



Statement by H.E. Archbishop Gabriele Caccia
Permanent Observer of the Holy See to the United Nations
UNGA 75 – Sixth Committee

Agenda item 86 – The rule of law at the national and international levels

Mr. Chair,

International treaties and their observance are central to the maintenance of good relations among States, to the rule of law at the international level, and to the protection of universal human rights within States. The relevance of treaties is affirmed by the Vienna Convention on the Law of Treaties, which recognizes “the ever-increasing importance of treaties as a source of international law and as a means of developing peaceful cooperation among nations.”¹

For treaties to achieve their purpose, however, they must be interpreted and observed faithfully. The Holy See accordingly would like to offer a few comments on their application and interpretation.

The first comment concerns the applicability of Treaties. “An international agreement concluded between States in written form and governed by international law”² is binding upon its parties and only upon its parties.³ In some instances, treaties may codify or reflect already binding customary international law. Near universal ratification of a particular treaty may also furnish evidence of general practice necessary to establish the existence of customary international law. Nonetheless, the fundamental principle remains that no State can be held to a treaty it did not ratify. Treaties set forth, in carefully negotiated language, the obligations that State parties have voluntarily undertaken. Thus, the State parties’ obligations are exclusively those set forth in their text, as modified by each State’s reservations. Any effort to extend a treaty obligation upon a State that has not ratified the relevant instrument would both undermine the sovereignty of each State as a subject of international law and the

¹ Vienna Convention on the Law of Treaties, Preamble, PP2.

² Vienna Convention on the Law of Treaties, art. 2.1.a.

³ Cf. Vienna Convention on the Law of Treaties, art. 34.

process leading to ratification which frequently involves the executive, legislative, and – in some cases – even the judicial branch of government.

Since treaties can only be applied when ratified, the Holy See remains hopeful that a number of treaties, such as the Treaty on the Non-Proliferation of Nuclear Weapons, may be ratified and faithfully implemented by all States, sooner rather than later.

The Holy See, in light of the above, continues to encourage UN Member States to maintain legal clarity in draft resolutions when referencing international treaties and their provisions. Imprecise or overly broad language that suggests universal applicability of treaty provisions per se is unhelpful and blurs the line between what is binding on States as a matter of treaty law and what is not. It lends itself also to an understanding that concerted action to bring States to ratify treaties of great importance is not needed. Conversely, excessively narrow interpretation of treaty provisions can wrongly suggest that States have not undertaken obligations that instead are clearly stated in the text.

A correct understanding of treaties is crucial when considering to make amendments to those instruments or to interpret them. Only the States Parties can amend the text of a treaty, and most multilateral instruments impose rigorous procedures for such changes, assigning to the Parties themselves the determination of whether they are to be bound by those amendments.

The same basic principle applies to the interpretation of treaties. Proposals or opinions advanced by conference secretariats, expert bodies, commissions or other auxiliary entities to interpret, further develop or broaden treaty texts – while possibly helpful to some States— have no legal effect until they are explicitly approved by States Parties. Members of treaty bodies, as well as Special Rapporteurs, are wisely required to be of “high moral standing and recognized competence in the field.”⁴ Frequently though, those experts, notwithstanding their broad knowledge of the subject matter of a particular treaty, have no real competence in the interpretation and application of international legally binding instruments. When selecting members of treaty bodies and Special Rapporteurs we must therefore ensure that they are qualified to interpret correctly complex legal instruments.

⁴ CRC, art. 43.2

To conclude, let me acknowledge the fundamental role of international tribunals in interpreting treaty provisions. Their decisions, although binding only upon the parties to the specific cases, guide all States in the interpretation and implementation of existing treaties and thereby contribute to the development of international law.

Thank you, Mr. Chair.