

Academic Platform Project on the 2020 Review: Strengthening Human Rights Protection by Enhancing the Effective Functioning of the Human Rights Treaty Body System

Concept note

February 2016

Introduction

The 10 UN human rights Treaty Bodies are a central pillar of the international human rights protection system. They prevent human rights violations by warning States about areas of concern and advising States on durable solutions that address the root causes of human rights violations.

Since the establishment of the first human rights Treaty Body in 1970, treaty ratifications have increased significantly and the Treaty Body System has grown exponentially. While this has enhanced human rights protection and promotion worldwide, it has also led to complex challenges which affect the Treaty Body System and those interacting with the system (States, national human rights institutions, UN entities, civil society, individual complainants, and right-holders at large).

On 9 April 2014, the General Assembly adopted a landmark resolution (A/RES/68/268) on strengthening and enhancing the effective functioning of the Treaty Body System. 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 2020 review.

The Secretary-General's report:

The General Assembly, in paragraph 40 of resolution 68/268, requested the Secretary-General to submit a report on the implementation of the resolution every two years. The first two reports will be submitted in 2016 and 2018 respectively.

2020 review by the GA:

The General Assembly, in paragraph 41 of resolution 68/268, decided to consider the state of the Treaty Body System no later than six years from the adoption of the resolution

- (1) To review the effectiveness of the measures taken [in resolution 68/268], in order to ensure their sustainability, and
- (2) If appropriate, to decide on further action to strengthen and enhance the effective functioning of the Treaty Body System.

Main challenges

The challenges confronting the Treaty Body System, which are often inter-related, are well documented. The areas of concern can be broadly grouped in the following categories:

- The impact of Treaty Body outputs (mixed State implementation records of recommendations and decisions from the Treaty Bodies)
- Continuing growth (including instruments and corresponding Treaty Bodies, ratifications, reports received, individual complaints, inquiries, general comments, meeting time, number of recommendations addressed to States)
- Reporting compliance or lack thereof (capacity, knowledge gap, political prioritization)
- Coherence (1. within the Treaty Body System: substantive overlap, duplication, consistency in jurisprudence, working methods, proliferation of procedures; 2. with other international human rights mechanisms such as the Universal Periodic Review and Special Procedures of the Human Rights Council; 3. with regional mechanisms)
- Governance of the Treaty Body System (the role of the Chairpersons)
- Treaty Body membership (qualifications, transparency of nominations and elections, independence, availability, accountability, gender balance, equitable geographic representation, diversity in professional backgrounds, term limits, status)
- Accessibility and visibility (webcasting, video archiving, video conferencing)
- Rising cost of Treaty Body work (for the UN, for treaty body members) or engagement (for States parties at national level, for NHRIs and civil society, for UN entities submitting written contributions)

Previous Treaty Body reform initiatives

Since the end of the 80s, four major initiatives to reform the Treaty Body System have been undertaken, with varying degrees of success:

1. The reports by Independent Expert Philip Alston to the UN Commission on Human Rights (1988 – 1996)
2. The Secretary-General's proposal of a single report (2002 – 2006)
3. The High Commissioner for Human Rights' proposal of a Unified Standing Treaty Body (2006)
4. The Treaty Body Strengthening process, launched by the High Commissioner for Human Rights, which culminated in General Assembly resolution 68/268 (2009 – 2014).

General Assembly resolution 68/268 on 'Strengthening and enhancing the effective functioning of the human rights Treaty Body System'

The Treaty Body Strengthening resolution, adopted by consensus on 9 April 2014, did not undertake to reform the Treaty Body System in an institutional or structural manner in order to enhance its effective functioning.

It did, however, provide temporary relief to some of the most urgent challenges and therefore constitutes the most successful initiative concerning the Treaty Body System to date.

Specifically, resolution 68/268

- Granted more meeting time (20 weeks) to the Treaty Bodies to help them cope with the increasing number of State party reports and individual communications received, as well as the backlogs. As a result of this measure, the Treaty Bodies met for a total of 99 weeks in 2015.
- Adopted a mathematical formula that increases the Treaty Bodies' meeting time every two years should the workload increase, calculated on the basis of the average number of reports and individual complaints received by the Treaty Bodies in the previous four years.
- Established a capacity-building programme to support States with their reporting obligations and with the setting up or strengthening of national mechanisms for reporting and follow-up.
- Respected and re-affirmed the independence of the Treaty Bodies and their members.
- Encouraged the Treaty Bodies to harmonize their working methods and called on the Treaty Body Chairpersons to assume a leadership role herein.

Resolution 68/268 has allowed the Treaty Body System to remain afloat by addressing some of the most pressing difficulties arising from the growth challenge, as well as some elements relating to States' reporting compliance and the visibility of the treaty bodies. Numerous fundamental concerns affecting the Treaty Body System, however, have remained unaddressed or insufficiently targeted in resolution 68/268.

At present, States parties have to report multiple times in any year; late and non-reporting remain endemic; the proliferation of instruments, bodies, and procedures continues; the substantive overlap among treaties and among Treaty Bodies increases; and the coherence in recommendations and views among the Treaty Bodies is an increasing challenge. Also remain the challenges related to Treaty Body membership, the length of sessions (and the corresponding burden on Treaty Body members), the cost of a continuously expanding Treaty Body System, the cost of State party reporting at national level, and the place of the Treaty Bodies and their work within the international human rights architecture.

The 2020 GA Review and launch of the academic project

The 2020 horizon presents an opportunity to further reflect on the Treaty Body System's future and to develop innovative proposals and solutions without weakening the human rights protection the Treaty Body System currently affords.

The 2020 review provides the opportunity for the General Assembly to complete the unfinished work and to make the Treaty Body system sustainable at national and international levels, based on

- (1) A stock-taking of the implementation of resolution 68/268 (biennial report of the Secretary-General), and
- (2) An analysis of options for structural and procedural reform of the Treaty Body System.

In January 2015, Norway and Switzerland convened a meeting of States and independent experts, including Treaty Body members, in **Wilton Park**.¹ During this meeting, the idea emerged of an academic track to explore new options for Treaty Body reform within the framework of the 2020 review, as stipulated in resolution 68/268.

In June 2015, the **27th Chairpersons' meeting** was held in Costa Rica, at the Inter-American Institute for Human Rights. During this meeting, the Government of Costa Rica launched a call for a worldwide academic process of reflection on the future of the Treaty Body System. The Minister of Foreign Affairs of Costa Rica stated that innovation, fresh ideas and innovative proposals were needed in the run-up to the 2020 review. He called upon academia to provide sober reflection, new approaches and innovative inputs to the review. They should consider all options for the reform of the Treaty Body System, including by analysing prior ideas that had not been pursued and adapting them to the new context. He called upon internationally renowned academic institutions from all regions of the world to join efforts to develop a reflection process that would feed into the work of decision-makers in the lead-up to the 2020 review. The call by the Government of Costa Rica was welcomed by the Treaty Body Chairpersons (A/70/302).

In November 2015, Costa Rica, Switzerland and the Chairperson of the 27th meeting of Treaty Body Chairpersons co-hosted a **Briefing for States** 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. The briefing provided an opportunity to reflect on the implementation of General Assembly resolution 68/268 in the lead-up to the 2020 review. At the briefing, Switzerland informed that the Geneva Academy of International Humanitarian Law and Human Rights could coordinate a worldwide academic network in addition to its role as host of the already existing Treaty Body Platform.

In response hereto, the **Geneva Academy of International Humanitarian Law and Human Rights** (further: the Geneva Academy), created by the University of Geneva and the Graduate Institute of International and Development Studies (IHEID), in December 2015, invited a small group of independent researchers to brainstorm on different scenarios in the lead-up to the 2020 review and to define the parameters for an academic research project from 2016 to 2018 that would yield innovative proposals and solutions for the Treaty Body System without weakening international human rights protection. Participants highlighted the need to broaden the reflection on the future of the Treaty Body System to a larger group of independent researchers.

¹ <https://www.wiltonpark.org.uk/conference/wp1375/>

Suggested roadmap for next steps in coordination with all stakeholders in the 2020 review

The following steps are an attempt to explore options for the 2020 review through the academic process in a manner that is transparent and open to all stakeholders (States, NHRIs, civil society, UN entities).

Opportunities for the involvement of all stakeholders to enrich the academic process are described below.

1. Regional workshops (April 2016 – September 2017)

An academic institution will be identified in each region. Each institution will organise, together with the Geneva Academy, a regional workshop for independent academic researchers on the effective functioning of the Treaty Body System in the context of the 2020 review.

All workshops will follow a similar structure and programme to allow for comparative results. The research questions, grouped into clusters, will constitute the main programme of the regional workshops.

The host institution, in consultation with the Geneva Academy, will identify participants with due consideration for knowledge of the Treaty Body System, gender balance, geographic representation, diverse backgrounds, and human rights expertise.

Prior to the regional workshops, each participant will be asked to research, analyse and develop a substantive paper on a cluster of questions. The research papers will constitute the basis for the workshop discussions. A Rapporteur will prepare a Chairs' summary of every regional workshop.

Treaty Body members, States, NHRIs, civil society, and UN entities will be invited to observe the regional workshops.

2. General call for papers (March 2016)

The Geneva Academy will issue a call for papers, inviting all interested researchers, think tanks, institutions, organisations, and individuals to reply to research questions developed on the basis of General Assembly resolution 68/268 and input received at the methodology meeting of December 2015, with the aim of generating the broadest possible range of ideas to enhance the effective functioning of the Treaty Body System, within the parameters of paragraph 41 of resolution 68/268.

It is important to note in this context that resolution 68/268 and the inter-governmental process leading up to its adoption examined the effective functioning of the Treaty Body System and did not include questions related to the implementation and impact of the

treaty body recommendations at national level. Research questions will use the same parameters, despite the importance of questions related to the implementation of Treaty Body recommendations at national level.

3. Annual meetings in Geneva (2016 and 2017)

The organizers of the regional workshops will meet at the Geneva Academy in 2016 and 2017 to ensure the coordination and flow of information among the regional workshops. These annual meetings will also be used to brief Treaty Body members, diplomatic missions in Geneva, and civil society on the regional workshops.

4. Interaction with States (throughout the project)

States will be briefed on the academic research project at regular intervals. In addition, States will be invited as observers to the regional workshops.

5. Interaction with the Treaty Bodies (throughout the project)

The Treaty Body Chairpersons and members will be kept abreast of the academic research project, including at the annual meetings of Treaty Body Chairpersons. Treaty body members will also be invited as observers to the regional workshops. Former Treaty Body members may be invited as participants / independent researchers in the regional workshops. In addition, Treaty Body members may wish to respond to the general call for papers. Furthermore, through the Treaty Body Platform, the Geneva Academy will update the Treaty Bodies, solicit their feedback and convey Treaty Bodies' ideas and views to the academic network.

6. Interaction with national human rights institutions and civil society (throughout the project)

National human rights institutions and civil society organisations will be invited to attend briefings on the academic project by the Geneva Academy. Interested national human rights institutions and non-governmental organisations may wish to respond to the general call for papers. In addition, national human rights institutions and civil society organisations will be invited as observers to the regional workshops.

7. Interaction with UN entities and with OHCHR

UN entities, particularly those that regularly engage with the Treaty Body System may wish to respond to the general call for papers. In addition, UN agencies, funds and programmes will be invited as observers to the regional workshops.

As Secretariat of the Treaty Bodies, OHCHR may be asked to provide information on the current implementation of General Assembly resolution 68/268 and other aspects of the functioning of the Treaty Body System.