

## **LUCERNE CONSULTATION ON STRENGTHENING THE UNITED NATIONS HUMAN RIGHTS TREATY BODY SYSTEM**

### **Introduction**

This short and brief contribution proposes that the Lucerne consultations should be guided by three broad contextual factors:

- a. continuity
- b. integration
- c. legality

### **Continuity**

The invitation from the organisers for participants to prepare a short submission containing one or more proposals for strengthening the functioning, effectiveness and impact of human rights treaty bodies will no doubt generate an interesting body of original and groundbreaking ideas for enhancing the role of these bodies. Whilst this meeting is neither the first nor will it be the last time that this subject has exercised the minds of experts and non-experts alike, it is useful to appreciate the opportunity it provides to look back and take stock of the lessons from previous initiatives in the determination of any future proposals. Strengthening the treaty body system should be seen as an open-ended exercise that began from the very initiation of the treaty bodies themselves. Proposals must therefore appreciate the progress made so far in order to define credible proposals for the future. In addition, the evidence would seem to suggest that the most successful proposals have been of a practical and realistic nature whereas idealistic suggestions have tended to be shelved. A stream of initiatives since the 1980s have yielded many proposals for the improvement of the treaty body system. Some of these have in fact led to practical and useful outcomes while some others have remained unimplemented. It may be useful at this meeting to revisit some of these previously unrealised proposals to assess if the time may be appropriate to push for their implementation. In this respect, one may highlight the role of the membership of these bodies – the manner of their election, the terms of their appointment and the duration of service – as key factors that concern the effectiveness of the system. There are important lessons to be learned from other regimes such as the European Court of Human Rights.

### **Integration**

Another important contextual factor to bear in mind is to approach the subject in a more integrated manner in which the effectiveness of the UN treaty body system is seen as linked to the wider international human rights system in which the role of its diverse state and non-state actors cast strong shadows on the work of the treaty bodies. From an institutional point of view it is interesting to strengthen the work of the treaty body system by defining strong links with the work of the Human Rights Council, as well as with the regional human rights regimes – the European, Inter-American and African regimes. This may take the form of regular interaction between personnel and the deliberate policy to draw upon good jurisprudential practice across regimes. This will help to cement the common objectives of the different institutions and also to take advantage of any institutional goodwill.

European or African member states cannot credibly marginalise the treaty bodies if they are seen to draw upon standards to which they already subscribe under the regional regimes. The great strides made by the treaty bodies and the regional regimes in the interpretation of substantive human rights guarantees as well as the strong language often employed by the regional courts need to be shared more forcefully. Such an approach may give stronger force to the concluding observations and recommendations made by the treaty bodies.

In addition to the essentially horizontal integration, the treaty bodies should consider ways of integrating their work in a vertical relationship with national institutions including national courts and national human rights institutions. Would it be conceivable, for example, for treaty bodies to recommend (perhaps routinely) that their views in individual communications or their concluding observations from the review of periodic reports should form the basis of parallel litigation at national level – a sort of unofficial advisory opinion. This will encourage a greater awareness of the standards and principles generated by treaty bodies at the national level. Of course, at the same time it will be useful for treaty bodies to increase their acknowledgement and application of good jurisprudential practice by national regimes

### **Legality**

It is important to the effective working of the human rights treaty system to affirm the fact that the system is based on a legal framework that is underpinned by the discourse of the rule of law. This has its settled precepts, language, priorities and expectations. Proposals for strengthening the treaty body system must be informed by these precepts. It is the rule of law that underlies the regime for effective realisation of the treaty guarantees as part of which concluding observations or views on individual communications must be rigorously argued on unassailable legal grounds. According to the law therefore recommendations must be tangible and workable. Similarly, in the framework of the rule of law, the primary beneficiary is the individual and not the state and accordingly, treaty bodies must apply the law with that bias in mind. Finally, the language of the rule of law must guide the communications of the treaty bodies. Such language must be clear and consistent. This may require a process for cohering the work of the different treaty bodies

### **Final Thoughts**

Strengthening UN human rights treaty bodies is a slow and continuing process. Philip Alston made a similar point in his final report on enhancing the long term effectiveness of treaty bodies. The subject cannot be approached in search of a miracle solution. At the same time there are some distinct shortcomings that must be addressed if the treaty bodies are to have any credible impact. It is to these tangible gaps that the Lucerne consultation should direct its attention.

