Strengthening the UN human rights Treaty Body System:

Prospects of a work in progress

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Introduction

The United Nations human rights treaty body system is one of the pillars of the United Nations and is *"one of the greatest achievements in the history of the global struggle for human rights*"[2]. This independent expert mechanism is the custodian of universal values, as expressed by legally binding human rights norms. Despite its normative grounds, and thanks to its constitutional parameters, particularly its independence, the treaty body system is far from being a static institution. It grew and developed over five decades during which it confronted numerous human rights challenges in a constantly dynamic mode.

The United Nations human rights treaty body system was not initially conceived within a comprehensive global vision. Its historical development rather reflects a dynamic incremental interaction between social demand as expressed by the human rights movement across the globe and States' engagement at the multilateral level in specific thematic areas of human rights protection. Indeed, norms are born out of a dynamic interaction between social demand, precise content and monitoring mechanisms. International expert bodies that monitor States' compliance with human rights norms conduct their own institutional journey in a constant mode of adaptation to various challenges and developments. Half a century separates the beginning of separate treaty making initiatives from the recently established notion and practice of a comprehensive "treaty body system", as labelled by the General Assembly in resolution 68/268 on Strengthening and enhancing the effective functioning of the human rights treaty body system in April 2014.[3] The added value of this notion gives effect to the principle of the indivisibility of all human rights as enshrined in the Vienna Declaration and Programme of Action. [4]

The year 2016 marks the 50th anniversary of ICERD and the two human rights covenants. Such a significant moment in the history of the human rights protection

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[2] Foreword by the Secretary General of the UN to the report by the High Commissioner for Human rights, *Strengthening the United Nations human rights treaty body system*, June 2012, page 7 (A/66/860).

[3] As evident from the title of the resolution '68/268, Strengthening and enhancing the effective functioning of the human rights treaty body system,' the resolution reaffirms human rights treaty bodies as a 'system'**.** The resolution further repeats the terminology **'**treaty body system' 23 times in the resolution. For instance, in its preamble, the GA reaffirmed the importance of the effective functioning of the treaty body as a system: *Reaffirming* that the full and effective implementation of international human rights instruments by States parties is of major importance for the efforts of the United Nations to promote universal respect for and observance of human rights and fundamental freedoms and that the effective functioning of the human rights treaty body system is indispensable for the full and effective implementation of such instruments,' A/RES/68/268, page 1.

[4] 'All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms,' Vienna Declaration and Programme of Action, Adopted by the World Conference on Human Rights in Vienna on 25 June 1993, para 5, http://www.ohchr.org/EN/ProfessionalInterest/Pages/Vienna.aspx

architecture provides an opportunity to reflect on the achievements and challenges facing the human rights treaty body system. We will address this topic through an analysis of the treaty body strengthening process which was launched by OHCHR in 2009 and culminated in the adoption of by the General Assembly of resolution 68/268.[5] In its final paragraph, resolution 68/268 calls for a review of the state of the treaty body system in 6 years, i.e. in 2020.[6] The transition period from 2014 to 2020 is characterized by a two parallel tracks: on the one hand the implementation of the treaty body strengthening resolution and the biennial reporting hereon by the UN Secretary-General, and, on the other hand, the birth of initiatives aimed at encouraging renewed reflection on the future of the treaty body system in anticipation of a new inter-governmental process in 2020.

These developments and processes take place within the larger framework characterised by a double trend that eventually reduces the impact of political controversies on the human rights movement: the expansion of the independent components of the human rights architecture at national, regional and international levels and the empirical progressive nature of their development. [7] The resilience of human rights monitoring mechanisms derives from the genuine social need for their role and the increased weight of peoples' voices within countries and around the globe. The future of human rights mechanisms largely depends on their capacity to transcend politics and add value to all stakeholders, including States. The legal and moral weight of such added value emanates from human rights mechanisms' double shield of knowledge and impartiality.

1. Optimising the promise of the treaty body system

The ten treaty bodies are the custodians of the legal norms established by human rights treaties. They are not judicial organs but are commonly considered as quasi-judicial. Despite their obvious legal nature, the treaty bodies have a great potential impact on policies at the national level. Given their accumulated global experience, their independent assessment of States' compliance with their human rights obligations provides authoritative guidance on how to enhance the implementation of human rights standards through rights-based public policies in almost all areas of governance. The periodicity of their review and the resulting updated advice to States on treaty implementation enhances human rights promotion and protection around the world in a promisingly gradual and sustainable manner. Through the individual complaints system, which is the second main function of the treaty body system, victims of human rights violations can directly access treaty bodies and seek redress and reparation. The resulting decisions offer valuable international jurisprudence on what is initially national case law. A third indispensable function of the treaty body system resides in its contribution to the progressive development of human rights law both through their own findings in individual cases, their general interpretative comments, and their impact on national courts' jurisprudence.

When properly resourced and professionally supported by OHCHR, the treaty body system is capable of realizing that promise. States, creators of the system and recipients of its outcomes, assume the primary responsibility for optimising the potential of the treaty body

[5] A/RES/68/268, General Assembly resolution on strengthening and enhancing the effective functioning of the treaty body system.
[6] A/RES/68/268, paragraph 41.
[7] Olivier De Frouville, Strengthening the Rule of Law: The Right to an Effective Remedy for Victims of Human Rights Violations in Julia Kozma, Manfred Nowak, Anna Müller-Funk (eds.), Vienna +20: Advancing the Protection of Human Rights Achievements, Challenges and Perspectives 20 Years After the World Conference, Ludwig Boltzmann Institute of Human Rights, Studies Series, vol. 31, Vienna, Austria: Neuer Wissenschaftlicher Verlag, January 2014, p.129.

architecture. When properly fulfilled, the periodic reporting function offers a triple benefit to States from a public policy perspective: (1) regular self-assessment of legislation, policies and programmes from a human rights perspective; (2) a national participatory process in preparation of States' reports that provides a healthy engagement between governments and civil society, and finally, (3) an opportunity to benefit from cross- fertilizing world views on States' human rights approaches through the melting pot of expert bodies representing all legal schools and regional experiences from around the world. All of the above naturally ends up promoting the placing of human rights at the centre of governance. The treaty body reporting process, with a follow-up function built into its periodicity, is a crucial element to ensure the effective protection of all rights-holders in the world in an incremental, knowledge-based and constructive manner.

At the same time, the treaty bodies' independence guarantees a non-selective approach to all country situations and all human rights. Their collective nature also shields treaty bodies from the risk of politicisation. The accuracy and quality of the recommendations made by treaty bodies are crucial attributes that need to be maintained and enhanced so that treaty body recommendations can be used effectively by all stakeholders to promote change at the national level**.**

Prevention is an important aspect of the role of the treaty body system.[8] However, a successful preventive aspect of the work of treaty bodies is guaranteed when States implement recommendations which change the situations that could have otherwise led to human rights violations. Among the more visible roles of treaty bodies one should mention their accumulated jurisprudence which has a direct impact on national and international courts. Equally visible are the follow-up and advocacy roles that treaty bodies' outcomes enable national human rights institutions and civil society actors to play, using regularly updated findings of treaty bodies as authoritative platforms, whether thematic or country specific.[9] It is obvious that technological advances, particularly in the area of communications offer a huge horizon to empower civil society actors and individuals to participate more effectively and engage directly with the UN human rights system.

A number of objective requirements need to be fulfilled for States and treaty bodies to achieve the purpose and object of human rights treaties in a meaningful way. The pre-requisites for achieving the benefits of the review by the treaty body system are: the sufficiency of resources to allow for the timely consideration of States reports and individual complaints[10], accessibility of the treaty body system to all stakeholders, particularly civil society, to ensure a dynamic engagement between treaty body members and States delegations based on sufficient information and, last but not least, institutional and competent State mechanisms that deal with the reporting and follow-up at national level in a sustainable manner, particularly given the cyclical nature of the reporting obligation. In addition, the process of nomination and election of experts should ensure the indispensable gender, geographical and knowledge diversity that allows the membership of the treaty body system

[8] For instance, see Navi Pillay, *The International Human Rights Treaty System: Impact at the Domestic and International Levels*, Human Rights Brief, Vol. 21, Iss. 1 [2014], Art. 6, p.g. 2.

[9] OHCHR has developed several tools to facilitate access to and tracking of country-specific human rights information emanating from international human rights mechanisms of the United Nations. One such tool is the Human Rights Index, an online database in which recommendations from the Treaty Bodies, the Special Procedures and the Universal Periodic Review (UPR) can be searched.

[10] Prior to the strengthening process, some treaty bodies suffered a backlog of State party reports of 5 to 7 years and a backlog of individual complaints of 3 to 4 years before a final decision by the competent treaty body was pronounced. . *See Strengthening the United Nations human rights treaty body system, A report by the United Nations High Commissioner for Human Rights, June 2012, page 7 (A/66/860)*

to engage States representatively and credibly. Indeed, the collegial nature of the treaty body system, its membership elected by States and its representation of all legal schools provide its unique authoritativeness.[11]

2. Challenges facing the treaty body system

The human rights treaty body system has grown over the past decade with an increase in the number of treaties, the entry into force of new optional protocols for individual complaints procedures, an increase in the number of individual complaints received, as well as the increase in the number of treaty ratification by States. The first biennial report by the Secretary General on the status of the treaty body system notes that there has been a sharp rise in individual communications submitted to the treaty bodies.[12] This demonstrates the importance of the system for the protection and promotion of human rights. In 2015, the treaty bodies collectively reviewed 173 countries, a 26 per cent increase compared to 2013[13], typically adopting 200 to 400 recommendations for each State party (for most treaty bodies, the reporting cycle is de facto about 5 years). Also in 2015, the treaty bodies adopted 183 decisions or views on individual communications, an increase of 58 per cent compared to 2013.[14]

With such a pace of growth, the challenges facing the treaty body system have intensified over time. Although the meeting time of the treaty bodies has increased over the years, and dramatically as of 2015 as a result of the adoption by the General Assembly of resolution 68/268, the input into the system grows at a faster pace, as a result of which the system is not able to catch up and backlogs in State reports and individual communications continue to accumulate. The system is further hampered by an insufficient level of financial and human resources. Given that treaty bodies have little opportunities to interact among themselves, their challenges also include the overlap between treaties and bodies and the corresponding risk of inconsistency in treaty body jurisprudence. The most significant challenge is the weak reporting compliance by a number of States. Indeed, only 33 of 197 States were fully compliant with their reporting obligations.[15] Yet, paradoxically, if all States parties to the human rights treaties and protocols were to report on time, existing backlogs would be exacerbated and the system would have collapsed**!** [16] This shows the depth of the challenges facing the treaty body system and the urgency of a major reform of the system. From States' perspective, at national level, the multiplicity of reporting obligations is equally

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[11] While the nomination and election of treaty body members is the exclusive competence of states parties to each of the ten human rights treaties, members of treaty bodies took the initiative to elaborate and adopt the Guidelines on the independence and impartiality of members of the human rights treaty bodies (Addis Ababa guidelines). This autonomous initiative by the treaty bodies following the initiative by their Chairpersons attests to the dynamic nature of this institution and its capacity to cope with developments. The Addis Ababa guidelines are available at at http://www.ohchr.org/EN/HRBodies/Pages/ElectionsofTreatyBodiesMembers.aspx

[12] See UN Secretary-General's report on the status of the treaty body system, UN Doc. A/71/118, and Press release by OHCHR, *More efficient and effective: UN Secretary General's report on strengthened Treaty Body system*, 4 August 2016, accessible at http://www.ohchr.org/EN/HRBodies/HRTD/Pages/TBStrengthening.aspx

[13] See Supplementary information to the report of the Secretary-General A/71/118, p. 12, Annex VI.

[14] Ibid., Annex VII.

[15] http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/LateReporting.aspx

[16] In her report, *Strengthening the United Nations human rights treaty body system*, UN Doc. A/66/860 (26 June 2012), p.9, the High Commissioner for Human Rights indicated that *"… only 16% of States parties report on time, and even with this low compliance rate, four out of nine treaty bodies with a reporting procedure are facing significant and increasing backlogs of reports awaiting consideration,(...) The treaty body system is surviving because of the dedication of the experts(....), the support of OHCHR and States' non-compliance with reporting obligations. However, at a time when human rights claims are increasing in all parts of the world, it is unacceptable that the system can only function because of non-compliance."*

demanding. The only positive result of the increasingly unrealistic workload, both at national and international levels, is the implicit realization that corrective action is urgently needed to save and strengthen of this fundamental human rights institution.

An additional challenge resulting from the growth of the treaty body system is that of coherence, both in terms of working methods and jurisprudence. The ten treaty bodies perform largely similar functions, with the exception of the Subcommittee on Prevention of Torture (SPT), and do so on the basis of similar legal principles, notwithstanding minor legal specificities. This should have led to at least largely similar working methods, unless normative specificities require distinct approaches. However, treaty bodies are independent entities, including from each other. They rarely conduct joint meetings, with the exception of the treaty bodies' chairpersons meeting, which takes place only once every year. [17]

3. The treaty body strengthening methodology

One of the key challenges of enhancing the impact of the treaty body system relates to its legal nature, being grounded in distinct normative texts, each of which has a different constituency in terms of States parties. Depending on its scope, a reform of the treaty body system would require amending existing treaties. To complicate matters further, such an amendment would technically require distinct meetings of the various States parties to each treaty who have to proceed on separate legal tracks. This is not merely a procedural challenge but even more of a political one. A number of initiatives have been undertaken since the 1980s aimed at addressing the challenges of the treaty body system's constant growth with the least possible legal complications. Past treaty body reform initiatives include the reports by Independent Expert Philip Alston (1988 – 1996); the UN Secretary-General's proposal of a single report (2002-2006); the High Commissioner's proposal of a unified standing treaty body (2006); and the most recent High Commissioner's Treaty body strengthening process (2009 – 2014).[18]

The treaty body strengthening initiative launched by OHCHR created a momentum that led to the adoption of landmark resolution 68/268 of 14 April 2014 by the General Assembly on strengthening and enhancing the effective functioning of the treaty body system.[19] The premise of this initiative was to learn the lessons of previous attempts to address the challenges facing the treaty bodies: the need for a bottom-up approach to ensure the buy-in of all stakeholders, incremental progress to achieve sustainable change through a transparent process that genuinely involves all relevant stakeholders. Last, but not least, the need to ensure regular assessment of progress achieved and an analysis of obstacles to enhancing the efficiency and effectiveness of the treaty body system.

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[17] OHCHR, Annual Meeting of the Chairpersons of Human Rights Treaty Bodies, http://www.ohchr.org/EN/HRBodies/AnnualMeeting/Pages/MeetingChairpersons.aspx

[18] "Final report on enhancing the long-term effectiveness of the UN human rights treaty system" by Mr. Philip Alston (E/CN.4/1997/74); "Interim report on enhancing the long-term effectiveness of the UN human rights treaty system" by Mr. Philip Alston (A/CONF.157/pc/62/Add.1/Rev.1); and "Initial report on enhancing the long-term effectiveness of the UN human rights treaty system" by Mr. Philip Alston (A/44/668).; "Strengthening the UN: an agenda for further change," UN Doc A/57/387/2002 (2002); UN Concept paper on the High Commissioner's Proposal for a Unified Standing Treaty Body, Report by the Secretariat, UN Doc HRI/MC/2006/2, 2006; Report of the High Commissioner "Strengthening the UN Human Rights Treaty Body System, UN Doc A/66/860 (June, 2012).

[19] UN General Assembly, Resolution 68/268 "Strengthening and enhancing the effective functioning of the human rights treaty body system," UN Doc. A/68/268 (9 April 2014).

The treaty body strengthening process (2009-2014) was initiated when the former High Commissioner for Human Rights Navenathem Pillay, in her statement to the Human Rights Council on 14 September 2009, launched a three-year-long consultation process among all key stakeholders aimed at soliciting ideas and suggestions with respect to streamlining and strengthening the treaty body system. The ultimate objective of the process was to improve the impact of treaty bodies on rights-holders and duty-bearers at the national level by strengthening the functioning of treaty bodies while fully respecting the independence of the latter.

A number of States contributed to this process by hosting informal expert events for different categories of stakeholders, namely NHRIs, NGOs, and academia while the High Commissioner for Human Rights organized consultations for treaty body members and States. Over 20 informal consultations took place between 2010 and 2012, which resulted in various proposals to strengthen the treaty body system.[20] These consultations stimulated a wealth of ideas on all aspects of the functioning of the treaty body system. The informal nature of this process is an interesting precedent of transparent human rights diplomacy which was not limited to States, who continued nevertheless to play a very important role in this area. It led, notably, to statements adopted by members of treaty bodies in Dublin (2009) and Poznan (2010) and by National Human Rights Institutions in Marrakesh (2010). This process was based on the inherent mandate the High Commissioner in General Assembly resolution 48/141 to "rationalize, adapt, strengthen and streamline the United Nations machinery in the field of human rights with a view to improving its efficiency and effectiveness."[21]

The strengthening process fully respected the fact that the treaty body system is inherently of a multi-stakeholder nature.[22] Treaty body members are independent and therefore enjoy exclusive competence to determine their working methods. These are not only privileges but also requirements to ensure the objectivity and impartiality of the members of treaty bodies in fulfilling their quasi-judicial functions. The role of treaty body members was therefore crucial in conceiving the reforms they believed were necessary and also in directly engaging with member states on these measures.

The inclusive nature of the strengthening process also extended to NHRIs and NGOs. Both actors were solicited to organize their own events and submit their proposals. The multiplicity of perspectives by such a varied and complementary selection of stakeholders created a dynamic intellectual momentum and the findings generated through this informal process were sufficiently rich and actionable that it stimulated the General Assembly to launch an inter-governmental process in February 2012.[23] With the aim of facilitating this process the High Commissioner presented her report, entitled "Strengthening the UN human rights treaty body system," in June 2012 to the General Assembly and made key proposals to strengthen the human rights treaty body system. These proposals generated a rich discussion among states which led them to adopting the General Assembly landmark resolution 68/268 in April 2014. A key point of common agreement among States, as reflected at the outset of

[20] All documents related to the treaty body strengthening consultations are available at http://www.ohchr.org/EN/HRBodies/HRTD/Pages/TBStrengthening.aspx

[21] UN General Assembly, Resolution 48/141 "High Commissioner for the promotion and protection of all human rights UN Doc. A/RES/48/141 (20 December 1993).

[22] http://www.un.org/en/ga/president/66/statements/humanrights020412.shtml

[23] UN General Assembly, Resolution 66/254 and Resolution A/68/2 entitled "Extension of the intergovernmental process of the General Assembly on strengthening and enhancing the effective functioning of the human rights treaty body system". UN Documents A/RES/66/254 and A/RES/68/2.

their negotiations on the treaty body strengthening, was the necessity of respecting the independence of treaty body members and to avoid any act that would interfere with the exercise of their functions.[24] Ultimately, States successfully paid attention during their negotiations to the imperative of respecting the variable legal competencies in this complex exercise of reforming the functioning of the treaty body system without reopening the legal framework. [25]

4. Main results of General Assembly resolution 68/268 on treaty body strengthening

The outcome of two years of difficult negotiations at the General Assembly was positive. General Assembly resolution 68/268 of 14 July 2014 generated significant additional regular budget resources to the treaty body system.[26] This resolution also reflected a number of novel features that are worthy of analysis.[27] First, the implementation of this resolution is financed through cost-saving measures. This included the reduction of summary records, page limitation of States and treaty body reports, and streamlining of interpretation and translation.[28] The suggested savings emanated from a comprehensive cost assessment of all aspects related to the functioning of the treaty body system. These suggestions were discussed with treaty body members then negotiated among states, leading the General Assembly to grant the treaty bodies overall 30% more meeting time. Significantly, it also awarded more human and financial resources as of 2015.

Importantly, the General Assembly decided that a dedicated capacity-building programme should be set up to assist States to fulfil their human rights reporting and follow up obligations.[29] The programme is based on the premise that a large percentage of States' non-compliance with their reporting duties under human rights treaties is the result of a knowledge gap. The capacity building programme, conceived in full collaboration with States during the negotiations in order to reflect their expectations and national level realities, has two key pillars: regular sessions of training of national trainers in all regions and encouraging the establishment of National Mechanisms for Reporting and Follow-Up to the outcomes of all human rights mechanisms that States engage with. The common feature and expected result of both pillars is a double shift: reporting by States to treaty bodies, instead of a burden, becomes a benefit and, secondly, instead of only "consuming" human rights knowledge and standards that are produced internationally, States would actively produce their own knowledge and tools, in conformity with their international obligations but also based on their national experiences.[30] The treaty body strengthening resolution also decided to webcast the

[24] UN General Assembly, *Report of the co-facilitators on the intergovernmental process of the General Assembly on strengthening and enhancing the effective functioning of the human rights treaty body system*, UN Doc A/68/832, April 2014, p. 26. The Dublin Statement on the Process of Strengthening of the United Nations Human Rights Treaty Body System adopted by 36 current and former treaty body members in November 2009, in response to the High Commissioner's call, marked out key parameters and methods for a successful reform programme also reaffirmed this point. See the High Commissioner's Report, *Strengthening the United Nations human rights treaty body system*, UN Doc. A/66/860 (26 June 2012), p. 10.

[25] See the Opening Statement of the High Commissioner, 26th Chairpersons Meeting (23 Jun 2014 - 27 Jun2014), http://www.ohchr.org/EN/HRBodies/AnnualMeeting/Pages/MeetingChairpersons.aspx

[26] UN General Assembly, Resolution A/RES/68/268, paragraph 27.

[27] For a more detailed analysis of the outcome of the General Assembly's process, see, Christen Broecker and Michael O'Flaherty, *The outcome of the General Assembly's Treaty Body Strengthening Process: An important Milestone on a Larger Journey*, Universal Rights Group, Policy Brief, June 2014.

[28] A/RES/68/268, paragraphs 4, 15, 16, 24, 30.

[29] UN General Assembly resolution 68/268, paragraph 17.

[30] See a publication by the Office of the United Nations High Commissioner for Human Rights (OHCHR) on national mechanisms for reporting and follow-up which provide States and other stakeholders with an analysis

public meetings of the treaty bodies which provides visibility and contributes to capacity-building for both State officials and civil society actors. All these steps were taken within the existing legal framework of the treaty body system and enhanced the system's functioning by making it more accessible to rights-holders. Importantly, the resolution also provided for a periodic reassessment of the treaty bodies' meeting time requirements based on objective criteria, in contrast to ad-hoc requests for resources that in the past were frequently submitted by individual treaty bodies to cope with their backlog.

The General Assembly encouraged the treaty bodies to harmonize their working methods to strengthen and enhance the effective functioning of the treaty body system, particularly in the area of the simplified reporting procedure, constructive dialogue, concluding observations, and the consultation process in the elaboration of general comments. Following this call by the General Assembly, treaty bodies have accelerated their work in their respective treaty bodies and through the Annual Meeting of the Chairpersons to find consensus on their role to follow up on resolution 68/268. Since 2011, the treaty bodies have introduced a number of changes in their respective working methods and reporting guidelines under the guidance of the annual Chairpersons meeting.[31] Notwithstanding their inherent limitations, these harmonization efforts improved the functioning of the treaty body system. Almost all treaty bodies, for example, are offering or will be offering the simplified reporting procedure, at least on a pilot basis, to those States who wish to opt for this procedure. From a State's perspective, the simplified reporting procedure, which grew out of a pilot project by the Committee against Torture, consists of answering a list of specific questions from a treaty body as opposed to drafting a "traditional" report for the treaty body and then receiving an additional 'list of issues' and questions in advance of the constructive dialogue. While the above could be seen as modest gains, they remain an improvement. The fact that the treaty body Chairpersons collectively took the lead in 2012, in Addis Ababa, to self-regulate the conduct of treaty body members, and in 2015, in San José, to endorse Guidelines against intimidation or reprisals, illustrates how treaty bodies are gradually developing as a system under the leadership of the treaty body Chairpersons.

Notably, two aspects of General Assembly resolution 68/268 ensure accountability in its implementation: the biennial report of the Secretary-General on the state of the treaty body system and the commitment expressed by States in the resolution to review the treaty body system in 2020 and consider further action – the latter (2020 review) presents an unprecedented opportunity to further reflect on the treaty body system's future and to develop innovative reform proposals to enhance the international human rights protection and the enjoyment of rights by individuals in all countries[32].

5. Prospects for the future

General Assembly resolution 68/268 constitutes the highest unanimous political recognition by the community of States of the challenges facing the international human rights compliance monitoring system. States assumed their responsibility to tackle those

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of existing practices related to national mechanisms for reporting and follow-up and model for their own national mechanism for reporting to the treaty bodies and the universal periodic review, as well as for engaging with special procedures (OHCHR, *A Study of State Engagement with International Human Rights Mechanisms*, 2016, accessible at http://www.ohchr.org/Documents/Publications/HR_PUB_16_1_NMRF_Study.pdf.

[31] For instance, since 2011 the Chairs have made recommendations in relation to the harmonization of working methods in the areas of constructive dialogue, concluding observations and general comments. See Reports of the Annual Meeting of Chairpersons of Human Rights Treaty Bodies at http://www.ohchr.org/EN/HRBodies/AnnualMeeting/Pages/MeetingChairpersons.aspx

[32] UN General Assembly resolution A/RES/68/268, paragraph 41.

challenges in a structured and incremental manner. The most significant reforms introduced by States through this resolution focused on pressing concerns: resources, meeting time, and the working methods of the treaty bodies. The resolution established a six-year implementation process accompanied by biannual reports of the UN Secretary-General on the status of the human rights treaty body system.[33]

The prospects for a successful implementation of resolution 68/268 depend on how all actors will follow up on their commitments defined by that resolution. States' engagement with the capacity-building component of the resolution will determine the degree to which they will actually benefit from the treaty body system as opposed to merely fulfilling the formality of reporting and can be best assessed by implementation at the national level.[34] One way of improving and assessing national implementation is through the establishment of national mechanisms for reporting and follow-up to treaty body outcomes,[35] as well as recommendations from other international and regional human rights mechanisms.

Treaty body members' continued effort to harmonize and rationalize their working methods is also a key ingredient for achieving the goal of an enhanced treaty body system. One of the relative institutional vulnerabilities of treaty bodies in their quest to act as a coherent system lies in their lack of horizontal ties. Whenever two or more treaty bodies need to consult on a thematic matter of joint interest, such as the preparation of general comments, OHCHR struggles to make joint meetings possible through ad hoc arrangements, since such encounters are not covered by any regular budget provision. Indeed, the only "mandated" cross-treaties meeting from a regular budget view point is the annual Chairpersons meeting.[36] This situation, which could hopefully be addressed in the 2020 review of the treaty body system by the General Assembly, adds weight and responsibility onto the Chairpersons' meeting, which currently constitutes the minimal horizontal link among the ten human rights monitoring bodies. Treaty body members and Chairs continue to make the best out of this minimal link.[37] Their legitimate concern and difficulty, however, is to constantly strive for a delicate balance between the need to and the benefits of acting as a system on the one hand, and the specificities and independent choices of the membership of each treaty body on the other hand. The current practice is that Chairs endorse findings at their level and recommend these findings to their respective treaty bodies for adoption. Whether or not the pace of such an approach, based on only one Chairs' meeting per year, is sufficient to ensure consistency

[33] The UNGA resolution concludes, '*Decides* to consider the state of the human rights treaty body system no later than six years from the date of adoption of the present resolution, to review the effectiveness of the measures taken in order to ensure their sustainability, and, if appropriate, to decide on further action to strengthen and enhance the effective functioning of the human rights treaty body system,' UN General Assembly, Resolution 68/268, para. 41

[34] Eibe Riedel**,** Global human rights protection at the crossroads**: S***trengthening or reforming the system*, 2013.

[35] See *A Study of State Engagement with International Human Rights Mechanisms*, OHCHR, 2016, accessible at http://www.ohchr.org/Documents/Publications/HR_PUB_16_1_NMRF_Study.pdf **;**

[36] The Annual Meeting of Treaty Body Chairpersons is a forum for the Chairpersons of the ten treaty bodies to maintain communication and dialogue with each other on common issues and problems, first called for by the General Assembly in 1983 in its resolution 38/117. The Chairpersons' meetings, convened annually pursuant to resolution 49/178, have been held in Geneva, New York and the regions. Information and documentation about the annual meetings is available at http://www.ohchr.org/EN/HRBodies/AnnualMeeting/Pages/MeetingChairpersons.aspx

[37] UN General Assembly Resolution 68/268 encourages the Chairpersons to enhance interactions during the annual meetings of the Chairpersons, '*Further encourages* the human rights treaty bodies to strengthen the possibilities for interaction during the annual meetings of the Chairs of the treaty bodies with States parties to all human rights treaties, held in Geneva and New York, with a view to ensuring a forum for an open and formal interactive dialogue in which all issues, including those related to the independence and impartiality of treaty body members, may be raised by States parties in a constructive manner…,' paragraph 39.

among treaty bodies both on substantive and methodological matters is an interesting question.

The role of the OHCHR in relation to the implementation of all strengthening measures agreed by States and treaty bodies cannot be over-emphasized, given the High Commissioner for Human Rights' mandate in resolution 48/141[38] and the tasks granted to OHCHR in resolution 68/268. Monitoring the results of the strengthening process and reporting thereon to the General Assembly is one of the duties of OHCHR that was fulfilled through the preparation of the first Secretary- General's bi-annual report, which was issued in August 2016.[39] The report noted that significant progress has been made in the first two years as treaty bodies increased the number of State party reports and individual communications reviewed and reduced the backlog in State party reports.[40] Additionally, capacity-building efforts have led to significant numbers of State party officials being trained on submitting their required reports to the treaty bodies. However, the sharp increase in individual communications submitted to the bodies will require more meeting time for those treaty bodies which receive large numbers of individual complaints rather. The report demonstrates that, even though the annual time of the treaty body system as a whole would not increase much (only 0.6 weeks), additional human resources are required due to the case-by-case nature of individual communications as opposed to State party reviews. Accordingly, the Secretary General recommended to the General Assembly to reassess the meeting time for each treaty body and to provide the human and other resources necessary to enable the treaty bodies to carry out State party reviews, examine individual communications and prepare field visits (in the case of the Subcommittee on Prevention of Torture).[41] The Secretary-General's report is technical in nature and constitutes an example of accountability for the UN and for treaty bodies with respect to management of resources. At the same time, States are expected, in light of this report, to assume the responsibilities they committed to with respect to the workload parameters so that the treaty body system can function efficiently.

In addition to its built-in review through the bi-annual Secretary-General's reports, the General Assembly committed in resolution 68/268 to review the treaty body system in 2020 and consider further action. This 2020 review is a historic opportunity for States and other stakeholders to further reflect on the treaty body system's future and to develop innovative reform proposals to enhance the international human rights protection.

In preparation for this crucial stage in the near future, a number of stakeholders already started a reflection on how to best seize the 2020 reform review opportunity.

In January 2015, Norway and Switzerland convened a meeting of States and independent experts, including treaty body members, at Wilton Park to discuss the next steps in strengthening the UN human rights treaty monitoring system.[42] One of the major points that emerged from the meeting was that, while the adoption of resolution 68/268 was a

[38] "to rationalize, adapt, strengthen and streamline the United Nations machinery in the field of human rights with a view to improving its efficiency and effectiveness."

[39] See UN Secretary-General's report on the status of the treaty body system, UN Doc. A/71/118, and its supplementary information with 20 statistical annexes, both available at http://www.ohchr.org/EN/HRBodies/HRTD/Pages/TBStrengthening.aspx

[40] See UN Secretary-General's report on the status of the treaty body system, UN Doc. A/71/118, p. 12, 18 July 2016, para. 88.

[41] Ibid, paragraphs 90-91.

[42] Wilton Park, Report, Strengthening the UN human rights treaty monitoring system: what are the next steps?, Jan 2015, accessible at https://www.wiltonpark.org.uk/wp-content/uploads/WP1375-Report.pdf

significant achievement in addressing immediate challenges confronting the treaty bodies, more ambitious, long-term plans must be pursued for the effective functioning of the system.[43] One of the main recommendations the meeting put forward was to undertake an independent study, 'using applied research and academic rigour', to look at future options for the long-term sustainability of the treaty body system as stipulated in resolution 68/268.[44]

In June 2016, during the 27th Chairpersons' Meeting in Costa Rica, the Government of Costa Rica, through its Minister of Foreign Affairs and Worship, called for a worldwide academic process to reflect on the future of the treaty body system.[45] He called 'upon academia to provide sober reflection, new approaches and innovative inputs to the review.'[46] Subsequently, in November 2015, Costa Rica and Switzerland and the Chair of the 27th meeting of treaty body Chairs co-hosted a Briefing for States in Geneva on the outcome of the 27th meeting of Treaty Body Chairpersons, in the context of the implementation of General Assembly resolution 68/268 on treaty body strengthening. At the briefing, Costa Rica and Switzerland called for an academic process to develop innovative ideas and solutions for the treaty body system that could feed into the intergovernmental process for the 2020 review.

Following the call by Costa Rica and Switzerland, the Geneva Academy of International Humanitarian Law and Human Rights (hereafter 'the Geneva Academy'), invited a small group of independent researchers to discuss possible parameters of research initiatives that could be undertaken in light of General Assembly resolution 68/268 and define the modalities for an inclusive academic research project that will look at future options for reform and the long-term sustainability of the treaty body system.[47]

The research project, entitled Academic Platform Project on the 2020 Review, aims to propose the largest possible options of reform proposals that are legally sound, resource realistic and will ultimately improve the promotion and protection of human rights on the ground. Academic institutions have been identified in each region to organise a regional workshop for academic researchers. The first regional workshop was held in Dublin in July 2016, and it is expected that other regional workshops will take place between September 2016 and 2017 in San José, New Delhi, Moscow, New York, Rabat and Nairobi. Each of the regional events is expected to generate suggestions for reform of the treaty body system by academic experts.

Prior to the regional workshops, each participant is asked to research, analyse and develop a substantive paper on a cluster of questions. The research papers constitute the basis for the workshop discussions. A summary of every regional workshop is prepared and made publicly available. [48] Treaty Body members, States, NHRIs, civil society, and UN entities are invited to observe the regional workshops. The organizers of the regional workshops are expected to ensure the coordination and flow of information among the regional workshops

[43] Ibid, page 3.
[44] Ibid, page 1.
[45] OHCHR, Report of the Chairs of the human rights treaty bodies on their twenty-seventh meeting, UN Doc A/70/30, page 59, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=A/70/302&Lang=en,
[46] Ibid, page 59.
[47] More information can be found at http://www.geneva-academy.ch/policy-studies/research-projects-and-policy-studies/un-treaty-body-review-2020
[48] The report of the first regional consultation in Dublin can be accessed at http://www.geneva-academy.ch/policy-studies/research-projects-and-policy-studies/un-treaty-body-review-2020

through annual meetings in Geneva in 2016 and 2017. These meetings will also be used to brief treaty body members, diplomatic missions in Geneva, and civil society on the regional workshops.

States and treaty body members, who are briefed on the academic research project at regular intervals, are encouraged to support this new and hopefully most decisive reflection process.

It is of interest to note the three suggested directions of research of the Academic Platform Project on the 2020 Review, under each of which several questions are analysed:

I. Continuing on the path of linear growth in continuation of General Assembly resolution 68/268
II. Considering adapting and integrating previous proposals to strengthen the treaty body system, building on General Assembly resolution 68/268 [49]
III. New ideas that may not necessarily require normative change ('thinking outside the box').

Conclusion

The human rights treaty body system has grown exponentially since the establishment of the first treaty body in 1969 and doubled in size over the last decade – a growth which has greatly enhanced human rights protection. This trend is likely to continue in the future. Indeed, the need to expand human rights protection in an increasingly specific manner, both thematically and with respect to different categories of rights holders, is a built-in feature of the history of the human rights movement.

The challenge is how to preserve the quality and consistency of the findings of human rights mechanisms, which, in their fuller spectrum include the special procedure system and the universal periodic review, while the system is naturally in constant specialised expansion. Some doubt the possibility of further expansion and call for more ambitious reforms as opposed to mere strengthening, harmonization and rationalization.[50]

[49] The main previous proposals that were not acted upon include the consolidation of reports to treaty bodies (Philip Alston proposal; SG proposal) which proposed that instead of submitting one report under each treaty ratified, States submit one consolidated report under all treaties ratified, summarizing implementation of the full range of provisions of the human rights treaties to which it is a party. Another important idea that was debated intensely during the Inter-Governmental Working Group to strengthen the treaty body system at the General Assembly was the idea of establishing a Comprehensive reporting calendar (See HC report on treaty body strengthening, A/66/860): according to this proposal, the current reporting deadlines would be organized into a single Comprehensive Reporting Calendar, based on a periodic five-year cycle. Within this five-year period, a maximum of two reports per year would be due for a State that is a party to all treaties, ensuring maximum commonality between the two reports due each year, and synchronizing the deadlines for these reports with the due dates under the Universal Periodic Review. A third idea that was also debated, but not acted upon was that of establishing a joint treaty body working group on communications (Proposal by the Committee on the Elimination of Racial Discrimination (CERD), supported by the HC in her report on treaty body strengthening, A/66/860): according to this proposal, recommendations emanating from one Working Group on Communications, composed of members from different treaty bodies, would be brought to the attention of the plenary of the treaty body to which the communication was addressed for formal adoption. Last, but not least, the idea of a platform for elections of treaty body members was not acted upon and could further strengthen the treaty body system (HC report on treaty body strengthening): according to this proposal, States parties would present their potential candidates for treaty body membership in an open public space using modern technologies, including social media.

[50] Olivier De Frouville, op-cit, p.130-131.

The predictable persistence of the growth of the human rights mechanisms and corresponding challenges for all stakeholders could generate ideas in the direction of ambitious reforms. The above-mentioned global academic project is a perfect vehicle for innovation. However, the treaty body strengthening process which culminated in resolution 68/268 has also proven that creative, small steps can also lead to reasonable solutions within the existing normative setting. If well thought and sustainably implemented, incremental progress could be meaningfully transformative and may provide the safest way forward. Thus, despite its recognised limitations, the implementation of the treaty body strengthening process, as assessed in the Secretary-General's biannual reports, and the parallel track of the lead-up to the 2020 review of the treaty body system, together offer great opportunity, whether or not they lead to radical reform in 2020. Missing such an opportunity is not an acceptable option for the human rights community.

The treaty body strengthening process set in motion a multi-stakeholders dynamic of common but differentiated sets of responsibilities, coupled with de facto mutual accountability mechanisms (the biannual UN Secretary General reports and the 2020 review by the General Assembly). This is a promising precedent of human rights diplomacy where independent experts positively expanded their role by directly engaging with both States and civil society actors regarding the future of the treaty body system. This model of interaction between States and independent experts, along with the independent mandate and actively supportive role of OHCHR, led to GA resolution 68/268 on treaty body strengthening and has not exhausted all its potential yet. "An important milestone on a longer journey" is, indeed, the most accurate depiction of this significant open ended act of multilateral human rights diplomacy.[51]

[51] On the analysis of the dynamics of these negotiations, see Christen Broecker and Michael O'Flaherty, *The outcome of the General Assembly's Treaty Body Strengthening Process: An important Milestone on a Larger Journey*, Universal Rights Group, Policy Brief, June 2014.