**Questionnaire in relation to General Assembly Resolution 68/268**

Replies by the Holy See

The Holy See welcomes this opportunity to comment on the implementation of General Assembly Resolution 68/268 and on the current state of the human rights treaty body system with a view to assisting the Secretary General in the preparation of the report to be submitted in January 2020, in advance of the review of the human rights treaty system.

Although the Holy See is not a Member State of the United Nations, it has ratified or acceded to five international human rights treaties and has participated in the State reporting process pursuant to its treaty obligations. The Holy See acknowledges the valuable contribution of each of the human rights treaty bodies in assisting States parties to fulfill their relevant obligations.

Observations on Resolution 68/268

The Holy See believes that, in order to enhance the effective functioning of the human rights treaty body system, it should be ensured that:

* treaty bodies align their working methodologies with States parties, bearing in mind the views of the States Parties and respecting fully their specific mandates (OP5);
* the Concluding Observations reflect accurately the inter-active dialogue with the State parties (OP6);
* the interaction between States parties and the chairs of the treaty bodies during their annual meetings be enhanced (OP39);
* all strengthening efforts fall under the framework of the legal provisions of the respective treaties without creating new obligations for States parties (OP9).

Scrupulous respect of the various treaties’ provisions is in fact an essential prerequisite for the strengthening and proper functioning of the treaty body system. The Holy See thus welcomes paragraph 82 of the Second Biennial Report of the Secretary-General (A/73/309) where the “broad consensus that the treaty body strengthening should be pursued within the existing normative framework and that proposals requiring treaty amendments are neither realistic nor advisable” is recognized.

An area of particular concern is the fact that General Comments are often described as offering an authoritative interpretation of the relevant treaties. It should be borne in mind, however, that human rights treaties set forth, in carefully negotiated language, the obligations that State parties have voluntarily undertaken. It is thus not within the treaty bodies’ mandate to provide innovative interpretations of their constitutive instruments nor to introduce concepts not found in those treaties. Human rights treaties must be interpreted strictly, pursuant to the rules of interpretation codified in the 1969 Vienna Convention on the Law of Treaties.

The recent practice whereby General Comments are co-authored by two or more treaty bodies is also a matter of concern, particularly for those States that have not ratified all the pertinent treaties. It is similarly a matter of concern when one treaty body relies upon a General Comment of another treaty body which not all State parties have ratified.

The Holy See suggests caution in the efforts to enhance the role of chairpersons (OP 37-39) since there is no legal basis for such an augmented role, particularly when it goes beyond purely procedural matters.

The Simplified Reporting Procedure (OP1-2) is a welcome measure to reduce the workload of States parties and the treaty bodies. It is indispensable however to ensure that the list of issues does not contain questions that fall outside the scope of the treaty or beyond the mandate of the treaty body concerned. Ideally, questions already answered by the State party in writing should not be repeated orally during the inter-active dialogue.

The possibility of submitting a Common Core document (OP3) and to use combined reports to satisfy all the outstanding reporting obligations (OP32) is a positive development. When a State submits a combined report, such a report should never be rejected by the treaty body.

Observations on the state of the human rights treaty body system

The Holy See is concerned by what appears to be the increasing role of OHCHR staff in legal analysis and in the preparation of the committees’ recommendations (A/73/309, paragraphs 61-69). Those functions are the purview of the treaty bodies’ experts.

The Holy See also suggests caution regarding the “strengthening of synergies” between the treaty bodies and other human rights mechanisms (A/73/309, paragraph 80). The nature and legal basis of treaty bodies differ greatly from those of the UN Charter bodies as well as from those of regional and local human rights bodies. It appears difficult to envision how treaty bodies might engage with such mechanisms without compromising the specificity of their legal mandates.

Lastly, the Holy See cannot but express its reservations regarding the use of the term “jurisprudence” to refer to the treaty bodies’ output (A/73/309, paragraph 85). Treaty bodies are not judicial organs, their members are not necessarily jurists and their procedures differ greatly from judicial proceedings. Moreover, in the past, some of the treaty bodies’ recommendations seem to have departed from basic principles of public international law. It appears necessary to find ways to ensure the consistency of treaty bodies’ outcomes with general international law and, in particular, with treaty law.