Your Excellencies, Ambassadors Lauber and Hilale,

The United States welcomes your invitation of June 17, 2020, to provide this written contribution setting forth our views on the UN treaty body system review process. The 18 issues set forth in your letter identify most of the major areas around which we believe this discussion should focus. In formulating our response we have, as you suggested, used these 18 issues as a guide. This response does not address the issues one by one, but instead groups them together in a manner designed to more effectively convey the points we wish to highlight.

The United States strongly supports the work of the treaty bodies in general and regards them as an important component of the promotion and protection of human rights globally. We have been integrally involved in conversations about treaty body reform since well before Resolution 68/268, and played an active role in the negotiation of that landmark resolution that has already brought many needed innovations. We therefore welcome the current review, anticipated in Resolution 68/268, as an opportunity to look comprehensively and critically at the benefits brought by Resolution 68/268 as well as areas where it may have fallen short or where updates may be warranted.

This response, as your letter solicited, covers a broad range of issues implicated in reviewing the treaty body system. To be sure, the General Assembly has an important role to play in this process including, as necessary, by adopting in the near term a successor resolution reaffirming and updating Resolution 68/268. We note, however, that the responsibility for changing practices and procedures falls in most respects to the treaty bodies themselves, guided by the provisions of the relevant treaty. We applaud the commitment expressed by the Chairs of the ten treaty bodies in July 2019 (Annex III, A/72/256) to implement, in a coordinated fashion, a series of reforms aimed at harmonizing and streamlining the system, as well as the decision made by the Human Rights Committee in July 2019 to put many of these reforms into actual practice.

The Chairs’ position paper, in turn, largely paralleled recommendations made in the June 20, 2019, paper coordinated by the Permanent Mission of Costa Rica on behalf of over 40 Geneva Missions, which was also endorsed by the United States. Those elements continue to be among the most relevant for consideration in the current discussion, and we touch upon several of them below.

1. **Selection, election, and conduct of treaty body members**

The effectiveness of the treaty bodies, and the quality of their work, is a direct reflection of the quality of their membership. It is imperative that States nominate candidates who are substantively qualified to serve on the treaty body in question and demonstrably independent of their government. States generally must also nominate candidates with legal expertise, given the treaty bodies’ primary role in reviewing implementation of States’ treaty obligations and, in the process, evaluating the State’s domestic legal regime to identify areas where it may fall short. While the treaty bodies may also benefit from non-lawyer experts in the substantive areas covered by the treaty in question, the preponderance of members should be recognized experts in international and relevant domestic law.

In regards to the practice of “vote trading” on treaty body candidates, while certain other considerations, such as regional and gender diversity, may be appropriate, the most relevant criterion should be substantive expertise so that the treaty bodies can effectively fulfil the important roles envisioned for them in the relevant treaties.

Recognizing the importance of impartiality and objectivity to the functioning of the treaty body system, we would also encourage the cofacilitators to consider whether recommending the development and self-implementation of ​certain ethical standards by treaty body members, similar to those for Special Procedures Mandate Holders of the Human Rights Council or for the Judges of the UN Dispute and Appeals Tribunals, which could improve the effectiveness of the treaty bodies. Of course, any such standards would need to be appropriately tailored to the unique situation of the treaty bodies and respectful of their independence and respective mandates.

1. **Individual communications**

While the United States has not recognized the competence of any of the treaty bodies to review individual communications alleging violations by the United States, as the most significant financial contributor to the United Nations, including to OHCHR,, we have a keen interest in ensuring that the treaty bodies are able to process individual communications in a speedy and efficient manner; expeditiously resolve communications, either at the admissibility or merits stage, as appropriate; and avoid the accumulation of backlogs of communications, which strain the treaty bodies’ limited time and resources.

In their report, the cofacilitators should explore options for introducing greater efficiencies into the processing of communications, such as splitting communications among “chambers” of a handful of members, which some treaty bodies have already adopted. The cofacilitators should also examine how case-management technology, uniform across the treaty bodies, along with staff appropriately trained in the use of the technology, might be introduced in a manner that takes into account the finite resources available. It is unacceptable that case management continues to be performed primarily through paper files, which has contributed to the accumulation of significant backlogs. By all accounts, treaty bodies now spend far too much of their time processing these communications at the risk of falling behind in their reviews of States parties, which is their primary function.

1. **Simplified reporting**

The United States welcomes the steps that the treaty bodies have taken to offer simplified reporting procedures to States consistent with Resolution 68/268 and the commitment of the treaty body Chairs, as expressed in their July 2019 position paper, to offer simplified reporting procedures to all States for periodic reports. Simplified reporting procedures were at the forefront of the reforms Resolution 68/268 sought to advance because, by reducing the burden on reporting States and improving the efficiency of the treaty bodies’ review process, simplified reporting procedures can help to improve compliance with States’ reporting obligations, which is a significant challenge to the current system. We are pleased, in particular, by the steps the Human Rights Committee has taken by making “opt-out” simplified reporting universal, even for initial reports, and we would encourage the cofacilitators to explore means of building on this progress, including, for instance, by making “opt-out” simplified reporting universal across the treaty bodies and ultimately phasing out the “opt-out” mechanism after one or two reporting cycles.

We are similarly encouraged by the progress that States have made in submitting, and updating as appropriate, common core documents to the treaty bodies and believe that these efforts have made States’ reports more focused and, in turn, have made the treaty body reporting process more efficient and effective. The cofacilitators should encourage all States to continue to submit common core documents and to update them regularly as appropriate.

1. **Coordinated and predictable calendars**

The treaty bodies should, as they committed to do in the July 2019 position paper, put in place a coordinated and fixed calendar that takes into account the review of all UN Member States under the Universal Periodic Review (UPR). With the certainty that comes from a predictable calendar, States will be in a better position to plan and draft their reports, and prepare for the oral review, knowing far in advance when these items will need to be completed. States will be able to better focus their energy and resources if the due dates for the reports are as spread out as possible considering the number of treaties to which the State in question is a party. States’ reports should, as a result, be better and more complete, and the oral review more substantive and efficient.

States should be held to account for the reporting obligations they have voluntarily undertaken by ratifying human rights treaties. It is regrettably a common practice among many States to ratify a large number of human rights treaties without any intention of abiding by all the obligations contained therein, or an appreciation for the significance of the reporting obligations undertaken. In an effort to encourage compliance with their reporting obligations, the treaty bodies should review these States parties just as they do States parties that submit reports. Like the UPR, reviews should be universal for the membership of a particular treaty.

While there is understandable reluctance among some to the idea of spacing out reviews by all treaty bodies to as much as eight years, the reality of the challenges facing the treaty body system leave few, if any, viable alternatives. In that vein, the United States welcomes the commitment of the Covenant Committees, expressed in the treaty body Chairs’ July 2019 position paper and the Human Rights Committee’s July 2019 decision, to review countries on an 8-year cycle and synchronize the timing of their reviews. However, recognizing the increasing number of treaty ratifications and the generally low reporting compliance rate among States, the cofacilitators should urge the Convention Committees to consider adopting longer cycles than 4 years. Even where the relevant treaty may call for a shorter review cycle, there is precedent for treaty bodies to request consolidated periodic reports and presentations, as appropriate. Accordingly, we would encourage the cofacilitators to explore similarly flexible approaches.

1. **Alignment of other working methods**

The treaty body chairs’ July 2019 position paper sets forth numerous other commitments toward alignment of working methods that represent a positive step forward. Among other things, lists of issues prior to reporting will be limited to 25 to 30 issues; concluding observations and recommendations will follow an aligned methodology and be short, concrete, and focused on the most pressing human rights concerns; and treaty bodies will communicate and coordinate with each other regularly in an effort to avoid unnecessary overlap or duplication in States parties’ respective reviews under different treaties.

While these are laudable goals, the treaty bodies should be urged to sharpen their focus as much as possible by restricting lists of issues prior to reporting and restricting concluding observations and recommendations to no more than 20 issues. We would note, moreover, that most of this cross-treaty body alignment has yet to occur, as most treaty bodies have not yet implemented these commitments in their internal procedures. The treaty bodies should be urged to follow through with implementation of the July 2019 position paper without further delay.

On the question of how the treaty bodies may achieve better communication and coordination, the cofacilitators should explore the idea of designating members from each treaty body to be responsible for liaising with counterparts in other treaty bodies about the reporting of each State party. While each treaty body is and should remain independent, the human rights issues they cover—especially when viewed through the expansive lens that many of the treaty bodies have adopted—implicate obligations across human rights treaties. Experience has shown that the treaty bodies are far less effective and the reporting process far less productive when the treaty bodies operate in isolation from one another and stray from the core issues implicated by the treaty obligations each body is responsible for monitoring.

1. **Participation of civil society**

While States parties, as the entities that bear obligations under the human rights treaties, are the primary interlocutors with the treaty bodies, civil society organizations also play an indispensable role. Most importantly, civil society organizations provide the treaty bodies with information about the situation on the ground in the State under review, allowing the treaty bodies to have a much fuller picture of the human rights landscape. Civil society’s role is not, and should not be seen as, adversarial with respect to the State under review. Their roles are complementary, and the State always retains the ability to respond to or refute any information provided by civil society it views as erroneous or incomplete. Reprisals against civil society for participation in UN treaty body reviews are unacceptable and should be reported to UN leadership.

The cofacilitators should detail in their report the ways in which civil society adds value to the work done by the treaty bodies. They should also emphasize that it is imperative that States engage in no acts of intimidation or retaliation against civil society members or human rights defenders who provide information to treaty bodies, and that other States should not tolerate any acts of intimidation or retaliation.

1. **Other matters**

The cofacilitators should look closely at the feasibility and cost implications of some of the other ideas that have been proposed in the course of the current review and the dialogues that preceded it in Geneva and New York over the past year. For example, the July 2019 treaty body Chairs’ position paper and the Human Rights Committee’s July 2019 decision raise the prospect of *in situ* reviews. While these may be appealing in theory because they bring the treaty body members closer to the individuals affected by possible human rights violations and abuses, the resource implications and logistical burdens of regular *in situ* reviews may prove prohibitive, especially in the current environment. States parties’ and treaty bodies’ energies should be focused on those solutions most likely to result in greater efficiency and effectiveness.

The possibility of updating or revisiting the formula for allocating meeting time set out in Resolution 68/268 has also been raised during the course of this review and the preceding dialogues. We note, for instance, that the Secretary General addressed this issue in his January 2020 report and that the Human Rights Committee recommended adjustments to the formula in its July 2019 decision. We are cognizant of the growing demands on the treaty bodies, given the increasing number of ratifications by States and increasing number of individual communications received by the relevant committees, while mindful of the finite resources available to the treaty body system and the potential resource implications of any proposed modifications to the formula. Accordingly, the co-facilitators may wish to explore with States whether the formula in Resolution 68/268 remains the most appropriate one.

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Excellencies, we stand ready, with our counterparts in Geneva, to continue to engage in these discussions with you in advance of your upcoming report. We welcome your stated commitment to consult widely with civil society and the treaty body members themselves, as both are critical stakeholders in this review process and their voices must also be heard.