Human Rights Law Review **7**:1 © The Author [2007]. Published by Oxford University Press.
All rights reserved. For Permissions, please email: journals.permissions@oxfordjournals.org
doi:10.1093/hrlr/ngl034 Advance Access published on 8 February 2007

Treaty Body Reform: the Case of the Committee on the Elimination of Discrimination Against Women

Hanna Beate Schöpp-Schilling*

1. Introduction

The issue of reforming the format and working methods of the UN treaty bodies that monitor the seven main human rights treaties through reporting, and in some cases through communication and inquiry procedures, has been on the UN agenda since the late 1980s.[1] Reform proposals have been formulated by a great number of people.[2] The discussion has been driven by the perception—which is to some extent corroborated by fact—that the treaty body system, in its current form, cannot adequately promote respect for and

*Member of the Committee on the Elimination of Discrimination against Women since 1989. She chaired the technical working group on 'Harmonized Guidelines on Reporting' and is a member of the new technical working group on 'Harmonizing Working Methods' at the Office of the High Commissioner for Human Rights which is to meet in late November 2006. The author would like to thank Marsha Freeman and Cees Flinterman for their very helpful comments on the draft text of this article.

1 See Effective Implementation of International Instruments on Human Rights, Including Reporting Obligations Under International Instruments on Human Rights, Initial Report of the Secretary-General's Independent Expert, Mr Philip Alston, 8 November 1989, A/44/668; Interim Report on Updated Study by Mr Philip Alston, 22 April 1993, A/Conf.157/PC/62/Add.11/Rev.1; and 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, 27 March 1996, E/CN.4/1997/74.

2 I will only refer to the reports by Alston, supra n. 1; and Bayefsky, *The UN Human Rights Treaty System: Universality at the Crossroads* (Ardsley, NY: Transnational Publishers, 2001), whose proposals have been referred to in the recent discussions.

protection and fulfilment of the human rights of various rights holders covered under the treaties. Given that the rate of ratification of treaties has been continuously increasing and that new treaties with monitoring bodies are currently being adopted, it is to be expected that the problems identified will not go away but will be further aggravated.

In this article I will first point to the problems with which various stakeholders such as States Parties, human rights treaty bodies and rights holders—often supported by non-governmental organisations (NGOs)—are confronted with in the monitoring processes. I will next give a short overview of the various reform proposals by the Secretary-General and the High Commissioner for Human Rights, which have been formulated since September 2002, followed by a summary of some of the reactions by some stakeholders, indicating areas of agreement and issues still unresolved. I will then develop my main argument that the Committee on the Elimination of Discrimination against Women (CEDAW Committee or 'Committee') is affected more seriously by these reform proposals than the other UN treaty bodies for a number of conceptual and organisational reasons, including the issue of changing its servicing links with respective UN entities and the related issue of changing its physical location to Geneva. I will close with some remarks about the pros and cons of such a change, in light of the Committee's own position that favours further harmonisation and integration of the human rights treaty body system rather than the idea of a unified treaty body. In this connection, I will identify some of the factors that will have to be taken into consideration if the Committee, and through it, the human rights of women, as rights holders under the Convention on the Elimination of All Forms of Discrimination against Women 1979 (CEDAW or the 'Convention'),[3] is not weakened but further strengthened.

2. Problems of the Human Rights Monitoring Process

A number of problems with the monitoring process undertaken by the human rights treaty bodies have been identified over the years. They are interrelated and affect all parties who are actively involved in the process, such as States Parties, the treaty bodies themselves, the administrative support staff of the UN Secretariat, other UN entities, NGOs and national human rights institutions. Ultimately, they impact negatively on the *de jure* and *de facto* human rights situation of the various rights holders. While the statistics quoted in various research studies, and, most recently, in the 'Concept Paper on the High Commissioner's Proposal for a Unified Standing Treaty Body',[4] speak for

3 1249 UNTS 13.

4 Concept Paper on the High Commissioner's Proposal for a Unified Standing Treaty Body, 14 March 2006, HRI/MC/2006/CRP.1 ('Concept Paper').

themselves, it must also be said that overt and covert interests of various kinds certainly do play a role in their interpretation and in proposals for reform based on them.

Late or non-reporting by many States Parties and the lack of implementation of concluding observations/comments[5] are deplorable problems. A number of reasons for the non- or late fulfilment of reporting obligations have been articulated by States Parties themselves. Some claim to feel 'burdened' by having to produce so many reports, the formulation of which requires a substantive amount of human and financial resources; others point to apparently 'overlapping' or 'congruent' provisions in the various treaties for which they find it repetitious to report to each respective treaty body. Other States are angry at the potential and actual delay, in some treaty bodies, between submission and discussion of reports, and this might, and apparently does, contribute to their unwillingness to continue to write reports or even to start producing them. Furthermore, some States feel that they are unjustly criticised by treaty bodies or that their positive efforts are not sufficiently appreciated, and this contributes to their reluctance to undergo another scrutiny.

These complaints by States Parties, however, do not give the whole picture. The success of the technical services offered by the Office of the High Commissioner for Human Rights (OHCHR), the Division for the Advancement of Women (DAW) and the UN specialised agencies in supporting States Parties to fulfil their reporting obligations, have shown that a lack of financial and human resources, including a lack of understanding of the nature of the respective norms and treaty obligations as well as the factual knowledge and administrative capacity of how to write such reports, are significant barriers. There are also, of course, conflict situations and natural disasters that keep a State Party from writing reports. All support efforts, however, cannot necessarily overcome a lack of political will, which needs to be addressed by altogether different measures. Unfortunately, these do not go beyond gentle persuasion or 'shaming' since the non-fulfilment of treaty obligations cannot be sanctioned by the treaty bodies themselves, and to date States Parties have refrained from utilising the relevant articles of the respective treaties that would allow them to negotiate a dispute concerning the interpretation or application of a treaty among themselves, submit the dispute to arbitration if it cannot be settled or even refer it to the International Court of Justice.[6]

5 The treaty bodies differ in the usage of terms. The CEDAW committee uses the term 'concluding comments' which I will use throughout the article. One of the harmonisation efforts by the OHCHR aims at standardisation of the terminology used by treaty bodies. The 18th meeting of chairpersons of June 2006 endorsed this effort, see Report of the chairperson of the human rights treaty bodies on their eighteenth meeting, 25 September 2006, A/61/385.

6 In the case of CEDAW, Article 29(1) provides for this possibility. However, of the currently 185 States Parties to CEDAW, 39 have entered a reservation to Article 29(1), permissible under Article 29(2).

Producing reports is both a challenge and an opportunity for States Parties.[7] What has to be kept in mind, however, before drawing any conclusions for treaty body reform from the problem of late or non-reporting is the reality that the reporting obligation of a State Party cannot be satisfactorily fulfilled if the State does not comply with its obligations to implement the relevant human rights treaty. That is, difficulties in reporting may and do arise for a State Party because it has exerted little or no effort to implement a treaty. From my long experience on the CEDAW Committee I have evidence indicating that many States Parties have often not addressed issues of legal reform or programmes to improve the material situation of women to enable and empower them to claim, exercise and enjoy their human rights, even if they ratified the CEDAW 15 or 20 years ago. Even fewer efforts have been aimed at the modification or elimination of the cultural, including religious, factors which may be the ultimate and persistent cause of the human rights violations that women experience.[8]

States Parties also complain and are confused by the differing guidelines for reporting issued by the seven treaty bodies and the differences in their working methods. This may create confusion for government officials in preparing reports and delegations in discussing them with the treaty bodies. The treaty bodies themselves have worked hard over the years to improve this situation insofar as it has been in their capacity to do so, both as individual bodies and through the institution of the by now annual 'meeting of chairpersons'. These meetings have been convened since 1994. More recently, work in these meetings has been supported by 'inter-committee meetings', which take place prior to the meeting of chairpersons and are attended by the chairpersons plus two experts from each treaty body. Both meetings, however, suffer from a lack of immediate decision-making power, since they can only recommend changes in working methods to the treaty bodies. The treaty bodies, in their subsequent sessions, decide whether to adopt and implement such proposals. This cumbersome and time-consuming process is grounded in the specificity of the respective treaties and in the independence of each expert, both of which are carefully observed

7 Committee on Economic, Social and Cultural Rights, General Comment No. 1, Reporting by States Parties, 24 February 1989, E/1989/22; 1–1 IHRR 1 (1994), elaborates upon this idea, as do the new Harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific documents, 10 May 2006, HRI/MC/2006/3.

8 This three-fold approach to the implementation of the CEDAW Convention through a legal strategy, a programmatic strategy and attempts to affect cultural change was developed in an academic study commissioned by the Netherlands Government in 1997, Groenman et al., *Het Vrouwenverdrag in Nederland anno 1997* (Den Haag: Ministerie van SZW, 1997). The English translation of part of the first chapter and the whole second chapter of this report is contained as an Appendix in Holtmaat, *Towards a Different Law and Public Policy: The Significance of Article 5a CEDAW for the Elimination of Structural Gender Discrimination* (Research undertaken on behalf of the Dutch Ministry of Social Affairs and Employment,

and guarded. Nevertheless, a number of 'best practices' developed by individual treaty bodies, have been introduced into the working methods of all of them through the initiatives taken in the meetings of chairpersons. This ongoing process of harmonisation has proven to be helpful to States Parties, despite its limitations, but it could certainly be improved, as some of the proposals discussed later in this article will suggest.

Both the supporting units of the OHCHR and the DAW have lacked sufficient staff and operational financial resources to service the treaty bodies, including resources to cope with the large amount of documentation involved and the consequent need for translation and oral interpretation. Rights holders, too, are affected by the problems in the system. They frequently are not aware of their country's obligations due to a lack of government transparency. If they are aware of these obligations, they may be disappointed by their government as well as by the treaty bodies. While the former may not implement the treaties and may not submit themselves to scrutiny, the latter may not respond satisfactorily in substance or with respect to handling reports or communications in due time.[9] This list of monitoring process short-comings, including the variable quality of nominated and elected experts, could easily be extended by reference to the OHCHR Concept Paper.[10] What must be questioned, though, is whether the various reform proposals offer real solutions to them.

3. Reform Proposals Since 2002

Since 2002, the discussion of reform of the treaty body system has gained a new momentum. Proposals have been made, sometimes superseding earlier proposals before they have been implemented, so that, unfortunately, various discussions now run in parallel. In September 2002, the Secretary-General, within the general framework of UN reform efforts, raised the issue of treaty body reform again and reiterated the Alston proposal to offer States Parties the opportunity to combine into one report all the reports that they may be obliged to submit to the various treaty bodies.[11] He also called upon treaty bodies to 'craft a more coordinated approach to their activities and standardize

9 The Concept Paper, at Annex I, gives numbers on the current backlogs of the treaty bodies. The CEDAW Committee has begun working in two chambers to overcome a backlog of reports of approximately 60 countries. However, a new backlog may quickly accumulate again, since the permission for working in two chambers has only been granted for three sessions in 2007 and 2008. The delay in processing communications, a problem that has been noted by several commentators over the years in relation to the Human Rights Committee, is not yet a problem for the CEDAW Committee under its Optional Protocol. However, it may become one in the future.

10 See Concept Paper at paras 15–26.

11 Interim Report, supra n. 1 at para. 141; and Final Report, supra n. 1 at para. 90.

their varied reporting requirements' and requested that the High Commissioner for Human Rights 'consult with treaty bodies on new streamlined reporting procedures and submit recommendations' to him.[12] In 2005, the High Commissioner for Human Rights proposed in her Action Plan to consolidate all treaty bodies into a single unified treaty body.[13] As a prerequisite for the realisation of this idea she formulated a second proposal, namely to relocate the CEDAW Committee to Geneva to be serviced by her Office.[14]

4. The 'Unified Report' v 'Harmonisation of Reporting Methods'

The idea of a unified report was discussed in various meetings, including a meeting in Malbun, Liechtenstein ('Malbun I') in the summer of 2003, which was attended by State Party representatives, treaty body experts, representatives of UN specialised agencies and NGOs. This meeting clearly rejected the idea of a unified report. Instead, a concept for a different kind of report was discussed which was seen by participants as solving some of the problems that States Parties allegedly and factually experience.

Up to this point, States Parties had reported according to the respective reporting guidelines of each treaty body. These guidelines, as mentioned earlier, differ from each other, thus contributing to the general reporting difficulties and confusion. In 1991, all the existing treaty bodies had agreed on consolidated guidelines concerning general information on a country's land and people, its political and legal systems and its human rights machinery. Up to that time, this information was usually contained in the first part of a State Party's report. Since this information, however, was of relevance to all treaty bodies, it was decided that it should now be offered in a so-called 'core document' to all of them, thus eliminating duplication of that information in all reports of a State Party. The Secretary-General transmitted these consolidated guidelines to all States that were party to any one of the human rights treaties.[15] The core document would

12 Report of the Secretary-General, Strengthening of the United Nations: an agenda for further change, 9 September 2002, A/57/387 at paras 52–4.

13 Plan of action submitted by the United Nations High Commissioner for Human Rights, Annex to In larger freedom: towards development, security and human rights for all, Report of the Secretary-General, 26 May 2005, A/59/2005/Add.3 at para. 99. In 2001, Bayefsky, supra n. 2 at 174, para. 228, called for two 'consolidated' treaty bodies, one for considering reports and another to examine individual communications, inter-State complaints and conduct inquiries.

14 Plan of action, ibid. at para. 148.

15 Consolidated guidelines for the initial part of the reports of States parties, 26 April 1991, HRI/1991/1.

be updated periodically by the Secretariat, based on information received from States Parties.[16] Despite the aim of this new procedure to ease the 'burden' of reporting for States Parties, this opportunity remained a voluntary one, and not all States Parties availed themselves of it.[17]

The new concept, which was put forward at Malbun I, further developed the idea of a 'satellite system' of reports by each State Party. It proposed not only to make the common core document an obligatory first part of any report of a State Party to any treaty body but also to expand it. Each treaty-specific report would then be attached as the second part of the report. By expanding the core document, it was believed that the treaty-specific document for each treaty body could become shorter and ultimately more focused, concentrating in a more in-depth way on the efforts of the State Party to eliminate the remaining human rights violations as time went on. It was also believed, that such a system would encourage States Parties to fulfil their reporting obligations so more countries would be scrutinised by treaty bodies and better protection for rights holders could be achieved.

The Malbun I meeting did not achieve agreement to the effect that the expanded core document should also include information on so-called 'congruent' provisions.[18] Nonetheless, the OHCHR did provide for exactly this in its first draft of the new 'harmonized guidelines' in 2004.[19] Treaty bodies and other stakeholders protested this inclusion in their first reaction to the first draft for a number of reasons, but the OHCHR still included the 'congruency' material in its second, amended draft.[20] Finally, in February 2006, a technical working group, consisting of one member of each treaty body, finalised a document of 'Harmonized guidelines on reporting',[21] which basically was acceptable to all treaty bodies. However, some saw the need for further review and questioned

16 Preparation of the Initial Parts of State Party Reports ('Core Documents') Under the Various International Human Rights Instruments, 24 February 1992, HRI/CORE/1 at para. 3.

17 Information on how many and which States Parties submit core reports is available at: www.unhchr.ch/tbs/doc.nsf.

18 Congruent provisions are those substantive provisions that are considered to be common to all human rights treaties. See Report of a meeting on reform of the human rights treaty body system, Malbun, Liechtenstein, 4–7 May 2003, 8 July 2003, A/58/123 at para. 16 and Annex, para. 36.

19 See draft Guidelines on an expanded core document and treaty-specific targeted reports and harmonized guidelines on reporting under the international human rights treaties, 9 June 2004, HRI/MC/2004/3 at paras 56–81. The congruent human rights provisions were identified as: non-discrimination and equality; effective remedies; procedural guarantees; and participation in public life.

20 Revised draft Harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific targeted documents, 1 June 2005, HRI/MC/2005/3 at para. 56. The substantive human rights provisions common to all or several treaties to be included now were identified as: non-discrimination and equality, which 'should' be included; and effective remedies, procedural guarantees, participation in public life, life, liberty and security of the person, marriage and the family, economic and social affairs, and education, for which it was left to States Parties to decide whether to include them.

21 Harmonized guidelines on reporting, supra n. 7.

the inclusion of even general information on a few provisions considered to be common to all treaties.[22] On this basis, these 'Harmonized guidelines' were endorsed by the inter-committee meeting and the meeting of chairpersons in June 2006.[23] These new guidelines require in the first part of any report, i.e. in the new and expanded core document, general information on the reporting State. and on its framework for the protection and promotion of human rights. Regarding the hotly debated issue of inclusion of the 'congruent' provisions, the new guidelines ask for merely general and factual information on only two areas, viz non-discrimination and equality and effective remedies.[24] What may be helpful to States Parties and treaty bodies alike are lists of indicators for assessing the implementation of human rights. Information according to these indicators can be added by States Parties in statistical form or in tables. It is hoped thus to reduce the need of treaty bodies to ask for factual information in the preparatory lists of issues and during the constructive dialogue. This should enable them to move into evaluative questions more quickly. From the point of view of the CEDAW Committee, the new guidelines are satisfactorily gender sensitive. So far, however, they cover only the first part of the new reporting format, and the treaty bodies still have to review and rewrite their treaty-specific reporting guidelines in light of the new common core document.

Unfortunately, the recommendation forwarded by participants of the inter-committee meeting to the treaty bodies, and endorsed by the eighteenth meeting of chairpersons, to apply the new guidelines 'in a flexible manner' is somewhat confusing. It may not be clearly understood by States Parties that they are, in fact, invited to apply these guidelines fully. Also, the decision to review 'experiences of each committee to implement the guidelines' as early as 2008 is completely unrealistic, as it will be 2008, if not 2009, before reports written according to the new guidelines, including the pending new treaty-specific guidelines for the second part of reports, will be submitted.

Following these first efforts to harmonise reporting guidelines, which still have to be completed successfully by individual treaty bodies, a new technical working group, again consisting of one member of each treaty body, was proposed by the inter-committee meeting. The aim of this group is to further

22 See discussion of the new guidelines at the fifth inter-committee meeting in June 2006 in Report of the chairperson, supra n. 5, Annex at para. 22.

23 Report of the chairperson, ibid. at para. 22 and Annex at para. 25.

24 Supra n. 7 at paras 50–9. As part of the new and expanded common core document, States are also requested to provide information concerning the demographic, economic, social and cultural characteristics of the State; its constitutional, political and legal structure; its acceptance of international human rights norms; its legal framework for the protection of human rights at the national level; its reporting process at the national level including follow-up to concluding observations of human rights treaty bodies.

discuss the harmonisation of work and working methods of treaty bodies on the basis of various proposals, such as those contained in paragraph 20 of the Concept Paper[25] and those put forward by the Committee on the Elimination of Racial Discrimination (CERD), the Committee on the Rights of the Child (CRC) and the CEDAW Committee as a reaction to the idea of a unified treaty body.[26] This group will convene for the first time in late November 2006.

5. The 'Unified Treaty Body' v the 'Unified Treaty Bodies System'

The idea of the unified treaty body was further elaborated in the Concept Paper of March 2006. Apart from the fact that the rationale for this idea and the details for its implementation, as outlined in the Paper, are not considered satisfactory by many, including myself, the idea has not found much support so far. Most participants in the inter-committee meeting and the eighteenth meeting of Chairpersons (which also included meetings with special procedures mandate holders and an informal consultation with States Parties[27]) as well as most participants in a second meeting in Liechtenstein in July 2006 ('Malbun II'),[28] were highly critical. They were not convinced that a unified treaty body would necessarily be a solution to the problems that they fully acknowledged were present in the current system. Many thought that these problems could also be solved by exerting more efforts of a conceptual and organisational nature towards harmonisation of working methods of the treaty bodies, while keeping the bodies themselves separate and intact. The greatest fear, expressed by those who were critical of the idea, concerned the danger of losing the specificity of the treaties and the conceptual and practical experience accumulated over the years in the so-called 'specific' treaty bodies. A number of NGOs, including those who support the CEDAW Committee and other treaty bodies through the provision of so-called 'alternative' or 'shadow' reports, also issued critical statements.[29] Confusion also reigned regarding the fact that the Secretary-General himself, in his report 'In larger freedom' of March 2005, had not mentioned the concept of a unified treaty body, but had merely reiterated his

25 These include treaty body sessions at the same time to permit interaction of treaty body members or even considering reports jointly; harmonisation of agendas, priorities and objectives; and formalisation of meetings of chairpersons and the inter-committee meetings.
26 These proposals will be discussed subsequently.
27 See supra n. 21.
28 Report of a Brainstorming Meeting on Reform of the Human Rights Treaty Body System, Triesenberg, Liechtenstein, 14–16 July 2006, 8 August 2006, HRI/MC/2007/2 ('Malbun II Report').
29 Of particular relevance to the CEDAW Committee were the statements by International Women's Rights Action Watch (IWRAW), available at: www.iwraw.igc.org/; and IWRAW Asia Pacific, available at: http://list.iwraw-ap.org.

request for the finalisation and implementation of harmonised guidelines on reporting 'so that these bodies can function "as a unified system"'.[30]

Before the Concept Paper was issued, the CEDAW Committee had already met with the High Commissioner for Human Rights during its 34th session in January–February 2006. In this meeting, the Committee expressed a number of concerns with respect to the idea of a unified treaty body. Based on past experience, the Committee voiced its fear that the Committee's knowledge of and focus on the protection and promotion of women's human rights would be lost without a specific mechanism designed to focus on these rights and that the human rights of women might be jeopardised in the new structure of a unified treaty body.

After the Concept Paper was issued, the Committee formulated a statement in favour of moving towards a 'harmonized and integrated human rights treaty bodies system' during its 35th session in May–June 2006, and contributed this to the various meetings to be held in June and July of 2006.[31] In the statement, the Committee voiced its opinion that the 'proposal to create a unified standing treaty body does not respond' to the challenges as described in the Concept Paper and that it 'implies a serious risk to undermine the differentiation and specificity of human rights as enshrined in the seven major international human rights treaties'. Rather, the Committee called for 'the progressive interpretation of the different treaties by treaty bodies, as relevant' and saw it as imperative for the existing treaty bodies to work as much as possible 'as a harmonized and integrated treaty bodies system' which should develop 'effective cooperation' with the Human Rights Council. It thus proposed that efforts to 'enhance the long-term efficiency of the treaty bodies system' be intensified, and that 'efforts to further harmonize, coordinate and integrate the various aspects of their mandates without losing the specificity of their different roles' be increased. The Committee pointed to the need to further harmonise working methods, including the currently differing rules of procedure under the various monitoring procedures. It called for an increase in the number of meetings of chairpersons from one to two annually. These meetings should coincide with sessions of the new Human Rights Council so that each chairperson could present statements at its sessions. The Committee also pointed to the need for efforts by all treaty bodies to ensure that States Parties use the new Harmonized guidelines on reporting.

CERD had earlier come up with a proposal of its own, in August 2005, when discussing the High Commissioner's idea of a unified treaty body.[32] Rejecting the

30 In larger freedom: towards development, security and human rights for all, Report of the Secretary-General, 21 March 2005, A/59/2005 at para. 147.

31 Towards a harmonized and integrated human rights treaty bodies system, Statement by the Committee on the Elimination of Discrimination Against Women, available at: www.un.org/womenwatch/daw/cedaw/35sess.htm.

32 Committee on the Elimination of All Forms of Racial Discrimination, Annual Report, 19 August 2005, A/60/18 at paras 475–85.

idea of a unified treaty body and emphasising the need for further improvement and harmonisation of the working methods of the various treaty bodies, CERD submitted the idea of creating a single body to deal with individual communications, which are currently possible under five treaties.[33] CERD saw the rationale for such a single body in a higher visibility of the communication procedures; a better accessibility for rights holders; and a more holistic interpretation of the treaties that would ensure a more effective protection of rights holders. Such a unified body for communications could be made possible on the basis of a procedural optional protocol.

At the fifth inter-committee meeting, the Chairperson of the CRC, rather than accepting the idea of a unified treaty body, suggested the creation of a strong bureau for the now seven treaty bodies composed of the seven chairpersons, who would organise and coordinate a number of actions that would contribute to a more effective harmonisation of the work of the treaty bodies and their working methods. The Human Rights Committee endorsed this last idea in October 2006 as a substitute for the meetings of chairpersons and the inter-committee meetings.

6. Challenges to CEDAW and its Committee

Whilst all the treaty bodies are challenged by the various reform proposals that have been made over the last four years, it has become obvious that the CEDAW Committee, for a number of reasons, has been confronted with additional specific challenges. These derive, first, from the history of its creation and the Committee's consequent organisational links within the UN system. Second, the fact that women constitute approximately half the world's population and the very nature of the various forms of discrimination against women, which finally have been recognised as human rights violations, raise questions for the implementation of the reform proposals that differ from the more general questions with which all treaty bodies have to deal. This point has been reaffirmed by the ongoing discussion in the various meetings and the papers issued by the OHCHR since 2002. Unfortunately, it became clear from these discussions that even two decades after the adoption of the Convention and after the Committee took up its work, the nature of the Convention and the causes of women's persistent inequality are still not fully understood by many, including some staff at the OHCHR.

33 Individual communications are permitted under CEDAW; the International Covenant on Civil and Political Rights 1966, 999 UNTS 171; the International Convention on the Elimination of All Forms of Racial Discrimination 1965, 660 UNTS 195; the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment 1984, 1465 UNTS 85; CEDAW; and the Convention on the Rights of All Migrant Workers and Members of their Families 1990, 2220 UNTS 93; 12 IHRR 269 (2005).

This was clearly demonstrated in both the first and the second drafts of the Harmonized guidelines for reporting issued by the OHCHR in 2004 and 2005.[34] In its official response to the first draft of the Harmonized guidelines, the CEDAW Committee severely criticised the 'chart of congruence in the substantive provisions of the seven core international human rights treaties' contained in that draft for a number of reasons.[35] First, the draft was 'grounded in a rather schematic interpretation of the norms and provisions of the seven human rights treaties' and did not take into account 'relevant differences and nuances' of the treaties.[36] Second, the characterisation of women as one 'demographic group' neglected their unfortunate experience of multiple discrimination and of forms of discrimination not experienced by men. Third, the difference between 'protective' and 'corrective' measures within the framework of special measures was not recognised; and, fourth, Article 14 was wrongly interpreted and incorrectly positioned under the category of special measures. Fifth, relevant Articles of the Convention were not even listed in the chart of congruence. Sixth, because the treaty bodies' general recommendations had not been taken into account during the composition of the draft, certain forms of discrimination against women, such as domestic violence, including female genital mutilation, which are implicitly covered by the Convention, were not made visible. In addition, the strategies of providing statistical data disaggregated by sex, on the one hand, and of gender mainstreaming, on the other, were confused, and the latter was not included as defined by intergovernmental mandates. Thus, the Committee strongly insisted that 'the "consistent" approach to human rights protection and reporting ... should not amount to the smallest common denominator in interpreting human rights in general and the human rights of women in particular' and that any new guidelines on reporting 'must ... not fall back behind the currently achieved theoretical and practical interpretation and implementation of women's human rights'.[37]

The most important issue, however, was that the schematic interpretation of discrimination against rights holders on all grounds, which was seen as 'congruent' to all treaties, was to be covered by the new common core document. This would apparently eliminate entirely treaty-specific reporting under the non-discrimination treaties, CEDAW and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) (and the new disability treaty, which was in the final drafting stage while the new guidelines were being formulated). Although, from the CEDAW Committee's perspective, all these issues were addressed and satisfactorily resolved in the final version of the

34 Supra n. 19 and 20.

35 Proposals on guidelines for an expanded core document and treaty-specific targeted reports and harmonized guidelines on reporting under the international human rights treaties: Preliminary views of the Committee on the Elimination of Discrimination against Women, 15 March 2005, CEDAW/C/2005/I/4/Add.1/Revised.

36 Ibid. at para. 25.

37 Ibid. at paras 26 and 28.

Harmonized guidelines, they will, nevertheless, have to be kept in mind as resulting from unfortunately widespread and recurring misinterpretations of the Convention, which can influence any new format, structures or treatment of the treaty bodies, including the CEDAW Committee.

The following short overview of the history of the Convention and its Committee will both illustrate the obstacles the Committee has experienced, and mostly overcome, since its inception almost 25 years ago and illustrate the rationale for the Committee's caution with respect to the proposals by the High Commissioner for Human Rights. These obstacles can be classified into three types: conceptual, organisational and technical.

The Convention was adopted on 18 December 1979 and came into force on 3 September 1981. It has been claimed to be the most important human rights instrument for women, prohibiting discrimination in all areas of women's lives and stipulating the achievement of their equality with men in the exercise and enjoyment of their human rights. Today it holds second place among the UN human rights treaties with respect to the number of ratifications, which currently stands at 185. However, its universal validity is threatened by the very large number of reservations, many of which go against the object and purpose of the Convention.[38] These reservations are one of the reasons that the right to non-discrimination on the ground of sex still has not reached the status of customary international law, in contrast with the right to non-discrimination on the ground of race. In 1979, Member States of the United Nations could not find a consensus to support the Convention with more than one monitoring procedure, i.e. the reporting procedure. On 10 December 1999, however, they strengthened the Convention through the adoption of an Optional Protocol. This provides for two additional monitoring procedures, i.e. the communication and inquiry procedures. The Optional Protocol came into force on 22 December 2000 and both procedures have been used since 2003.

For many years, States Parties, the UN system and civil society viewed the Convention as a development instrument, rather than a human rights instrument. The Committee was characterised—as well as treated—as the 'poor relation' of the other UN human rights treaty bodies.[39] Factors contributing to this image of the Convention and its Committee derived from their organisational link with the Commission on the Status of Women (CSW) and the DAW

38 For a recent overview of the Committee's statements on reservations since its inception see Schöpp-Schilling, 'Reservations to CEDAW: An Unresolved Issue or (No) New Developments?', in Ziemele (ed.), *Reservations to Human Rights Treaties* (Leiden: Martinus Nijhoff Publishers, 2004) 3.

39 Bustelo, 'The Committee on the Elimination of Discrimination against Women at the crossroads', in Alston et al. (eds), *The Future of UN Human Rights Treaty Monitoring.* (Cambridge: University Press, 2000) 98. Bustelo also gives a systematic overview of a number of the obstacles encountered and overcome, the criticisms voiced against the Committee's work and recommendations for improvement.

within the UN system; the poor servicing the Committee experienced in its early years; and a misinterpretation of the Convention itself.

This misinterpretation, too, may have been reinforced by a number of other factors. First, the very text of the Convention refers to the 'advancement of women' in Article 3. Second, although UN Member States at the early UN World Conferences on Women in Mexico (1975), Copenhagen (1980) and Nairobi (1985), within the framework of the UN Decade for Women covering the themes of 'equality, development, [and] peace', identified the various forms of discrimination women have to suffer in education, employment, health, political and public decision-making, before the law and through the law, they did so by seeing them mostly as political, social and economic challenges rather than as human rights issues. Third, apparently convincing arguments about the cost involved in overcoming the discrepancies in the economic, social and cultural situation of women as compared with those of men, made many States believe that they were dealing with development issues that would take time to be eliminated. At the same time this argument served States, allowing them to hide the persistence of patriarchal notions and their very resistance to guaranteeing women the full enjoyment of their human rights. Fourth, despite the requirement in Article 2 of the Convention of implementation 'without delay', for many States Parties to CEDAW the notion that implementation could be 'progressive' was suggested by confusion with the framework of progressive implementation according to available resources contained in the International Covenant on Economic, Social and Cultural Rights,[40] which includes many of the same rights articulated in CEDAW. Fifth, the foundation of many forms of discrimination against women lies in stereotyped notions of women's social nature as determined by existing and assumed biological facts and supported by cultural beliefs, including religious ones. This made implementation 'without delay' seem impossible to many States Parties. Implementation of Articles 2(f) and 5(a) was interpreted either as a very long-term development issue or as one not to be complied with at all by entering reservations to these and other substantive articles relating to areas of women's human rights—such as in the family and in public life—where such religious and other cultural beliefs hold sway. Lastly, perceptions of the Convention as a development instrument rather than a human rights instrument may have been reinforced by the fact that it has been serviced since its inception by parts of the UN Secretariat that were designed for the 'Advancement of Women' and were located in larger units

40 It was not understood that although according to Article 2(2), International Covenant on Economic, Social and Cultural Rights, economic, social and cultural rights for both men and women can be implemented progressively within the framework of available resources of a given State Party, the State Party is prohibited from discriminating against women while doing so. The prohibition of any discrimination on the grounds of sex, or of any other ground, cannot be ignored. This notion was further elaborated in Principles 22 and 35–41, Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights 1986, (1987) 9 *Human Rights Quarterly* 122.

dealing with 'Social Development' or 'Social Affairs', first in Vienna and as of 1994 in New York.[41]

The separation from the other human rights treaty bodies is attributable to the Convention's history. In contrast to all other UN human rights treaties, the Convention was not drafted by the (now defunct) Commission on Human Rights, but by the CSW, which is also serviced by the DAW. Because of this, the CEDAW Committee remained organisationally linked with the DAW and through it, though not directly, with the CSW, which is informed about the Committee's work through the transmission of its annual reports by the Secretary-General and through an oral statement by the Committee's Chairperson at its annual session.

The World Conference on Human Rights in Vienna (1993) changed the perception of the Convention as a development instrument forever and reaffirmed its human rights character.[42] The International Conference on Population and Development in Cairo (1994) and the Fourth World Conference on Women in Beijing (1995) built on Vienna and reiterated this position. In addition, the World Conference on Human Rights recommended that the entities of the United Nations, including the independent treaty monitoring bodies, address the human rights of women through mainstreaming.[43] This request also was reiterated in Beijing. While women's human rights and their rights to non-discrimination and equality are explicitly or implicitly also covered under other human rights instruments, it has taken some time, as well as the presence of knowledgeable experts on the treaties' respective monitoring bodies, for these bodies to interpret their treaties and review States Parties' reports from this perspective.[44] Since Beijing, a number of treaty bodies have made decisive efforts at gender mainstreaming both through new general comments and in their concluding comments on States Parties' reports, but the work is still not

41 The history of the DAW, which still services the Committee, and its location within the UN system can be found at the Division's website: www.un.org/womenwatch/daw/history.

42 Para. 18, Part I, Vienna Declaration and Programme of Action, June 1993; 1–1 IHHR 240 (1993), reads: 'The human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights.'

43 Para. 37, Part II, Vienna Declaration, ibid., provides: 'The equal status of women and the human rights of women should be integrated into the mainstream of United Nations system-wide activity.' Para. 42, Part II, further states: 'Treaty monitoring bodies should include the status of women and the human rights of women in their deliberations and findings, making use of gender-specific data.'

44 On this issue see Schöpp-Schilling, 'Some Reflections on the Women's Human Rights Dimension of the International Covenant on Economic, Social and Cultural Rights (ICESCR) as Compared to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)', in Pentikäinen (ed.), *EU-China Dialogue: Perspectives on Human Rights—With Special Reference to Women* (Rovaniemi: Northern Institute for Environmental and Minority Law, University of Lapland, 2000).

consistent and depends on members who have sufficient awareness and knowledge of violations of women's human rights and on contributions by NGOs.[45]

There is yet another aspect of the conceptual nature of discrimination against women which does not seem to be fully understood, as the 2004 and 2005 drafts of the Harmonized guidelines for the new common core document unfortunately clearly demonstrated again. I am referring to the tendency among some States Parties and parts of the UN system to view women as a 'vulnerable group', i.e. being of the same nature and to be placed into the same category as other vulnerable groups such as children, the aged, minorities and others. What is not recognised by those who formulate such lists of various vulnerable groups, is that discrimination against women differs both quantitatively and qualitatively from discrimination against any of these other groups. Women constitute approximately half the world's population. In addition, the relationship between the perpetrators and the subjects of discrimination is uniquely and inescapably intimate—men and women live together in nuclear and extended families everywhere in the world. Lastly, if one talks about 'groups' at all, it must be recognised that they all include women and men. However, not only are men and women treated differently in general with discriminatory consequences, but within these vulnerable groups discrimination against women is perpetrated by those within the group as well as by those outside it. Thus, discrimination on other grounds (such as religion, race, age and health, to name a few) may be, and most often is, compounded for the women of these groups by discrimination on the grounds of sex and gender, thus amounting to multiple or intersectional discrimination.

Another more technical issue is that the Convention is the only UN human rights treaty in which the working time of its monitoring Committee is limited through the Convention text itself. Article 20(1) of the Convention provides that the Committee 'shall normally meet for a period of not more than two weeks annually'. For many years, this provision severely hampered the work of the Committee, especially as the unexpectedly rapid ratification of the Convention quickly produced a backlog of reports by States Parties that could not be considered due to a lack of working time.

In addition to these problems, which are specific to CEDAW, other problems similar to those experienced by other treaty bodies remain. Many States Parties continue not to report at all or to report much too late. At the same time, the Committee continues to face a backlog of reports and so it cannot pursue follow-up efforts on its concluding comments nor formulate general recommendations due to lack of time.

45 The recent publication by IWRAW is a very important example for a compilation of questions that refer to the gender dimension of the International Covenant on Economic, Social and Cultural Rights: IWRAW, *Equality and Women's Economic, Social and Cultural Rights: A Guide to Implementation and Monitoring under the International Covenant on Economic, Social and Cultural Rights* (Minneapolis: University of Minnesota, 2004).

Despite these interrelated obstacles, the Committee has been doing excellent work over the years. Apart from reviewing a great number of reports, it has developed 25 general recommendations. Some of these recommendations contributed to a conceptual expansion of the understanding of human rights violations suffered primarily or even solely by women, such as domestic violence, including female genital mutilation; discrimination against women in the family with consequent discrimination in civil and political life; and discrimination against women in the area of maternal as well as general health. In addition, the interpretation of Article 4(1) of the Convention on temporary special measures, which the Committee sees as an appropriate and necessary instrument to be applied in order to accelerate the elimination of indirect and structural discrimination, has been an important milestone for the discussion of 'affirmative action' at the national level.[46] The work of the Committee, through its constructive dialogue with States Parties, its concluding comments and its close cooperation with international and national NGOs and UN specialised agencies, programmes and funds—in particular, with the United Nations Development Fund for Women (UNIFEM)—has had a tangible impact on the improvement of women's exercise of their human rights in many countries. This has been effected both through legal reform and programmes aimed at creating the material conditions for the full enjoyment of rights, as well as contributing to cultural change with respect to traditional cultural and religious beliefs, attitudes and behaviour.[47]

46 General Recommendation No. 12: Violence against women, 2 February 1989, HRI/GEN/1/Rev.7 at 240; 1–1 IHRR 20 (1994); General Recommendation No. 19: Violence against women, 29 January 1992, HRI/GEN/1/Rev.7 at 246; 1–1 IHRR 25 (1994); General Recommendation No. 14: Female circumcision, 2 February 1990, HRI/GEN/1/Rev.7 at 241; 1–1 IHRR 21 (1994); General Recommendation No. 21: Equality in marriage and family relations, 4 February 1994, HRI/GEN/1/Rev.7 at 253; 2 IHRR 1 (1995); General Recommendation No. 23, Political and public life, 13 January 1997, HRI/GEN/1/Rev.7 at 263; 5 IHRR 7 (1998); General Recommendation No. 24: Article 12 of the Convention (women and health), 2 February 1999, HRI/GEN/1/Rev.7 at 274; 6 IHRR 909 (1999); General Recommendation No. 5: Temporary special measures, 4 March 1988, HRI/GEN/1/Rev.7 at 235; 1–1 IHRR 16 (1994); and General Recommendation No. 25: Article 4, paragraph 1, of the Convention (temporary special measures), 30 January 2004, HRI/GEN/1/Rev.7 at 282; 11 IHRR 909 (2004).

47 See McPhedran et al. (eds), *The First CEDAW Impact Study: Final Report. Released during the CEDAW Committee, twenty-third session, New York, June 2000* (Toronto: The Centre for Feminist Research, York University and the International Women's Right Project, 2000); Landsberg-Lewis, *Bringing Equality Home: Implementing the Convention on the Elimination of all Forms of Discrimination against Women* (New York: UNIFEM, 1998). Zwingel, 'From Intergovernmental Negotiations to (Sub)national Change: A Transnational Perspective on the Impact of CEDAW', (2005) 7 *International Feminist Journal of Politics* 400, demonstrates the Committee's impact supported by NGO action, though there are some factual mistakes in her article that also influence her thesis. The forthcoming book by Schöpp-Schilling and Flinterman (eds), *The Circle of Empowerment: Twenty-five Years of the UN Committee on the Elimination of Discrimination against Women* (New York: The Feminist Press, 2007), will have a number of essays by former and current members of the Committee demonstrating the impact of the work of the Committee.

On the positive side it must also be observed that servicing through the DAW, which was rather poor at the beginning, has been quantitatively and qualitatively improved. In particular, additional staff have been recruited and a human rights section installed. The working time issue has been addressed both through an amendment to Article 20(1),[48] which, however, is slow in being ratified; and through the allotment of additional working time by the General Assembly over the years, culminating in a measure allowing for three sessions of three weeks each for 2006 and 2007, including holding three of these sessions in two chambers.[49] Thus, the Committee seems to be finally on an equal footing with other treaty bodies that face a similar amount of work, such as the CRC and the Human Rights Committee.

7. The Challenge of Servicing/Location and Its Consequences

The issues of servicing and location of the Committee are interesting. According to Article 20(2) of the Convention, meetings of the Committee shall 'normally be held at United Nations Headquarters or any other convenient place as determined by the Committee'. Whilst located in Vienna, from 1982 to 1993, the Committee's requests also to meet in New York were met at least every other year.[50] Following the World Conference on Human Rights, the Committee noted the 'increasing relevance of women's human rights' and formulated Decision 14/II, requesting that it be located in Geneva 'with servicing provided by the Centre for Human Rights'.[51] It based this request on the recommendations of chairpersons at their third, fourth and fifth meetings, on the explicit recognition of the 'Vienna Declaration and Program of Action . . . that the human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights', as well as on resolutions of the CSW and the Commission on Human Rights on the 'mainstreaming of women's human rights' and 'integrating the rights of women into the human rights mechanisms of the United Nations', respectively. However, this decision did not produce any result.

Later, when the then High Commissioner for Human Rights, Mary Robinson, invited the Committee to be serviced by what then had become the OHCHR,

48 The General Assembly noted with approval, in GA Res. 50/202, 22 December 2002, A/RES/50/202, that on 22 May 1995 States Parties to the Convention had adopted an amendment of Article 20(1), removing the restriction on working time. The amendment will enter into force upon acceptance by two thirds of the States Parties. Currently only 47 (out of 185) have accepted it.

49 See GA Res. 60/230, 23 March 2006, A/RES/60/230.

50 The Committee met in New York for its second and third sessions (1983, 1984), and for its fifth, seventh, ninth, eleventh and thirteenth sessions (1986, 1988, 1990, 1992 and 1994).

51 31 May 1995, A/50/38 at 13.

the Committee did not want to move from New York for fear of losing the by then excellent servicing it enjoyed from the DAW. It was also pointed out that, at the time, the linkages between the DAW and the OHCHR with respect to the servicing of the Committee could easily be intensified with the help of the by then widely available new communication technologies.

After learning about High Commissioner for Human Rights Louise Arbour's new proposal to move CEDAW to Geneva, as stated in her 2005 Action Plan, the Committee first discussed the proposal with a representative of the OHCHR in New York during its 33rd session in July 2005. Discussions were then held with the High Commissioner in person during the Committee's 34th session in January 2006; and again among its members during an informal meeting supported by the German Government in Berlin in May 2006.[52] The Committee voiced a number of concerns and, in general, remained reluctant to move in view of a number of other factors unresolved at the time of the discussion, such as the then pending decision on a new Human Rights Council and the expansion of the OHCHR with new financial and human resources. It also clearly stated that even if such a move should happen, the Committee could and should still meet in New York at least once a year as is the practice of the Human Rights Committee and as the CEDAW Committee itself did while located in Vienna.

In October 2006, the Committee, although not in session, was surprised by a letter from the Secretary-General, in which he announced his decision to transfer responsibility for supporting the Committee to the OHCHR. Since negotiations between the DAW and the OHCHR seemed to be underway, Committee members quickly, though informally, compiled a number of questions and recommendations and asked the DAW that they be taken into account. A few days later, members of the Committee were addressed individually on this issue by the High Commissioner, who also proposed to meet with the Committee during its 37th session in January 2007.

From my personal point of view, the decision to be serviced by the OHCHR is conceptually appropriate and necessary considering the new and strengthened human rights structure. It is to be hoped that once the CEDAW Committee is located with the other human rights treaty bodies and serviced by the same support structure, many of the misperceptions of the nature of the Convention outlined earlier will be laid to rest. The relocation is also necessary if the idea of a 'harmonized and integrated human rights treaty bodies system', as proposed by the Committee, is to succeed.

52 The Committee was lucky to have been able to hold informal meetings facilitated and financed by the Governments of Spain (1995), Germany (2000 and 2006), Sweden (2002) and the Netherlands (2004). In these meetings the Committee could discuss its contribution to the Fourth World Conference on Women in Beijing as well as important issues of working methods for which it would not have found time during its formal sessions due to the restriction of meeting time and ever growing backlog of reports.

The achievement of such a system should be guided by several conceptual and administrative objectives. As mentioned in the statement by the CEDAW Committee, and in statements by other treaty bodies, a consistent interpretation of the legal provisions of all treaties must be aimed for. At the same time, however, I would ask that caution be exerted so that the call for consistency does not dampen any creative approaches aimed at expanding the conceptual nature of norm interpretation. Such interpretation has been done successfully not only by the CEDAW Committee but by other committees as well. Again, as similar efforts towards achieving greater consistency in concluding comments can certainly lead to their improvement, the specificity of the respective treaty and the country under discussion must be maintained.[53] In fact, the new technical working group meeting in November 2006 may well need to discuss and define what is meant by 'consistency' in these and other instances.

Geographical proximity and support by a common secretariat structure will further enhance the opportunity and capacity for integrating gender perspectives into the work of the OHCHR and among members of the other committees, although such efforts should never diminish the importance of the CEDAW Committee as the one treaty body primarily responsible for dealing with the elimination of all forms of discrimination against women. Because the mandates of most treaty bodies require that they focus on specific rights, with attention to discrimination, rather than attending solely to discrimination, their scrutiny will, ideally, reinforce rather than replace scrutiny by the CEDAW Committee and other bodies mandated to focus solely on discrimination. A more innovative way of cross-referencing should, perhaps, be developed to address this issue.[54] On the other hand, a successful mainstreaming effort, in the sense that discrimination against women is well noticed by all treaty bodies when relevant, may give the CEDAW Committee more working time to address specific issues of discrimination in more depth than is currently possible. Thus, from my point of view, discussion between the CEDAW Committee and government delegations needs to be deepened and extended in order to raise awareness of and explain certain persistent forms of violations of women's human rights, such as structural and intersectional discrimination. In addition, both in its constructive dialogue with States Parties and in general recommendations to be newly formulated, the Committee may then also address in greater detail issues of cultural and religious beliefs supporting discrimination against women. These challenges will become more and more important as time goes by and other forms of discrimination, more easily eliminated, may disappear. Together with the other treaty bodies, the Committee may address the

53 The CEDAW Committee is always struggling to keep a balance between creating a consistent 'quasi-jurisprudence' and being as country specific as possible. Both States Parties and UN specialised agencies, programmes and funds that have made it their task to assist States Parties in the implementation of concluding comments, have called for greater specificity.

54 I am grateful for Marsha Freeman for this suggestion.

burning issue of reservations to the Convention often grounded in such beliefs, which, in the opinion of the Committee, go against the 'object and purpose' of the Convention and which, strangely, are not entered to other conventions with similar provisions.[55] Being serviced by the same support structure, treaty bodies also may find it easier to formulate general recommendations more collaboratively than happens now. This could be achieved through thematic seminars that could be convened when one or several treaty bodies would meet at the same time as has been suggested by the Chairperson of the CRC.

If the Committee were more strongly linked with the other treaty bodies through a common secretariat, efforts to review and amend treaty-specific reporting guidelines in a consistent manner within the framework of the new Harmonized guidelines on reporting could probably be accomplished more quickly, as could efforts to convince States Parties to utilise these new guidelines. Collection of evidence of their benefits or shortfalls may also become easier both for treaty bodies and the staff of the OHCHR. The idea of shorter, focussed or targeted treaty-specific reports certainly needs to be further discussed and developed, and it would be helpful to do this in cooperation with other treaty bodies. I am quite aware of the difficult decisions to be made by treaty body members when attempting to prioritise a list of human rights violations for a State Party. A discussion by all treaty bodies of how to do this without creating the perception of new hierarchies of human rights is deserved. From an organisational point of view, this also involves a more thorough analysis of previous reports of a State Party, in particular as time progresses, which should be done with increased assistance from the common secretariat.

The relocation of CEDAW will not only strengthen its working relationship with the other treaty bodies but with all the Charter bodies as well, as was outlined by another CEDAW member in 2003. He noted five principles for the enhancement of all these relationships, consisting of: a joint responsibility to preserve the integral character of human rights law; an increase of effectiveness, including cost effectiveness; awareness and more effective utilisation of the complementary roles of all bodies; harmonisation of best practices; and consistency.[56] As mentioned before with respect to the issue of consistency, these principles should be further discussed in the new technical working group.

Links with other treaty bodies through a common support structure would also facilitate the implementation of the CERD and CRC harmonisation proposals. While the inter-committee meeting found the idea of a single body for communications interesting and asked for further elaboration of the concept

55 At the fourth inter-committee meeting, it was decided to form a working group on reservations to address this issue. The working group has already met and continues to meet. See Annex, Note by the Secretary-General transmitting the Report of the chairperson of the human rights treaty bodies on their seventeenth meeting, 19 August 2005, A/60/278 at Recommendation VI.

56 Flinterman, 'United Nations Human Rights Reform: Some Reflections of A CEDAW Member', (2003) 21 *Netherlands Quarterly of Human Rights* 621.

for the Malbun II meeting, the CEDAW Committee has not yet had time to discuss these proposals. I basically endorse the idea of one treaty body to deal with individual communications, but I hesitate to suggest rapid implementation, since it is too early for the Committee to give up on its own efforts under its Optional Protocol. The Committee began to apply its communication procedure—nobody so far, has talked about the inquiry procedure in the more recent context of reforming treaty bodies[57]—only in 2003. So far the Committee, after discussing admissibility and the merits of a few communications, has produced some innovative interpretations of the Convention and its Optional Protocol. This required a strong collective effort of the 23 Committee members. I would be reluctant to transfer this experience, which also contributes to a heightened collective understanding of the Convention and its Optional Protocol among CEDAW Committee members, to a new treaty body to deal with individual communications too soon.

The idea of creating a 'bureau of chairpersons' could certainly more easily be implemented if all treaty bodies are serviced by the OHCHR. Again, this idea, which is intriguing, needs to be discussed more thoroughly, because its implementation and the benefits supposedly flowing from it for States Parties due to better coordination and harmonisation of work and working methods of the treaty bodies also depend on a number of other factors. The issue of the quality of treaty body members, including chairpersons, was referred to in various discussions. In addition, some of the alleged benefits do not seem to be grounded in factual research. For example, I have heard conflicting opinions from States Parties as to whether they really want to report to several treaty bodies in as short a period of time as possible, which might be arranged by a strong bureau coordinating the work programmes, including the review calendar of States Parties' reports, of the treaty bodies.

A number of challenges remain, however, that should be considered in any negotiations on the move of the CEDAW Committee to be serviced by the OHCHR in Geneva (and, as to be hoped, also in New York). One question is timing. While the decision to move may be irreversible, it may be better not to rush its implementation but rather to wait until the expansion of the OHCHR has become stable and the CEDAW Committee itself has successfully managed the integration of its five new members arriving in January 2007 during its three sessions in 2007, two of which will be conducted in two chambers again.[58]

57 However, note that Bayefsky, supra n. 2, did. CEDAW under its Optional Protocol and the Committee Against Torture under Article 20, Convention Against Torture, have inquiry procedures. CEDAW has conducted one inquiry (Mexico) so far, see Report on Mexico produced by the Committee on the Elimination of Discrimination Against Women under Article 8 of the OP to the Convention, and Reply from the Government of Mexico, 27 January 2005, CEDAW/C/2005/op.8/MEXICO.

58 The CEDAW Committee is facing a daunting workload in 2007. It plans to discuss reports from 38 countries in 2007, some of which will have submitted combined reports or more than one report.

A second issue is the question of how and in what form the Committee will maintain its links with the UN gender structure, in this case the CSW; the Office of the Special Adviser to the Secretary-General on Gender Issues and the Advancement of Women; the DAW with its accumulated knowledge and institutional memory of the Committee; and UNIFEM, which has played a most effective role for increasing the visibility of the Convention as well as enhancing its implementation in numerous countries. This important question, however, cannot be answered at this point since the UN gender structure itself is also being discussed in the reform process.[59] However, such links are of importance in view of the mandate given to both the CSW and the CEDAW Committee by the Fourth World Conference on Women in Beijing to review the implementation of the goals and strategies contained in the Beijing Platform for Action.[60] Thematic seminars, convened by the DAW, on aspects of women's human rights issues both under the Convention and the Platform for Action in preparation for sessions of the CSW, have also contributed to the expertise of CEDAW experts, diplomats and NGO representatives who were invited to participate. Such invitations should continue. While maintaining these links when being serviced by the OHCHR, I can also see potential for the Committee to utilise them in contributing to a gender perspective in the new Human Rights Council. Last but not least, access by UN specialised agencies, programmes and funds as well as national and international NGOs to the Committee's review process must be maintained and further strengthened, since all of these entities have been contributing decisively to the implementation of the Convention and the concluding comments of the Committee. With reference to Article 20(2) of the Convention, it may be helpful to involve members of the Committee in the ongoing negotiations between the DAW and the OHCHR to ensure consideration of the issues described earlier as well as others.

59 While writing this article, the Report of the Secretary-General's High-Level Panel on UN System-wide Coherence in the areas of development, humanitarian assistance, and the environment, 9 November 2006, A/61/583, was issued. At this point I can only note that the Report addresses 'Gender equality and women's empowerment' and that it contains recommendations concerning the mandate and structure of a 'consolidated gender entity'. At the same time, a 'strong belief' is expressed that 'the commitment to gender equality is and should remain the mandate of the entire UN system' (paras 46–9). These recommendations, as well the ones concerning 'Human rights' (paras 50–1), need to be carefully reviewed by all stakeholders inside and outside the United Nations, including the CEDAW Committee. The Committee's assessment of these recommendations should then also be taken into consideration by the DAW and the OHCHR when negotiating the concrete details of the Committee's move.

60 Beijing Declaration and Platform for Action, Fourth World Conference on Women, 15 September 1995, A/CONF.177/20 (1995) at paras 318 and 322.

8. Final Remarks

Both the High Commissioner for Human Rights and, more recently, the Secretary-General, have spoken about their willingness to raise the status, visibility and authority of the CEDAW Convention and its Committee, thereby ensuring that women's rights will be at the centre of an integrated human rights machinery. While I have identified some elements that may contribute to these goals, additional ideas and more concrete details will have to be produced. The Concept Paper, unfortunately, did not elaborate on this idea. The CEDAW Committee, while naturally being pleased with such goals after its long history of difficulties as described in this article, will need to make additional recommendations, and those involved in the current negotiations must use them as their yardstick if the human rights of women are to be taken seriously.