

A World Court of Human Rights in Light of the UN Treaty Bodies' Reform

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Overview

1. Pioneering Ideas of the 1940s in the UN Commission for Human Rights
2. Eight Reasons Why We Need a World Court of Human Rights
3. Added Value
4. The Way Forward



1. Pioneering Ideas of the 1940s in the UN Commission for Human Rights

High Commissioner for Human Rights:

Proposal of Uruguay

- Vienna World Conference of Human Rights in 1993
- replaced the UN Centre for Human Rights in 1994

International Criminal Court:

Envisaged in the Genocide Convention 1948

- Ad hoc Tribunals for the former Yugoslavia and Rwanda established by the Security Council in 1993/94
- Rome Statute of an ICC 1998 / 2002

World Court of Human Rights:

Proposal of Australia

- Swiss Agenda for Human Rights 2008
- not yet realized



2. Eight Reasons Why We Need a World Court of Human Rights

1. Rights demand a remedy
2. Need to overcome the cold war
3. Need to learn from regional organizations
4. Independent counterpart to Human Rights Council
5. No treaty amendments necessary
6. Principle of complementarity
7. Accountability of non-State actors
8. Right of victims to adequate reparation



2.1. Reason One – Legal Rights Without a Remedy Are Empty Promises

- Rights holders, duty bearers and accountability
- Rights holders have a procedural **right to hold duty bearers** violating their obligations **accountable** before an independent court (civil law, administrative law etc.).
- This simple logic of rights, duties, responsibility and accountability should also apply to the most precious of all rights (i.e. human rights to life, liberty, dignity, work, health, security).



2.2. Reason Two – UN Human Rights Complaints Mechanisms Still Reflect the Logic of the Cold War

- Individual complaints before UN treaty bodies are **optional**
- UN treaty bodies are quasi-judicial expert bodies, **not courts**
- Decisions of UN treaty bodies are legally **non-binding**
- Terminology reflects the **lowest common denominator** between East and West: e.g. communications, final views etc.
- Although the Cold War is over for more than 20 years the UN still **maintains a separation** between WEOG and Eastern Europe
- Nevertheless, **binding judgments by a court** on individual complaints, based on a fair and public hearing, **are simply better** than non-binding “final views” by a Committee on “communications”, based exclusively on written and confidential proceedings

2.3. Reason Three – The UN Might Learn from Regional Organizations

- All regional organizations concerned with the promotion and protection of human rights entrusted an **independent regional court** with deciding on human rights complaints
- **Council of Europe**: ECHR (1950), European Court of Human Rights (since 1998 full time)
- **Organization of American States**: ACHR (1969), Inter-American Court of Human Rights
- **African Union**: AfrChHPR (1981): African Court of Human and Peoples' Rights (OP 1998 / 2004) => merged with African Court of Justice (2004)
=> African Court of Justice and Human Rights (2008)
- No regional organisation and court in the **Asia/Pacific region**.

2.4. Reason Four – Human Rights Council Needs an Independent and Powerful Counterpart

- Commission on Human Rights was replaced by Human Rights Council 2006 (GA Res. 60/251): **balance** and division of labour between States, NGOs, and Independent Experts **shifted** towards States-centred process.
- Universal Periodic Review (UPR): **States assess** the implementation of human rights obligations by **other States**
- Reports by UN Treaty Bodies and Special Procedures inform country specific action to a lesser degree than before
- Binding judgements of a **World Court of Human Rights would carry much more weight** than “final views” of current treaty bodies
- World Court as a more powerful **counterpart to the Council** could re-establish a proper balance between States and Independent Experts



2.5. Reason Five – Creation of a World Court is Much Easier Than UN Treaty Body Reform

- **Treaty body reform** (structural reform proposals by Philip Alston, Anne Bayefski, Louis Arbour etc would require merger of treaty bodies, such as creation of a unified treaty body) needs a formal amendment of existing treaties which is **very difficult to achieve**
- World Court of Human Rights can be established by an **independent treaty** (statute), similar to the ICC Statute
- With the ratification of the Statute, optional power of treaty bodies to decide on **individual complaints** would automatically **transfer to World Court**
- World Court would only gradually **take over individual complaints competence from treaty bodies**
- **State reporting procedure** would remain the main function of existing treaty bodies (treaty-specific expertise, multi-disciplinary membership)



2.6. Reason Six – Principle of Complementarity: Strengthening of Domestic Judicial Systems

- Need of applicants to exhaust effective domestic remedies requires States parties to establish **national human rights courts** or similar domestic courts with a special human rights expertise which should be empowered to directly apply the respective UN human rights treaties (see example of European Court of Human Rights)
- Judgments of the World Court with binding orders to provide reparation to the victims should function as an **incentive** for States to strengthen their domestic judicial system for the protection of human rights
- **Principle of complementarity**, similar to ICC
- In developing effective judicial human rights mechanisms, States shall be assisted by a **Global Fund for National Human Rights Protection Systems**



2.7. Reason Seven – Non-State Actors Can Be Held Accountable Before the World Court

- Increased **responsibility of non-State actors** (inter-governmental organisations, trans-national corporations, parties to internal armed conflicts etc.) for both the protection and the violation of human rights
- Need to **hold non-State actors accountable**
- **Shared responsibility** of State and non-State actors: the 21st Century approach (Human Rights Agenda)
- Possibility for non-state actors to voluntarily **accept the jurisdiction** of the World Court

2.8. Reason Eight – Need to Enforce the Right of Victims to Adequate Reparation

- **UN Basic Principles and Guidelines** on the Right of Victims to a Remedy and Reparation (2005)
- Traditional human rights litigation not concerned about the right to reparation (e.g. European Court of Human Rights)
- World Court of Human Rights should be **empowered to order** States and non-State actors to afford victims with provisional measures and adequate reparation: **restitution, rehabilitation, compensation, guarantees of non-repetition and other forms of satisfaction**
- World Court of Human Rights would **combine the functions** of a traditional human rights court and an International Civil Court



3. Added Value

- Competences of World Court shall go **beyond** those of existing **regional** human rights courts
- Jurisdiction regarding **all human rights**, not only civil and political rights
- **Accountability** of IGOs and non-State actors
- Power to grant victims **adequate reparation** for the harm suffered



4. The Way Forward

- **Swiss Agenda for Human Rights: “Protecting Dignity”**
- **Panel of Eminent Persons**
- Need to ensure **support of States** from all world regions
- Need to ensure **support from civil society** (similar to the NGO coalition for the establishment of the ICC).
- Drafting in the **Human Rights Council**
- Adoption by the **General Assembly**



Thank you for your attention!



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