

THE FUTURE OF HUMAN RIGHTS TOWARDS A WORLD COURT OF HUMAN RIGHTS: REASONS FOR THE ESTABLISHMENT

Elena ANDREEVSKA*

Abstract

The founding of the United Nations in 1945, with the promotion of universal observance of human rights as a principle objective under its Charter, launched an era of international human rights institution-building and standard-setting. Despite the existence of a considerable number of human rights treaties elaborated on the international and regional level, one of the main challenges is the large implementation gap between the "high aspirations and the sobering realities on the ground". On the one hand, many national systems do not provide access to effective domestic protection systems for human rights; on the other hand, the UN system still lacks an effective judicial mechanism responsible for the implementation of these rights. Even where States have given their consent to be bound by a human rights treaty, there are failures in compliance. Non-enforcement is a major failure of the United Nations human rights treaty system. However, the promise of universal human rights protection is not likely to be fulfilled unless and until victims of human rights violations are able to have access to effective remedies at both the national and international levels.

The World Court of Human Rights should be a permanent court established by a multilateral treaty under the auspices of the United Nations. The Court would exercise jurisdiction not only in respect of States but also in respect of a wide range of other actors, jointly referred to as 'Entities' in the Draft Statute. They would include intergovernmental organizations, transnational corporations, and other non-state actors.

The article will try to answer three questions. First, whether a World Court for Human Rights would be desirable. Second, whether there is a need for such a court and third, whether there is a reasonable chance of actually realizing the plan, taking into account the most important challenges of the 21st century.

Keywords: human rights, human rights treaties, judicial mechanism, effective remedies, world court of human rights.

Introduction

Traditional international law was defined as the law governing relations between nation-states exclusively. This meant that only states were subjects of and had legal rights under international law¹. The traditional definition was expanded somewhat after World War I to include various newly-created intergovernmental organizations which acknowledged to have some very limited rights under international law as well as the protection of human rights became an issue of concern to the international community². Individual human beings were not deemed to have international legal rights as such; they were said to be objects rather than subjects of international law.

The horrors perpetrated during the Second World War motivated the international community to ensure that such atrocities would never be repeated and

provided the impetus for the modern movement to establish an international system of binding human rights protection. Consequently, the international human rights as an idea that every nation has an obligation under international law to respect the human rights of its citizens, and that other nations and the international community have a right, and responsibility, under international law to protest and take other appropriate action as permitted by international law if States do not comply with their obligations in this respect is new, emerging for the most part only since 1945 and the establishment of the United Nations. Thus, the international human rights law consists of a body of international rules, procedures and institutions developed to implement this concept and to promote respect for human rights in all countries on a worldwide basis³.

* Professor, PhD, Faculty of Public Administration and Political Science, "South East European University", Tetovo (e-mail: e.andreevska@seeu.edu.mk).

¹ The fundamental principle underlying the 'law of the nations' is that of sovereignty. According to that principle, a sovereign state has complete freedom to deal with its own nations and territory as it wishes. That meant that, in general, international law imposed obligations, accorded rights, and provided remedies only to states not to individuals. There were exceptions to this rule of non-intervention. See Thomas Buergental, *International Human Rights* (1994), 2-3. See also Harsch Lauterpacht, *International Law and Human Rights* (1950); Theodor Meron, *Human Rights in International Law* (1984); James Nickel, *Making Sense of Human Rights* (1987); Jack Donnelly, *Universal Human Rights in Theory and Practice* (1989); Louis Henkin, *Age of Rights* (1990).

² Under the League of Nations, established at the end of the First World War, attempts were made to develop an international legal framework, along with international monitoring mechanisms, to protect minorities.

³ One of the initial questions is what is meant by human rights. There are many theories and definitions about the meaning of term 'human rights', which could be divided mainly into two groups. According to the first, that human rights are those rights to which human beings are entitled to and which they can claim against state authority simply because they are human, and second, is that human rights are those social and political guarantees necessary to protect individuals from the standard threats to human dignity posed by the modern state and modern markets. See Theodor Meron, *Human Rights in International Law*, (Vol.1, 1984), 75-100; John Austin, *The Province of Jurisprudence Determined and the Uses of Jurisprudence* (1954); Isaiah Berlin, *Two Concepts of Liberty* (1958); and Frederick Engels, *The origin of the Family, Private Property and the State* (1972). From my point of view independently of the above mentioned opinion of the meaning of what

The Universal Declaration of Human Rights (UDHR), adopted in 1948, elaborated upon and systematized for the first time the idea of 'human rights' derived from the United Nations (UN) Charter. The UDHR enumerated a variety of civil, political, economic, social and cultural rights⁴, that were subsequently separated and incorporated into two binding treaties – the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR)⁵. The UDHR and the two Covenants together form the minimum standard of international human rights protection, known as the International Bill of Rights. Several other international human rights conventions followed⁶, which focused on more specific thematic concerns (such as racial discrimination) or on the protection of vulnerable groups (such as women, children, migrant workers, or disabled persons), and which substantively complement and expand upon particular rights guaranteed in the International Bill of Rights⁷.

The primary aims of the treaty system are to:

- encourage a culture of human rights;
- focus the human rights system on standards and obligations;
- engage all states in the treaty system ;
- interpret the treaties through reporting and communications;
- identify benchmarks through general comments

and recommendations;

- provide an accurate, pragmatic, quality end product in the form of concluding observations for each state;
- provide a remedial forum for individual complaints;
- encourage a serious national process of review and reform through partnerships at the national level; and
- mainstream human rights in the UN system and mobilize the UN community to assist with implementation and the dissemination of the message of rights and obligations.

The nine treaties are associated with nine treaty bodies which have the task of monitoring the implementation of treaty obligations⁸.

Each State party has an obligation to take steps to ensure that everyone in the State can enjoy the rights set out in the treaty. The treaty body helps them to do this by monitoring implementation and recommending further action⁹. Although each treaty is a separate legal instrument, which States may or may not choose to accept. The extent to which the treaties and the treaty bodies can function together as a system depends on two factors: first, States need to accept all the core international human rights treaties systematically and put their provisions into operation (universal and effective ratification); and, second, the treaty bodies need to coordinate their activities so as to present a

human rights mean, I completely agree with I. Brownlie's opinion that 'Human rights have always existed alongside with human beings. They existed independently from, and before, the State. Alien and even stateless persons must not be deprived of them. Belonging to diverse kinds of communities and societies-ranging from family, club, corporation, to State and international community, the human rights of man must be protected everywhere in this social hierarchy, just as copyright is protected domestically and internationally'. He added: 'A State or States are not capable of creating human rights by law or by convention; they can only confirm their existence and give them protection. The role of the State is no more than declaratory. It is exactly the same as the International Court of Justice'. See Ian Brownlie, *Basic Documents on Human Rights* (1992), 580-81.

⁴ One of the most important clauses of the UN Declaration of Human Rights concerning human rights, maybe of key importance which provide a foundation for, an impetus to further improvement in the protection of human rights is Article 55, which states that 'the United Nations shall promote: a) higher standards of living, full employment, and conditions of economic and social progress and development... c) universal respect for, and observance of, human rights and fundamental freedoms for all... 'Article 56 provides: 'All Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55. See A Compilation of International Instruments, Vol. I., United Nations 1994; and Elena Andreevska, *The National Minorities in the Balkans Under the UN and European System of Protection of Human and Minorities Rights* (1998), 1-18.

⁵ See UN General Assembly resolution 2200A (XXI) of 16 December 1966.

⁶ the Convention on the Elimination of all forms of Racial Discrimination (CERD), UN General Assembly resolution 2106 (XX) of 21 December 1965; the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), UN General assembly resolution 34/180 of 18 December 1979; the Convention Against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), UN General Assembly resolution 39/46 of 10 December 1984; the Convention on the Rights of the Child (CRC), UN General Assembly resolution 44/25 of 20 November 1989; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), UN General Assembly resolution 45/158 of 18 December 1990; Convention on the Rights of Persons with Disabilities (CRPD), UN General Assembly resolution 56/158 of 19 December 2001; and the International Convention for the Protection of all Persons from Enforced Disappearance (CED), UN General Assembly resolution 47/133 of 18 December 1992.

⁷ The treaty body system of the United Nations is a product of the Cold War, which only allowed for the lowest common denominator between the East, West and South. Western countries had introduced a strong division between civil and political rights on the one hand, and economic, social and cultural rights on the other, and permitted a complaint system only with respect to the former category.

⁸ These are: the Committee on the Elimination of Racial Discrimination (CERD); the Human Rights Committee (HRC); the Committee on Economic, Social and Cultural Rights (CESCR); the Committee on the Elimination of Discrimination Against Women (CEDAW); the Committee Against Torture (CAT); the Committee on the Rights of the Child (CRC); the Committee on Migrant Workers (CMW); the Committee on the Rights of Persons with Disabilities (CRPD); and the Committee on Enforced Disappearance (CED). In addition, there is the CAT Subcommittee on the Prevention of Torture (SPT), which is mandated to carry out state visits under the Optional Protocol to the Convention Against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment. Prior to 2008, CEDAW met in New York and was serviced by the UN Division for the Advancement of Women. The treaty bodies are composed of members who are elected by the states parties to each treaty (or through the UN Economic and Social Council (ECOSOC) in the case of CESCR). In principle, treaty members are elected as experts who are to perform their functions in an independent capacity.

⁹ It should be noted that the Committee on Economic, Social and Cultural Rights is not technically a treaty body, since it was not established directly under the terms of the Covenant but was created by Economic and Social Council resolution 1985/17.

consistent and systematic approach to monitoring the implementation of human rights at the national level¹⁰.

The practice of individual and inter-State communications before the UN treaty bodies is indeed not very encouraging. Despite the fact that Article 1 of the CERD¹¹ even provides for a mandatory inter-State communication procedure which had entered into force already in 1970, not one of the 169 States Parties to CERD has so far availed itself of this opportunity *vis a vis* any of the other States Parties where systematic racial discrimination and ethnic cleansing had even led to genocide. The same holds true for the optional inter-State communications procedures under the CCPR¹² and the CAT¹³. While the full-time European Court of Human Rights presently decides by a binding judgment on some 1000 individual complaints per year (in relation to 46 States Parties to the ECHR, all UN treaty bodies competent to deal with individual communications together have handed down only little more than 500 non-binding decisions on the merits ('final views') within almost 30 years in relation to more than 100 States Parties!¹⁴ Although the Human Rights Committee has done its utmost to interpret its powers under the first Optional Protocol to the CCPR 1966¹⁵ in a broad manner and renders highly professional quasi-judicial decisions on the merits, this procedure seems to be very little known in the world, and/or the billions of human beings in all regions of the world entitled to lodge complaints with the UN treaty bodies have little confidence in this procedure. The Petitions Team in the Office of the UN High Commissioner for Human Rights in Geneva is a small and grossly understaffed unit which cannot be compared to the Registry of the European Court of Human Rights in Strasbourg. No political body in the United Nations feels responsibility to supervise the

implementation of the treaty bodies' decisions by States Parties which has led to the absurd situation that the treaty bodies themselves have developed their own follow-up procedures. No wonder that many States Parties simply ignore the decision of treaty bodies, and even Western States increasingly argue that they are not bound by the decisions of the Human Rights Committee¹⁶.

There is no doubt that non-enforcement is a major failure of the United Nations human rights treaty system. The treaty bodies themselves are usually left with the task of overseeing the implementation of their own findings¹⁷. This situation is in stark contrast with the unconditional binding force of judicial decisions in national jurisdictions, or with the role of intergovernmental organs in the non-selective supervision of the implementation of rulings by regional human rights courts, such as the European Court of Human Rights within the Council of Europe framework.

The establishment of the Human Rights Council seems to be the right moment to start seriously thinking about the creation of a World Court of Human Rights (hereinafter referred to as WCHR) as its independent counter-part¹⁸. Similar to the International Criminal Court, the Court would be based on a new treaty, the Statute of the WCHR¹⁹. There is no doubt, the establishment of a WCHR, is a response to many of the most important challenges of the 21st century.

1. Establishment of the WCHR: Jurisdiction, Admissibility and Applicable Law

After the end of the Cold War, some of the institutional visions of the 1940s²⁰ have been taken up.

¹⁰ In contrast to the UN, the Council of Europe and the Organization of American States had already during the Cold War established fully independent human rights courts with the power to render final and binding judgments on both individual and inter-State complaints (the European Court of Human Rights was established in 1959 pursuant to Section IV, European Convention of Human Rights, and the Inter-American Court of Human Rights was established in 1979 by the American Convention on Human Rights). See 1969(ACHR), OAS No. 36. In addition, the Organization of African Unity (now the African Union) decided in 1998 to establish an African Court on Human and Peoples' Rights). See 1998, 6 IHRR 891 (1999). In other words, all three world regions where a regional organization for the protection of human rights exists decided to entrust the decision on human rights complaints to a regional human rights court. Only the Asian region lacks a human rights court, but this has to do with general lack of a regional organization and human rights system.

¹¹ UN Doc. 660 UNTS 196.

¹² UN Doc. 999 UNTS 171.

¹³ UN Doc. 1465 UNTS 85.

¹⁴ Manfred Nowak, *Introduction to the International Human Rights Regime* (2003) 100.

¹⁵ *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, General Assembly resolution 60/147, 16 December 2005, A/RES/60/147; 13 IHRR 907 (2006).

¹⁶ See the cases of *Perterer v Austria* (1015/01), CCPR/C/81/D/1015/2001 (2004), as to which see E.U. Network of Independent Experts on Fundamental Rights, *Report on the Situation of Fundamental Rights in Austria in 2004*, submitted to the Network by Manfred Nowak and Alexander Lubich, 3 January 2005, CDR-CDF/AT/2004, available at: <http://cridho.cpd.ucl.ac.be>, at 82nd; and *Derksen and Bakker v the Netherlands* (976/01), CCPR/C/80/D/976/2001 (2004), as to which see Nowak, 'Diskriminatie van buiten echt geboren wezen onder de anw Nederland botst met VN-Mensenrechtencomitee', (2005) 30 NJCM Bulletin 186 (text in English) 186.

¹⁷ Philip Alston, *Effective functioning of bodies established pursuant to United Nations Human Rights Instruments*, Final report on enhancing the long-term effectiveness of the United Nations human rights treaty system, UN Doc. E/CN.4/1997/74.

¹⁸ General Assembly resolution 60/251, 15 March 2006, A/RES/60/251. This resolution was adopted by a vote of 170 in favour, four against (Israel, Marshall Islands, Palau and United States), with three abstentions (Belarus, Iran and Venezuela). See also Concept Paper on the High Commissioner's Proposal for a Unified Standing Treaty Body, HRI/MC/2006/2, 22 March 2006, and UN Doc. 993 UNTS 3.

¹⁹ See Manfred Nowak, "The Need for a World Court of Human Rights", *Law Review*, 7.1. Oxford University Press (2007): 251-255.

²⁰ When the Working Group on Implementation of the UN Commission on Human Rights in 1947 recommended the establishment of an International Court of Human Rights as "final guarantor of human rights" with the power "to give judgments against violators of human rights", it left open whether the proposed court should give "judgment only against States, or whether employers or other individuals might be adjudged violators of human rights". See UN Doc E/600, p. 58.

Already during the Vienna World Conference on Human Rights in 1993²¹, the establishment of the Office of a UN High Commissioner for Human Rights²² has been agreed upon and the first High Commissioner took up his post in Geneva in April 1994²³. At about the same time, the UN Security Council had established two ad hoc criminal tribunals for the former Yugoslavia²⁴ and Rwanda²⁵ which in 1998 led to the adoption of the Rome Statute for an International Criminal Court (ICC)²⁶. Despite the massive resistance of the United States, the Rome Statute entered into force in 2002 and the Court started to function one year later in The Hague²⁷.

A number of human rights proponents continued to argue that international human rights standards required an international mechanism for effective enforcement and implementation. The first question, then, is whether it would be a good thing to have a world court for human rights. The answer tends to be an affirmative one, at least if the person who answers is someone who believes in human rights, the supremacy of law, and the possibility of conflict-solving through the judicial process²⁸.

The International Commission of Jurists (ICJ) made the establishment of a WCHR one of its central advocacy objectives at the First World Conference on Human Rights held in Tehran in 1968²⁹, a global event at which the question was addressed. During the lead-up to the Tehran Conference, ICJ Secretary-General

and future Nobel Peace Prize winner Sean MacBride³⁰ addressed the question in numerous public speeches, seminars and conferences, including at the UNESCO International NGO Conference on Human Rights in Paris in September of 1968³¹. In his public advocacy, Sean Macbride insisted that while the elaboration of binding treaties was critical, the treaties must be subject to judicial enforcement in order to represent an effective contribution to international justice³².

There is no doubt that we live in a geocentric world of nation-states, preoccupied mainly by “national” problems of the economy, society and politics. No matter where we live, for most of us the “nation” is the center of our political universe – the immovable point around which revolve other nations and, supposedly, the rest of the world. Our attachment to our nation is not merely legal; it is profoundly emotional. In the usual “international” context, the individual is nowhere to be found³³.

For a higher authority to come into being, therefore, a new compact is needed, a global civic contract that transcends the national paradigm. The good news is that such a contract already exists, both naturally and legally³⁴.

The WCHR, for example, was established in France by a General assembly of World Citizen in 1972.³⁵ A provisional statute for the court was subsequently drafted, and still later the World Judicial

²¹ See Vienna Declaration and Program of Action, adopted by the World Conference of Human Rights, in Vienna on 25 June 1993, available at <http://www.ohchr.org/Documents/ProfessionalInterest/vienna.pdf>.

²² *Ibid.*, p. 11, para. 16.

²³ UN General Assembly resolution 48/141 of 20 December 1993.

²⁴ See UN Security Council resolutions 808 (1993); 713 (1991); 827 (1993); and 1166 (1998).

²⁵ See UN Security Council resolution 10141 (2010).

²⁶ On the basis of the deliberations recorded in the records of the Conference (A/CONF.183/SR.1 to SR.9) and of the Committee of the Whole (A/CONF.183/C.1/SR.1 to SR.42) and the reports of the Committee of the Whole (A/CONF.183/8) and of the Drafting Committee (A/CONF.183/C.1/L.64, L.65/Rev.1, L.66 and Add.1, L.67/Rev.1, L.68/Rev.2, L.82-L.88 and 91), the Conference drew up the Rome Statute of the International Criminal Court. See also U.N. Doc. A/CONF.183/10.

²⁷ Until today, the Rome Statute has been ratified by 108 States from all regions of the world.

²⁸ On the other hand, many governments might not regard a world court for human rights as desirable at all. Time has, therefore, come for a new initiative to reform the human rights system of the United Nations. See the 2005 World Summit Outcome, UN Doc. A/Res/60/1 of 24 October 2005.

²⁹ UN Conference on Human Rights, Tehran, April 22 to May 13, 1968, Proclamation of Tehran. 63 Am. J. Int'l L. 674 1969. Para. 4

³⁰ Sean MacBride was a renowned international politician and human rights defender. To list a few of his accomplishments, he was the Minister for External Affairs in Ireland from 1948-1951, Vice-President of the OECD (then called the OEEC) from 1948-1951, President of the Committee of Ministers of the Council of Europe in 1950, Secretary-General to the ICJ from 1963-1971, a founding member and Chairman of Amnesty International from 1961-1975, and recipient of the Nobel Peace Prize in 1974, the Lenin Peace Prize in 1975-1976, and the UNESCO Silver Medal for Service in 1980

³¹ See 1968 International Year for Human Rights, The UNESCO COURIER Journal 1968 (21st year), pp. 27-29, available at <http://unesdoc.unesco.org/images/0007/000782/078234eo.pdf>. See also, Records of the General Conference Fifteenth Session, Paris 1968, available at <http://unesdoc.unesco.org/images/0011/001140/114047E.pdf>.

³² MacBride, Sean. “The Strengthening of International Machinery for the Protection of Human Rights”, Nobel Symposium VII: The International Protection of Human Rights. Oslo (1967): 16- 17

³³ The accumulated power of nation-states does not make them the only legitimate participants in global decision-making. In a world threatened by war and injustice, “responsible citizenship” can only mean a powerful assertion of humanity’s ultimate sovereignty. As Thomas Paine explained it, “individual human beings, each in his or her own personal and sovereign right, enter into a compact with each other to produce any government.” Available at muckraker-gg.blogspot.com/2015/12/the-emergence-of-world-citizenship.html.

³⁴ The World Government of World Citizens, which was established in 1953, is both an extension of the individual and an expression of humanity as a whole. It grows from your sovereignty and mine as world citizens, and from our commitment to each other’s protection and survival. It is a horizontal network based on natural rights and the human rights affirmed by both national constitutions and international agreements like the Universal Declaration of Human Rights. It is also “vertical” as the political expression of a world community by those who recognize only the geographic limits of the planet itself. See Greg Guma, A Global Contract: The Case for World Citizenship, Global Research, January 02, 2014Maverick Media, available at <http://www.globalresearch.ca/a-global-contract-the-case-for-world-citizenship/5363382>.

³⁵ The World Government of World Citizens is the political representation of the sovereign citizen of the world dynamically, intrinsically allied with sovereign humanity, to provide a global political service institution for the installation and maintenance of the world peace. It has been founded on September 4, 1953. See The Ellsworth Declaration available at <http://www.worldservice.org/ells.html>.

Commission was set up to handle preliminary complaints filed by world citizens³⁶.

In December 2008, the drive for a WCHR gained renewed momentum when the Foreign Minister of Switzerland, Micheline Calmy-Rey, declared it as one of eight projects constituting a new Swiss Agenda for Human Rights, which was launched in commemoration of the 60th anniversary of the Universal Declaration of Human Rights (UDHR). The Swiss Federal Department of Foreign Affairs established a Panel of Eminent Persons, co-chaired by Mary Robinson and Paulo Sérgio Pinheiro, to implement the new Agenda³⁷. The experts combined their efforts to produce a consolidated draft proposed statute, which was published in 2010³⁸.

The WCHR Project is a collaborative effort of judges, lawyers, academics, practitioners, and nonprofit groups dedicated to the theory and practice of court-based protections of human rights. The goal of the project is to design a court that implements, affirms, and promotes unequivocal respect for human rights globally. The Court also would provide areas of human rights protection that are currently underserved by existing public law structures, such as the International Court of Justice (ICJ) and the International Criminal Court (ICC), and existing regional courts of human rights. The Design Team represents major legal systems around the world and provides a balance of gender, race, ethnicity, and culture. Over the past several years, Chief Justices of the World, lawyers, academics, and practitioners have worked together to clarify the need for the court, draft its Statute, and identify its guiding bodies of law. The Statute was presented at the plenary session of the 15th annual World Judiciary Summit, in Lucknow India, in December 2014. A draft copy of the Statute can also be found on the WCHR's website:³⁹

The WCHR is an international treaty, the WCHR shall nevertheless become a permanent institution that brought into relationship with the United Nations. The WCHR shall have the power to decide in a final and binding manner on all complaints about alleged human rights violations; its judgments shall be enforced by domestic law enforcement bodies. An important principle modelled after the ICC statute is the

complimentary nature of the WCHR's jurisdiction in relation to the jurisdiction of national human rights courts. The WCHR shall be brought in relationship with the United Nations by way of an agreement; its expenses shall be borne by the regular budget of the United Nations rather than by contributions of States Parties. The statute proposes The Hague as the seat of the WCHR, since centralizing international courts in one place will contribute to their exchange of ideas and cooperation⁴⁰.

A WCHR would be designed first and foremost to provide access to justice and effective redress to victims of human rights violations throughout the world. Individuals alleging violations would have recourse to an international judicial mechanism, composed of independent and impartial judges of the highest standard of competence, to bring complaints against States that are parties to the WCHR's Statute.

While victims of human rights violations seeking a remedy would, in the first instance, be expected to make use of their own States' national procedures and mechanisms, the WCHR would be available to them where the national mechanisms are unavailable, ineffective, or have failed to deliver justice.

The precise jurisdictional scope and structure of the WCHR will ultimately have to be negotiated by States. However, certain identifiable features will be essential for a credible and effective judicial mechanism. The WCHR would be a permanent standing institution established through a multilateral treaty under the auspices of the United Nations. It would be composed of highly qualified and independent fulltime judges elected by the States parties. It would have the power to take final and legally binding decisions on applications of alleged human rights violations committed by States parties, in breach of their international human rights obligations⁴¹.

The WCHR shall be established by the Member Nation States, and the Member National Judiciaries, through their accession to the Treaty of Lucknow, as follows⁴².

The Statute of a WCHR would be unlikely to contain any fresh enumeration of substantive human rights standards. Rather, the WCHR would assume jurisdiction for rights contained in the existing

³⁶ World citizens, whose exercise of human rights can contravene "national laws," need a new kind of court, one both grounded on the legal defense of global rights and accessible to all. As the first Chief Justice of the World Court, Dr. Luis Kutner explained upon accepting the post, "The international community has come to realize that human rights are not an issue to be left solely to the national jurisdiction of individual states. These rights obviously need protection at a higher level within the framework of international law." Written with Garry Davis for *Passport to Freedom: Guide for World Citizens*, available at <http://muckraker-gg.blogspot.mk/2015/12/the-emergence-of-world-citizenship.html>.

³⁷ The Geneva Academy of International Humanitarian Law and Human Rights Law (Geneva Academy) also is involved in such efforts, being responsible for organizing and coordinating the initiative. See also <http://www.udhr60.ch/research.html>.

³⁸ Julia Kozma, Manfred Nowak and Martin Scheinin, *A World Court of Human Rights - Consolidated Statute and Commentary* (2010).

³⁹ Available at www.worldcourtofhumanrights.net/wchr-statute-current-draft.

⁴⁰ The composition of the Court and the election of the judges are regulated. Judges shall be nominated by States Parties; different than with respect to the UN Treaty Bodies, where a pluralistic composition is advantageous, it is necessary that all judges of the Court are jurists and are working on a fulltime professional basis.

⁴¹ Towards the World Court of Human Rights: Question and Answers, Support paper to the 2011 Report of the Panel on Human Dignity, International Commission of Justice, p. 6. The 15th annual meeting, in Lucknow, Indija, held December 12-16, 2014, at the conclusion of the Conference, the World Chief Justices issued a unanimous Resolution which provide that, "The Heads of States/Government of all countries be urged . . . to hold a high level meeting to deliberate on the measures required for creating . . . a World Court of Human Rights. . ." The full text of the Chief Justices' Resolution can be found at the following link: <http://www.cmseducation.org/article51/resolutions.htm>.

⁴² Statute of the WCHR (The Treaty of Lucknow), Article 1 A. See also Article 1 B,C,D,E,F,G.

universal human rights treaties⁴³, including the International Covenant on Civil and Political Rights and its Second Optional Protocol; the International Covenant on Economic, Social and Cultural Rights; Slavery Convention; Protocol Amending the Slavery Convention; Convention on the Prevention and Punishment of the Crime of Genocide; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Rights of the Child and its First and Second Optional Protocols; the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families; the Convention on the Rights of Persons with Disabilities; and the International Convention for the Protection of All Persons from Enforced Disappearance⁴⁴.

2. Organization of the Court and Obligations of States Parties and of Non-State Actors

The Statute of the WCHR will be an international treaty⁴⁵. The WCHR shall nevertheless become a permanent institution that brought into relationship with the United Nations⁴⁶. The ratification of or accession to this Statute by a State shall be treated by the Secretary-General of the United Nations⁴⁷. The WCHR shall have the power to decide in a final and binding manner on all complaints about alleged human rights violations; its judgments shall be enforced by

domestic law enforcement bodies⁴⁸. An important principle modelled after the ICC statute is the complimentary nature of the WCHR's jurisdiction in relation to the jurisdiction of national human rights courts⁴⁹.

The WCHR shall be composed of a body of 21 independent Justices⁵⁰, nationals of the States Parties to the Statute, elected in the individual capacity. All judges shall serve as a full-time members of the Court⁵¹. The WCHR shall be composed of the following organs: Plenary Court⁵²; Chambers and Committees⁵³; Presidency⁵⁴; and Registry⁵⁵.

Besides the States and jointly called 'Entities' in the Draft Statute, could accept the jurisdiction of the WCHR. The term 'Entity' refers to any inter-governmental organization or non-State actor, including any business corporation, which has recognized the jurisdiction of the WCHR in accordance with Article 51⁵⁶. This would constitute a welcome opportunity to solve the difficult problem of holding at least some types of non-State actors accountable in relation to international human rights law. One may think, first of all, of inter-governmental organizations, such as the United Nations and its specialized agencies; the European Union; the World Bank and other financial institutions, the World Trade Organization; and the North Atlantic Treaty Organization (NATO).⁵⁷ Similarly, NATO forces involved in peace-keeping, peace-building or peace-enforcement missions might be held accountable for possible violations of international human rights standards. The same holds true for any other inter-governmental organization willing to ratify the Statute of the WCHR. Secondly, transnational corporations which adopt voluntary codes of conduct with references to human rights standards in

⁴³ See Article 5 of the Statute.

⁴⁴ In deciding its cases, the Court shall apply the following substantive law: human rights conventions and declarations of which one or more of the parties is a member; human rights custom, and generally accepted practice; general principles of human rights law; human rights judicial decisions; and the teachings and writings of preminent human rights experts. This provision shall not limit the power of the Court to decide a case under principles of equity, if the parties consent. See Article 20.

⁴⁵ Hence, ratifying States will be the primary category subject to the jurisdiction of the WCHR. In line with the traditional rules of public international law, no State will become party to the Statute and subject to the WCHR's general jurisdiction, without its explicit consent.

⁴⁶ The WCHR shall be brought in relationship with the United Nations by way of an agreement; its expenses shall be borne by the regular budget of the United Nations rather than by contributions of States Parties.

⁴⁷ Article 7(3) of the Statute

⁴⁸ See part 1 at the Statute, available at <http://www.eui.eu/Documents/DepartmentsCentres/Law/Professors/Scheinin/ConsolidatedWorldCourtStatute.pdf>.

⁴⁹ Ibid. Part 2.

⁵⁰ See Articles 20 (1) of the Statute.

⁵¹ The Justices shall serve in their personal capacities, and not as the representatives of the Nation States of which they are citizens. No two Justices may be nationals of the same Nation State. See Ibid.

⁵² See Article 26 of the Statute.

⁵³ See Article 27 of the Statute.

⁵⁴ See Article 29 of the Statute

⁵⁵ Ibid. Article 20 (2) of the Statute. See also Article 30 of the Statute.

⁵⁶ Article 4(1) of the Statute. The 'Entities', for example include: International organizations constituted through a treaty between States, or between States and international organizations; Transnational corporations, i.e. business corporations that conduct a considerable part of the production or service operations in a country or in countries other than the home State of the corporation as a legal person; international non-governmental organizations, i.e. associations or other types of legal persons that are not operating for economic profit and conduct a considerable part of their activities in a country or in countries other than the home State of the organization as a legal person; Autonomous communities within a State or within a group of States and exercising a degree of public power on the basis of the customary law of the group in question or official delegation of powers by the State or States.

⁵⁷ The United Nations, for example, does exercise jurisdiction in the context of interim administrations, such as those established in relation to Kosovo (See Security Council resolution 1244, 10 June 1999, S/RES/1999/1244), and East Timor (See Security Council resolution 1272, 22 October 1999, S/RES/1999/1272, replaced by United Nations Mission of Support in East Timor, Security Council resolution 1410, 17 May 2002, S/RES/2002/1410), which may lead to human rights violations by military, police and other components.

the framework of their corporate social responsibilities (CSR) and which become members of the Global Compact of the United Nations⁵⁸ might be invited and encouraged to accept the binding jurisdiction of the WCHR in relation to selected human rights in the sphere of their respective influence, such as the prohibition of forced or child labour; the right to form and join trade unions; the right to collective bargaining; and the prohibition of discrimination. The WCHR would not only be in a position to decide in a binding judgment whether or not a business corporation subject to its jurisdiction has violated any human right of an employee, a client or any other person affected, but it might also provide proper reparation to the victim concerned. In principle, any non-State actor might be interested, for various reasons including upholding ethical standards, marketing, corporate identity or a genuine interest in strengthening human rights, to recognize the jurisdiction of the WCHR.

A second extension of the Court's jurisdiction is provided for by Article 7(2) which allows both States that are not parties to the Statute, and Entities that have not generally accepted the jurisdiction of the WCHR, to accept that jurisdiction on an *ad hoc* basis in respect of a particular case (complaint) submitted to the WCHR⁵⁹. All forms of exercise of jurisdiction described so far result in a legally binding judgment of the WCHR⁶⁰. The States Parties undertake to directly enforce the judgments of the WCHR by the respective bodies⁶¹.

The judgment of the Plenary Court shall be final, but the judgment of a Chamber shall become final only if the parties declare that they will not request that the case be referred to the Plenary Court or three months after the date of the judgment, if reference of the case to the Plenary Court has not been requested⁶².

The right to a judicial remedy for human rights violations⁶³ must include the right of the victim to receive adequate reparation by the same court that

decides about the alleged human rights violation⁶⁴. It is not efficient for an international court to only decide about the violation and leave it to the duty-bearer to decide which type of reparation, if any, it wishes to afford to the victim for the harm suffered. It is also not efficient to expect from the victim, who has already exhausted all domestic remedies before going through the cumbersome process of international human rights litigation, to start again, on the basis of the judgment by an international court, tort litigation before domestic courts⁶⁵.

Finally, it is important to be emphasized that any judgment of the WCHR shall be transmitted to the UN High Commissioner for Human Rights⁶⁶ who shall supervise its execution⁶⁷.

Conclusion

Rights mean essentially nothing if there is no way to enforce them. United Nations charter-based and committee-based human rights systems are extremely valuable, but they are “intergovernmental” systems. They are not court-like in their nature, or in their operation. Just as nations states need an International Court of Justice to resolve their treaty disputes, victims of human rights violations need a WCHR⁶⁸ to which they can turn when governments either violate their rights, or act indifferently in the face of preventable suffering or discrimination. The United Nations’ intergovernmental human rights bodies cannot do it alone, and the right to judicial access is fundamental.

All proposals for a substantive reform of the UN treaty monitoring system, including the “consolidation” of existing treaty bodies, are faced with the considerable challenge of amending UN human rights treaties. Similar to the ICC, the WCHR would be based on a new treaty, the Statute of the WCHR. As other human rights treaties, this Statute should be drafted by the Human Rights Council⁶⁹ and adopted by the

⁵⁸ Information on the Global Compact initiative can be found at www.unglobalcompact.org.

⁵⁹ This model of *ad hoc* acceptance of jurisdiction is also applicable when a State or Entity has accepted the jurisdiction of the Court but excluded a particular human rights treaty, and now a complaint is submitted in respect of an issue not governed by the existing acceptance of jurisdiction.

⁶⁰ See Article 18(1) of the Statute.

⁶¹ The Court may only deal with any individual complaint if the complaint has been submitted to the highest competent domestic court and the applicant is not satisfied with judgment of this court. This admissibility requirement does not apply if, in the view of the Court, the relevant domestic remedy is not available or effective. See Article 9 (1) (2) of the Statute. See also Articles 10, 11, 12, 13 and 14 of the Statute.

⁶² See Article 28 (1) (2) of the Statute.

⁶³ In 2005, the UN General Assembly adopted the “UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law”. See UN General Assembly Res. 60/147 of 16 December 2005.

⁶⁴ See Article 17(2) of the Statute.

⁶⁵ Since the jurisdiction of the World Court also extends to non-State actors, including business corporations, reparation orders shall also be made to non-State actors.

⁶⁶ The Human Rights Council is the symbol of UN human rights reform relating to the Charter based system. It is the main political body of the United Nations dealing with human rights, composed of State representatives.

⁶⁷ See Article 18 (4)(5) of the Statute.

⁶⁸ The proposed Statute of the World Court of Human Rights (The Treaty of Lucknow) is drafted through an international collaboration of judges, lawyers and scholars, and the Chief Justices of the World unanimously pass a Resolution endorsing the creation of the Court as an avenue of recourse for the voiceless. 2015 and 2016 – Information about the World Court of Human Rights has been broadly disseminated, widespread public awareness of the need has been promoted, grass roots support has been built, and an Advisory Board has been formed.

⁶⁹ As a subordinate body of the General Assembly, it enjoys a higher status than the former Commission on Human Rights, and it meets on a much more regular basis than its predecessor. The most prominent new procedure is the “Universal Periodic Review” (UPR) of all UN member States. The Council thereby has to assess the human rights performance of States on the basis of governmental, non-governmental and expert

General Assembly. The WCHR would only gradually take over one of the functions of the treaty monitoring bodies, namely examining individual and inter-State complaints. This has at the same time the positive effect that the existing treaty bodies could devote more time and resources to their main function, the examination of State reports, which would contribute to reducing the considerable backlogs and delays in the State reporting procedure⁷⁰.

Through the adoption of human rights treaties over the past seven decades, the available remedies have expanded...in theory. Human rights standards are more widely known, better understood, and more universally accepted. The paradox is that the countries with the highest incidences of human rights violations often have governments with the least interest in fixing the problem. They also often have the least independent judiciaries. This is one factor in the emergence of the regional courts of human rights. The European Court of Human Rights is the closest regional example of what the World Court of Human Rights would be at a global level. Africa and the Americas have regional human rights systems as well, but they are somewhat more intergovernmental in nature. Asia, sadly, with 60% of the world's population, and with more than its share of human rights problems, has no regional human rights

system. Each of these regional human rights systems has evolved from a fundamental societal need, and the time has come to make the system procedurally and substantively uniform, and universally available⁷¹.

A WCHR would provide a major contribution to ensuring the right of victims of human rights violations to an effective remedy and to an adequate reparation for the harms suffered. It would also offer the opportunity to address a number of unsolved contemporary human rights problems, such as the accountability of non-State actors. The creation of the WCHR can be achieved in a smooth manner without any treaty amendment and without abolishing the present treaty monitoring bodies. It is a purely voluntary measure as States would decide freely whether or not to ratify the Statute of the WCHR and for which rights they were willing to recognize the binding jurisdiction of the WCHR. Finally, the WCHR should become the major counterpart of the Human Rights Council within the treaty system, and by supervising the execution of the binding judgments of the WCHR, the universal periodic review mechanism of the Human Rights Council would fulfil a meaningful and important function based on a strict division of labour between the two major future political and expert bodies of the United Nations in the field of human rights⁷².

References:

- 1968 International Year for Human Rights, The UNESCO COURIER Journal 1968 (21st year), <http://unesdoc.unesco.org/images/0007/000782/078234eo.pdf>;
- A Compilation of International Instruments, Vol. I, United Nations (1994);
- Alston, Philip. Effective functioning of bodies established pursuant to United Nations Human Rights Instruments, Final report on enhancing the long-term effectiveness of the United Nations human rights treaty system, UN Doc. E/CN.4/1997/74;
- Andreevska, Elena. The National Minorities in the Balkans Under the UN and European System of Protection of Human and Minorities Rights (1998);
- Austin, Johan. The Province of Jurisprudence Determined and the Uses of Jurisprudence (1954);
- Basic Principles and Guidelines on the Right to a Remedy and Reparation for Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, General Assembly resolution 60/147, 16 December 2005, A/RES/60/147;
- Berlin, Isaiah. Two Concepts of Liberty (1958);
- Brownlie, Ian. Basic Documents on Human Rights (1992);
- Buergerthal, Thomas. International Human Rights (1994);
- Concept Paper on the High Commissioner's Proposal for a Unified Standing Treaty Body, HRI/MC/2006/2, 22 March 2006;
- Convention on the Rights of Persons with Disabilities (CRPD), UN General Assembly resolution 56/158 of 19 December 2001;
- Derksen and Bakker v the Netherlands (976/01), CCPR/C/80/D/976/2001 (2004);
- Doc. 13 IHRR 907 (2006);
- Doc. 1969(ACHR), OAS No. 36;
- Doc. 1998, 6 IHRR 891 (1999);
- Doc. CDR-CDF/AT/2004, <http://cridho.cpd.ucl.ac.be>, at 82nd;
- Donnelly, Jack. Universal Human Rights in Theory and Practice (1989);
- East Timor, UN Security Council resolution 1272, 22 October 1999, S/RES/1999/127;

information prepared specifically for this exercise by the Office of the High Commissioner for Human Rights. This expert information includes relevant decisions, conclusions and recommendations of UN treaty bodies.

⁷⁰ Swiss Initiative to Commemorate the 60th Anniversary of the UDHR Protecting Dignity: An Agenda for Human Rights, Austria (2009), pp. 19-27, available at http://bim.lbg.ac.at/sites/files/bim/World%20Court%20of%20Human%20Rights_BIM_0.pdf.

⁷¹ The case for support, An invitation to Philanthropists and Justice Leaders: Join US in Establishing the World Court of Human Rights., available at <http://www.worldcourtofhumanrights.net/project-overview>.

⁷² Manfred Nowak, The Need for a World Court of Human Rights (2007), available at <https://academic.oup.com/hrlr/article-abstract/7/1/251/645636/The-Need-for-a-World-Court-of-Human-Rights>.

- Engels, Frederick. *The origin of the Family, Private Property and the State* (1972);
- Guide for World Citizens, <http://muckraker-gg.blogspot.mk/2015/12/the-emergence-of-world-citizenship.html>;
- Guma, Greg. *A Global Contract: The Case for World Citizenship*, Global Research (2014);
- Henkin, Louis. *Age of Rights* (1990);
- <http://www.udhr60.ch/research.html>;
- In 2005, the UN General Assembly adopted the “UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law”, UN General Assembly resolution 60/147 of 16 December 2005;
- Information on the Global Compact initiative www.unglobalcompact.org;
- Kozma, Julia., Manfred Nowak., and Martin Scheinin. *A World Court of Human Rights - Consolidated Statute and Commentary* (2010);
- Lauterpacht, Harsch. *International Law and Human Rights* (1950);
- MacBride, Sean. “The Strengthening of International Machinery for the Protection of Human Rights.” Nobel Symposium VII: *The International Protection of Human Rights* (1967);
- Manfred Nowak, “The Need for a World Court of Human Rights”, *Law Review*, 7.1. Oxford University Press(2007);
- Manfred Nowak, *The Need for a World Court of Human Rights* (2007), <https://academic.oup.com/hrlr/article-abstract/7/1/251/645636/The-Need-for-a-World-Court-of-Human-Rights>;
- Maverick, Media, <http://www.globalresearch.ca/a-global-contract-the-case-for-world-citizenship/5363382>;
- Meron, Theodor. *Human Rights in International Law* (1984);
- muckraker-gg.blogspot.com/2015/12/the-emergence-of-world-citizenship.html;
- Nickel, James. *Making Sense of Human Rights* (1987);
- Nowak, Manfred. *Introduction to the International Human Rights Regime*(2003);
- *Perterer v Austria* (1015/01), CCPR/C/81/D/1015/2001 (2004);
- Records of the General Conference Fifteenth Session, Paris 1968, <http://unesdoc.unesco.org/images/0011/001140/114047E.pdf>;
- Rome Statute of the International Criminal Court, UN Doc. L.66 and Add.1, L.67/Rev.1, L.68/Rev.2, L.82-L.88 and 91;
- Statute of the World Court of Human Rights (The Treaty of Lucknow), <http://www.eui.eu/Documents/DepartmentsCentres/Law/Professors/Scheinin/ConsolidatedWorldCourtStatute.pdf>;
- Swiss Initiative to Commemorate the 60th Anniversary of the UDHR *Protecting Dignity: An Agenda for Human Rights, Austria* (2009), at: http://bim.lbg.ac.at/sites/files/bim/World%20Court%20of%20Human%20Rights_BIM_0.pdf;
- The 15th annual meeting, in Lucknow, Indija, held December 12-16, 2014, <http://www.cmseducation.org/article51/resolutions.htm>;
- The case for support. An invitation to Philanthropists and Justice Leaders: Join US in Establishing the World Court of Human Rights, <http://www.worldcourtofhumanrights.net/project-overview>;
- The Convention Against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), UN General Assembly resolution 39/46 of 10 December 1984;
- The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), UN General Assembly resolution 34/180 of 18 December 1979;
- The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), UN General assembly resolution 34/180 of 18 December 1979;
- The Convention on the Rights of the Child (CRC), UN General Assembly resolution 44/25 of 20 November 1989;
- The International Convention for the Protection of all Persons from Enforced Disappearance (CED), UN General Assembly resolution 47/133 of 18 December 1992;
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), UN General Assembly resolution 45/158 of 18 December 1990;
- *Towards the World Court of Human Rights: Question and Answers*, Support paper to the 2011 Report of the Panel on Human Dignity, International Commission of Justice, <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2013/07/World-court-final-23.12.pdf>;
- U.N. Doc. A/CONF.183/10;
- UN Security Council resolution 10141 (2010);
- UN Security Council resolution 1244, 10 June 1999, S/RES/1999/1244);
- UN Conference on Human Rights, Tehran, April 22 to May 13, 1968, Proclamation of Tehran. 63 Am. J. Int’l L. 674 1969;
- UN Doc. A/CONF.183/C.1/SR.1 to SR.42;
- UN Doc A/CONF.183/8;
- UN Doc E/600;
- UN Doc. 1465 UNTS85;
- UN Doc. 660 UNTS196;
- UN Doc. 993 UNTS 3;
- UN Doc. 999 UNTS 171;
- UN Doc. A/CONF.183/C.1/L.64, L.65/Rev.1;
- UN Doc. A/CONF.183/SR.1 to SR.9.
- UN Doc. A/Res/60/1 of 24 October 2005;

- UN Doc. A/RES/60/251.
- UN General Assembly resolution 60/251, 15 March 2006;
- UN General Assembly resolution 2106 (XX) of 21 December 1965;
- UN General Assembly resolution 2200A (XXI) of 16 December 1966;
- UN General Assembly resolution 48/141 of 20 December 1993;
- UN Security Council resolution 1410, 17 May 2002, S/RES/2002/1410);
- UN Security Council resolution 1166 (1998);
- UN Security Council resolution 1410, 17 May 2002, S/RES/2002/1410);
- UN Security Council resolution 713 (1991);
- UN Security Council resolution 827 (1993);
- UN Security Council resolutions 808 (1993);
- Vienna Declaration and Program of Action, adopted by the World Conference of Human Rights, in Vienna on 25 June 1993, <http://www.ohchr.org/Documents/ProfessionalInterest/vienna.pdf>;
- www.worldcourtofhumanrights.net/wchr-statute-current-draft.