



Swiss Initiative to Commemorate the 60th Anniversary of the UDHR
Protecting Dignity: An Agenda for Human Rights

RESEARCH PROJECT ON A WORLD HUMAN RIGHTS COURT:

“A World Court of Human Rights”

by Manfred Nowak and Julia Kozma, University of Vienna, Austria

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The year 2008 marked the 60th Anniversary of the Universal Declaration of Human Rights. To commemorate this occasion, and in order to make a meaningful contribution to the protection of human rights, the Swiss Government decided to launch "An Agenda for Human Rights". The initiative aims to explore new ways of giving human rights the weight and place they deserve in the 21st century. It is designed as an evolving and intellectually independent process.

The text *Protecting Dignity: An Agenda for Human Rights* was authored by a Panel of Eminent Persons, co-chaired by Mary Robinson and Paulo Pinheiro. This *Agenda* and the Swiss Initiative are designed to achieve two objectives: firstly, to set out some of the main contemporary challenges on the enjoyment of human rights, and secondly, to encourage research and discussion on a number of separate topics linked to the *Agenda*. These include: Human Dignity – Prevention – Detention – Migration – Statelessness – Climate Change and Human Rights – the Right to Health – and A World Human Rights Court.

The project is sponsored and financed by the Swiss Federal Department of Foreign Affairs. The Ministry of Foreign Affairs of Norway and the Ministry of Foreign Affairs of Austria have actively supported the project. The Geneva Academy of International Humanitarian Law and Human Rights is responsible for the coordination and organisation of the Initiative.

A WORLD COURT OF HUMAN RIGHTS

MANFRED NOWAK AND JULIA KOZMA



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EXECUTIVE SUMMARY

1. Background, Aims and Methodology of the Research

Despite the existence of a considerable number of human rights treaties elaborated on the international and regional level, one of the main challenges identified by the eminent persons panel was 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.

Based on the proposition “where there is no remedy there is no right”, the eminent persons panel in its progress report “Protecting Dignity: An Agenda for Human Rights” thus recommended that “a fully independent World Court of Human Rights should be created, entrusted with the judicial protection of human rights against all duty bearers. The World Court of Human Rights should be a permanent court established by a multilateral treaty under the auspices of the United Nations. It should be competent to decide in a final and binding manner on complaints of human rights violations committed by state and non-state actors alike and provide adequate reparation to victims”.

Accordingly, Manfred Nowak and Julia Kozma, both University of Vienna, were selected by the panel to conduct a research project on the establishment of a World Court of Human Rights. The aim of the project was to identify and address all relevant legal and practical issues that need to be taken into account when considering the establishment of a World Court. In particular, the authors commenced to draft a statute for a World Court of Human Rights, which could serve as a basis for possible future discussions at UN level. In addition to the draft statute, the authors prepared an article-by-article commentary, intended to provide the reader with a deeper understanding of single provisions.

The research takes into account existing statutes of diverse international and regional courts, such as the International Criminal Court (ICC), the International Court of Justice (ICJ), the Inter-American Court of Human Rights (ACtHR), the African Court of Human and Peoples’ Rights (AfCtHPR), the European Court of Human Rights (ECtHR) and the European Court of Justice (ECJ); as well as UN human rights treaties, particularly the International Covenant on Civil and Political Rights (CCPR), the Optional Protocol to the Convention against Torture

(OPCAT), and the Convention on the Rights of Persons with Disabilities (CRPD). In addition to existing articles on a World Court of Human Rights, the authors mainly used literature on procedural aspects of the diverse monitoring mechanisms and court systems and legal commentaries on their statutes, as well as background literature on general issues of international law. For the understanding of the historical development of the idea of a World Court, the authors consulted relevant UN documentation.

On 17 April 2009, the authors convened an international expert workshop on the UN human rights monitoring machinery in Vienna. The primary aim of the workshop was to discuss with academics as well as human rights practitioners the draft statute of the World Court. Besides a lively discussion on the underlying ideas of the court, the authors could gain concrete suggestions for improvement of the statute, which have been taken into account in the final document.

2. Structure and Main Content of the Statute

The statute of the World Court of Human Rights (in the following: the Court or the World Court) is divided into six parts and some 40 articles, including an annex.

Part 1 “Establishment of the Court” provides that although the statute of the Court is an *international treaty*, the Court shall nevertheless become a *permanent institution* that brought into relationship with the United Nations. The Court 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 Court’s jurisdiction in relation to the jurisdiction of national human rights courts (see below, Part 2). The Court 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 Court, since centralising international courts in one place will contribute to their exchange of ideas and cooperation. Finally, the *composition of the Court* and the *election of judges* are regulated: Initially, the Court shall consist of 21 judges. The Statute enables the Assembly of States Parties to increase the number of judges if necessary, without an amendment of the Statute. 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 full-time professional basis.

Part 2 “Jurisdiction, Admissibility and Applicable Law” constitutes the core of the statute. It regulates the Court’s competences with regard to individual complaints; third party complaints; and advisory opinions. Part 2 also contains an essential provision obliging States Parties to establish on the domestic level a national court of human rights. Furthermore, procedural clauses on admissibility criteria, third-party interventions, the striking out of complaints and examination on the merits, friendly settlements, and public hearings are included. Finally, this part includes the deliverance of judgments including reparation, their binding force, execution and supervision of implementation, as well as provisional measures.

The provision on individual complaints breaks new ground in respect of the circle of possible complainants and respondents to a complaint. Regarding *jurisdiction ratione personae*, the Court can receive complaints from a natural person, non-governmental organization or group of individuals *claiming to be a victim of a violation*. An *actio popularis* is therefore excluded. The complaint can in principle be lodged against a State Party, the United Nations or any of its specialised agencies, any other regional or global inter-governmental organization, any non-State actor subject to the jurisdiction of a State Party, and any inter-governmental or non-governmental organization, including business corporations. The broad circle of respondents takes into account contemporary forms of human rights responsibility by non-State actors and will enhance human rights protection. The Court will have jurisdiction *ratione materiae* against a State Party regarding any human rights treaty listed in the annex, which the respective State has explicitly opted for (see below, Part 6); against the UN regarding any treaty listed in the annex; against inter-governmental organizations which are party to the statute regarding any human rights treaty listed in the annex, which the organization has opted for; against non-State actors under the jurisdiction of a State Party regarding any human rights treaty listed in the annex, which the respective State has explicitly opted for or has not excluded by means of a reservation; and against other organizations, including business corporations, that have explicitly declared that they recognize the jurisdiction of the Court regarding specific human rights contained in the treaties listed in the annex.

Another essential provision in Part 2 obliges States Parties to establish, maintain or designate a *national court of human rights*. In principle, the functions of the national court of human rights can also be carried out by more than one domestic court. The provision is based on the OPCAT and the CRPD, both of which foresee a national mechanism as counter-part to an international body and as the main organ responsible for human rights implementation on the territory of the State Party. With regard to complaints against a State Party or a non-State

actor under the jurisdiction of a State Party, the national court of human rights shall have the same competences as the World Court described above. The national court shall decide cases in a final domestic manner and shall afford adequate reparation to the victim; its judgments shall be enforced by the responsible national law enforcement bodies. In relation to the national courts, the World Court acts in a *complementary manner*, similar to the ICC and national criminal courts. It is thus an admissibility criterion for a complaint to the World Court to have first exhausted the domestic remedy provided for by the national court of human rights. A logical consequence of the establishment of national courts is that most States Parties will have to enact domestic legislation in order to make the respective *treaties directly applicable* for the courts. In light of the difficulties regarding national implementation of international human rights treaties, this step will also contribute to enhanced protection on the national level.

Lastly, Part 2 contains provisions on the decision making of the Court on the merits of a case. If the Court finds a violation it shall afford the victim *adequate reparation*. The judgments should be final and binding under international law. States Parties are obliged to *directly enforce the judgments* and provide reparation as decided by the Court. Any judgment of the Court shall be issued in English and, if requested, the *language of the concerned country* in order to ensure broad dissemination of the findings. The *UN High Commissioner for Human Rights* shall supervise the execution of the judgments; in case a State Party fails to enforce the judgment, the High Commissioner shall request the Human Rights Council, or, if appropriate, the Security Council to take the necessary measures.

Part 3 “Organization of the Court” is concerned with the *organs of the Court*: the Plenary Court, the Chambers and Committees, the Presidency and the Registry; and with the functions of these organs. Other provisions in this part are on the possible removal from office of a judge or the Registrar, privileges and immunities, and representation before the Court. It follows, to some extent, the organizational structure of the European Court of Human Rights: six Committees of three judges each may by a unanimous decision declare complaints inadmissible; the main responsibility regarding decisions on admissibility and merits in individual cases rests with three Chambers of seven judges each; and the Plenary Court of 21 judges decides on inter-State cases and, in exceptional cases, as appeals chamber on individual cases referred to it by a Chamber or a party to the case.

Part 4 “Obligations of States Parties” and **Part 5 “Obligations of Non-State Actors”** deal with issues of *cooperation* with the Court as well as obligations to *comply with judgments* and provisional measures. Again, States Parties will have to enact appropriate domestic legislation for these obligations.

Part 6 “Final Clauses” contains next to the usual provisions on signature, ratification, entry into force, authentic texts and reservations an article on the requirement of States Parties to declare at the time of signature or ratification, which of the human rights treaties listed in the annex should be subject to the jurisdiction under the statute (*opting-in*). States Parties can opt for further treaties also at a later stage. Such declarations cannot be withdrawn. An alternative way of solving the issue would be to make all treaties listed in the annex and ratified by the respective State Party automatically subject to the jurisdiction of the World Court; at the time of signature or ratification, States could, however, enter a reservation with regard to certain treaties by which they express that they do not wish to be bound vis-à-vis the Court (*opting-out*). States Parties could at a later stage withdraw such reservations.

Finally, the **Annex** lists all relevant international human rights treaties, including ILO Conventions. This list can be expanded to cover also future treaties by a decision of the Assembly of States Parties. Thus, a formal amendment to the statute is not necessary to add further instruments.

3. Results

It goes without saying that the authors assumed from the outset that the establishment of a World Court of Human Rights was feasible, both from a legal and a political point of view. The formulations of the single provisions were drafted carefully in order to bring them in accordance with international law. In addition, due consideration was given to political realities and the certainty that exaggerated requirements would adverse the acceptance of the statute by States. Above all, however, the drafting was guided by the desire to enhance human rights protection both nationally and internationally and to reduce the existing implementation gap.

The statute follows on the one hand basic legal texts of existing international and regional courts, wherever these provisions have proven to be constructive. On the other hand, the

authors have included a number of novelties into the statute of the World Court. The most important innovations include:

- The World Court shall be established by an international treaty and shall become a permanent organ that is brought into a relationship with United Nations
- The World Court shall have jurisdiction over non-State actors, such as business corporations and rebel groups, the United Nations and other inter-governmental organizations
- Organizations can have victim status and file complaints if their rights were violated
- The World Court can directly afford reparation to victims of human rights violations
- In order to avoid extensive interpretation costs, English shall be the only working language of the Court; judgments, if requested by a party to the case, shall be issued both in English and in the language of the country concerned to provide for broader dissemination; hearings before the Court shall also be conducted in these two languages; leading judgments and other important documents shall also be published in the other five official UN languages
- The High Commissioner for Human Rights and, upon his or her request, the Human Rights Council and the Security Council, are endowed with oversight of enforcement of the World Court's judgments
- A system of national courts of human rights is introduced; these courts shall aim at a more effective domestic implementation of international human rights treaties and act as last instance before a complaint can be brought before the World Court
- Accordingly, States are in principle required to make the respective human rights treaties directly applicable at the domestic level
- States have the possibility to choose from a list of human rights treaties which they have ratified and with regard to which they also wish to accept the jurisdiction of the World Court.

I. INTRODUCTION

Human rights constitute one of the three main objectives of the United Nations, in addition to security and development.¹ The United Nations were established in reaction to the horrors of World War II and the Nazi Holocaust. Its founding member States envisaged a new world order in which freedom from fear, freedom from want and other human rights could be realised and enjoyed by all human beings. In order to move from the mere promotion of human rights, as foreseen in the UN Charter, to the effective protection of human rights, the newly established *Commission on Human Rights* in 1947 proposed a three step approach and established three Working Groups with the following tasks:²

- to first draft a non-binding *declaration* for the purpose of achieving universal consensus about the content of the term “human rights” used in the UN Charter;
- secondly, to draft a legally binding *convention* to be ratified by all UN member States in which all human rights of individuals and the respective legal obligations of States were to be codified;
- and finally to adopt measures of *implementation* in order to ensure that the legal rights and duties were in practice complied with and enforced.

The first step was achieved within less than three years. On 10 December 1948, the General Assembly adopted the *Universal Declaration of Human Rights* as a “common standard of achievement for all peoples and all nations”. In retrospective, the Universal Declaration constitutes a historical document as its drafters in the Commission on Human Rights under the chair of *Eleanor Roosevelt* managed to define human rights in a broad and comprehensive manner notwithstanding major ideological differences between East, West and South. Even at its 60th birthday, the Universal Declaration still looks remarkably young and does not need any major face-lifting.

¹ See Charter of the United Nations of 26 June 1945, TS 993, first preambular para. and Art. 1(1); Kofi Annan, Report of the Secretary General to the General Assembly, *In larger freedom: towards development, security and human rights for all*, UN Doc. A/59/2005 of 21 March 2005; Manfred Nowak, ‘The three pillars of the United Nations: Security, Development and Human Rights’, in Margot E. Salomon, Arne Tostensen, Wouter Vandenhole (Eds.), *Casting the Net Wider: Human Rights, Development and New Duty-Bearers*, Antwerpen/Oxford 2007, pp.25-41.

² See the report of the Commission on Human Rights on its second session held in Geneva from 2 to 17 December 1947: UN Doc. E/600. See also Yearbook of the United Nations 1948-49, pp. 524 et seq.

Due to the Cold War, the second step was much more difficult to achieve. It took the Commission and the General Assembly almost twenty years of intensive drafting and negotiations until the “*International Bill of Human Rights*”, consisting mainly of the two *Covenants* on Civil, Political, Economic, Social and Cultural Rights, could finally be adopted on 16 December 1966. In retrospective, and taking the intense ideological battles of that time into consideration, it is actually astonishing that Western, Southern and Socialist governments were able to agree on legally binding obligations of States to respect and ensure a fairly comprehensive list of both civil and political, as well as economic, social and cultural rights. Furthermore, the two *Covenants* became the backbone of a much more comprehensive legal framework of nine core treaties and a considerable number of other human rights treaties, most of which had been drafted already during the time of the Cold War. Most impressive is, however, that some of the core treaties, above all the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), achieved almost universal ratification during the 60 years since the adoption of the Universal Declaration.³ There is no State in the world which would not have accepted at least a few international human rights treaties as legally binding. Since human rights are usually more widely recognized by civil society than by governments, this comprehensive state of ratifications leads us to assert that human rights constitute the only *universally accepted value system* of our times.⁴

How far did we come with the third step envisaged by the founders of the United Nations in the 1940s? In fact, far reaching ideas about the *universal implementation of human rights* were developed in those years: The Genocide Convention of 1948 pronounced the creation of an International Penal Tribunal of the United Nations based on the experiences with the Nuremberg and Tokyo Tribunals,⁵ Uruguay proposed the establishment of a High Commissioner for Human Rights,⁶ and the Working Group on Implementation of the Commission on Human Rights, on the basis of an Australian proposal,⁷ recommended that an International Court of Human Rights be established and “empowered to constitute the final

³ As of 11 June 2009, the CRC had been ratified by 193 States, the CEDAW by 186 and the CERD by 173. But also the two *Covenants* counted 164 (CCPR) and 160 (CESCR) and the Convention against Torture (CAT) 146 States parties.

⁴ Cf. Manfred Nowak, *Introduction to the International Human Rights Regime*, Leiden/Boston 2003, p. 1.

⁵ See Article VI of the Convention on the Prevention and Punishment of the Crime of Genocide 1948.

⁶ See Andrew Clapham, “Creating the High Commissioner for Human Rights: The Outside Story”, 5 *European Journal of International Law* (EJIL) (1994), p. 556.

guarantor of Human rights”.⁸ Unfortunately, none of these ideas could be realised during the time of the Cold War. Rather, the implementation and monitoring mechanisms developed in the two Covenants and the other core treaties only represent the lowest common denominator between the Western and the Socialist concept of human rights: non-judicial expert bodies with the only mandatory function of examining in a “spirit of cooperation” reports prepared by States parties in which they submit information as to their measures taken to implement the respective human rights. Some treaties provide also for a weak optional complaint system entrusting these non-judicial treaty monitoring bodies with the task of examining individual and inter-State “communications” leading to non-binding “final views”. Although the *Human Rights Committee* during the 1980s did its best to develop an independent quasi-judicial jurisprudence on violations of civil and political rights,⁹ it had to fight against strong and partly absurd obstruction by Socialist and other States, was supported only by a very limited staff in the UN Human Rights Directorate in Geneva, and enjoyed no support whatsoever from the Commission on Human Rights and other political UN bodies for the supervision, follow-up and enforcement of its decisions.

After the *end of the Cold War*, some of the institutional visions of the 1940s have been taken up. Already during the Vienna World Conference on Human Rights in 1993, the establishment of the Office of a UN *High Commissioner for Human Rights* has been agreed upon and the first High Commissioner took up his post in Geneva in April 1994. At about the same time, the UN Security Council had established two *ad hoc* criminal tribunals for the former Yugoslavia and Rwanda which in 1998 led to the adoption of the Rome Statute for an *International Criminal Court* (ICC). 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 Hague. Until today, the Rome Statute has been ratified by 108 States from all regions of the world.

Strangely enough, the third institutional idea of the 1940s, an *International Court of Human Rights*, has not yet been taken up by the global human rights movement, let alone in the relevant drafting bodies of the United Nations. There is wide agreement that the human rights

⁷ See, e.g., Annemarie Devereux, “Australia and the International Scrutiny of Civil and Political Rights: An Analysis of Australia’s Negotiating Policies, 1946 – 1966”, 22 *Australian Yearbook of International Law* (2003), p. 47.

⁸ UN Doc. E/600, 58 et seq. See also Herbert W. Briggs, “Implementation of the proposed International Covenant on Human Rights”, 42 *American Journal of International Law* (AJIL) (1948), p. 389 at p. 395.

⁹ See the first German edition of Manfred Nowak, *UNO Pakt über bürgerliche und politische Rechte – CCPR-Kommentar*, Kehl/Straßburg/Arlington 1989.

treaty monitoring system of the United Nations, despite considerable efforts on the part of the existing treaty bodies to stretch their respective mandates, is far from ideal and would be in urgent need of a major reform.¹⁰ At the same time, there can be no doubt that the huge *implementation gap* between the high aspirations and the sobering realities on the ground constitutes a veritable threat to the impressive human rights achievements of the last 60 years and a major challenge of the 21st century. If it is taken for granted that legally binding human rights obligations can be systematically violated without any legal and factual consequences, these treaties are not worth the paper on which they have been written. Whereas certain attempts have been made during the 1990s to hold governments accountable for gross and systematic violations of human rights,¹¹ the first decade of the 21st century provides many examples of most serious violations of human rights without any consequences.¹²

Time has, therefore, come for a new initiative to reform the human rights system of the United Nations. In his report “In Larger Freedom”, former Secretary-General *Kofi Annan* has developed a number of far-reaching *reform proposals* of which only some have been taken up by States at the World Summit meeting in September 2005.¹³ The most prominent institutional reform of the last years was the replacement of the former Commission on Human Rights by a *Human Rights Council* as a subsidiary body of the General Assembly.¹⁴ The Human Rights Council is the most prominent political, Charter-based organ of the United Nations dealing with human rights. With the new procedure of “Universal Periodic Review” (UPR), the Council monitors the human rights situation in all States on the basis of specific reports prepared by the respective States and the UN High Commissioner for Human Rights. In the High Commissioner’s reports, relevant decisions, conclusions and recommendations of treaty monitoring bodies play an important role as basis for assessing the human rights situation in the State concerned. Although the Council is fully submerged into a fierce and

¹⁰ Cf. 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; Philip Alston and James Crawford (Eds.), *The Future of UN Human Rights Treaty Monitoring*, Cambridge 2000; Anne Bayefsky (Ed.) *The UN Human Rights Treaty System in the 21st Century*, The Hague/London/Boston 2000; Idem, *The UN Human Rights Treaty System: Universality at the Crossroads*, New York 2001; Michael O’Flaherty, *Human Rights and the UN: Practice Before the Treaty Bodies*, London 1996; Wouter Vandenhoe, *The Procedures before the UN Human Rights Treaty Bodies: Divergence or Convergence?*, Antwerp/Oxford 2004; Manfred Nowak, *Introduction to the International Human Rights Regime*, Leiden/Boston 2003.

¹¹ Cf., e.g., certain sanctions, humanitarian interventions and peace building operations authorized by the UN Security Council and General Assembly for the protection of human rights in countries, such as El Salvador, Cambodia, Guatemala, Haiti, Iraq, Somalia, Bosnia and Herzegovina, Sierra Leone, Liberia, East Timor etc. See Nowak, *Introduction* (note 10), pp. 307 et seq.

¹² Cf., e.g., the situations in Darfur, Iraq, Afghanistan, DRC, Zimbabwe or various human rights violations committed during the global „war on terror“.

¹³ See the 2005 World Summit Outcome, UN Doc. A/Res/60/1 of 24 October 2005.

partly absurd ideological battle between States of the North (above all, from the EU) and the South (above all, from the Organization of the Islamic Conference), and the UPR exercise has partly become a farce,¹⁵ there is a certain potential to develop this procedure into an effective tool of supervising the compliance of States with decisions and recommendations of independent treaty monitoring bodies.

No similar steps have been taken to reform the UN treaty based system for the protection of human rights. Not even *Kofi Annan* went so far as to propose the creation of a World Court of Human Rights. Most reform initiatives, including a Plan of Action submitted by the former High Commissioner for Human Rights, *Louise Arbour*, criticized the proliferation of treaty bodies and aimed at “consolidating” the nine existing treaty monitoring bodies by simply replacing them by one single “super-committee”.¹⁶

In spring 2008, the Swiss Foreign Minister, *Micheline Calmy-Rey*, selected a “Panel of Eminent Persons” from all world regions, chaired by former High Commissioner for Human Rights and President of Ireland, *Mary Robinson* and by the well-known Brazilian human rights expert *Paulo Sérgio Pinheiro*,¹⁷ with the task of drafting an Agenda for Human Rights, similar to earlier UN Agendas for Peace, Development and Democracy. At its first meeting on 11 and 12 June 2008 in Oslo, the Panel discussed its vision and selected eight themes to be addressed in the Agenda, including the creation of a World Court of Human Rights. *Manfred Nowak* was appointed Rapporteur and entrusted with the task of preparing a first draft of the Agenda which was reviewed during further meetings in Vienna (30 August 2008) and Geneva (4 October 2008). On 5 December 2008, on the eve of the 60th anniversary of the Universal Declaration, “*Protecting Dignity: An Agenda for Human Rights*” was formally presented in Geneva to the international community by the Swiss Foreign Minister and the “Panel of

¹⁴ UN Doc. A/RES/60/251 of 15 March 2006.

¹⁵ See, e.g., the experiences with the UPR of China and Cuba in spring 2009: Report of the Working Group on the Universal Periodic Review: China, UN Doc. A/HRC/11/25 of 3 March 2009 and Report of the Working Group on the Universal Periodic Review: Cuba, UN Doc. A/HRC/11/22 of 3 March 2009.

¹⁶ See Philip Alston, *Effective Functioning* (note 10); Kofi Annan, *In larger freedom* (note 1); United Nations High Commissioner for Human Rights, *Plan of action*, UN Doc. A/59/2005/Add. 3, Annex of 21 March 2005; Concept Paper on the High Commissioner’s Proposal for a Unified Standing Treaty Body, UN Doc. HRI/MC/2006/2 of 22 March 2006; Michael O’Flaherty and Claire O’Brien, “Reform of UN Human Rights Treaty Monitoring Bodies: A Critique of the Concept Paper on the High Commissioner’s Proposal for a Unified Standing Treaty Body”, 7 *Human Rights Law Review* (HRLR) (2007), pp. 141-172; Michael Bowman, “Towards a Unified Treaty Body for Monitoring Compliance with UN Human Rights Conventions? Legal Mechanisms for Treaty Body Reform”, 7 *HRLR* 2007, pp. 225-249.

¹⁷ The other six members of the Panel are Pregs Govender (South Africa), Saad Eddin Ibrahim (Egypt), Hina Jilani (Pakistan), Theodor Meron (USA), Manfred Nowak (Austria) and Bertrand Ramcharan (Guyana).

Eminent Persons”.¹⁸ This Agenda for Human Rights represents work in progress. It consists of a short document (the Agenda in the narrow sense),¹⁹ a more elaborate Progress Report by the Rapporteur with detailed conclusions and recommendations,²⁰ and ten ongoing research projects selected by the Panel in relation to eight themes. One of these themes is the *World Court of Human Rights*. As the Panel stated in its tender for these research projects, we “now need concrete proposals to elaborate how such a World Court might ensure greater accountability for all in the 21st Century”.²¹ Two research projects were selected to further elaborate the idea of a World Court. In addition to the authors of this study, *Martin Scheinin*, who had been at the forefront of advocating this idea for many years, was entrusted by the “Panel of Eminent Persons” to present his ideas of how a World Court of Human Rights could be realized in practice. Although we had many discussions with him about this idea over the last decade, the two research projects developed in full independence from each other. We express our hope that the various ideas expressed in the two draft Statutes for a World Court of Human Rights prepared in the framework of these two research projects will eventually be merged by the “Panel of Eminent Persons” into a joint draft to be submitted by a group of like-minded States from all world regions to the United Nations for further action and speedy adoption by the General Assembly.

II. REASONS FOR THE ESTABLISHMENT OF A WORLD COURT OF HUMAN RIGHTS

Wherever the idea of a World Court of Human Rights is discussed, plenty of arguments are quickly developed by both politicians and scholars why this idea is utopian and will never be realized in practice.²² Before presenting a draft Statute for further consideration it seems, therefore, important to recall the main reasons which prompted the “Panel of Eminent Persons” and others to call for the establishment of such a Court.²³

¹⁸ The Agenda was published in December 2008 in several languages by the Swiss Federal Department of Foreign Affairs and the Geneva Academy of International Humanitarian Law and Human Rights and distributed via www.UDHR60.ch.

¹⁹ *Ibid.*, pp. 6-8.

²⁰ *Ibid.*, pp. 9-41.

²¹ *Ibid.*, p. 42.

²² For a discussion see, e.g., Stefan Trechsel, “A World Court for Human Rights?”, 1 *Northwestern University Journal of International Human Rights* 3 (2004); Geir Ulfstein, ‘Do We Need a World Court of Human Rights?’, in Ola Engdahl and Pål Wrange (Eds.), *Law at War - the Law as it was and the Law as it Should Be*, Leiden/Boston 2008, pp. 261-272.

²³ The following considerations are based primarily on earlier research, such as: Manfred Nowak, “The Need for a World Court of Human Rights“, 7 *Human Rights Law Review* (2007), pp. 251-259; *Idem*, ‘Eight Reasons why we need a World Court of Human Rights’, in Gudmundur Alfredsson, Jonas Grimheden, Bertrand Ramcharan, Alfred de Zayas, *International human rights monitoring mechanisms: essays in honour of Jakob TH. Möller*, 2nd edition, Leiden/Boston, forthcoming 2009, pp. 321-332; *Idem*, „Ein Weltgerichtshof für Menschenrechte – Eine utopische Forderung?“, 5 *Vereinte Nationen* (2008), pp.205-211.

1. There is no human right without a remedy

The main argument for a World Court of Human Rights was already submitted to the UN Commission on Human Rights by the Australian Government more than 60 years ago:²⁴ “The Australian proposals for an International Court of Human Rights have been put forward because we favour a continuous, effective and just system of international supervision. In English law, the remedy is to us as important as the right, for without the remedy there is no right. Our basic thesis is that individuals and associations as well as states must have access to and full legal standing before some kind of international tribunal charged with supervision and enforcement of the covenant. In our view, either a full and effective observance of human rights is sought, or it is not.”

Let us continue with another citation which seems to state the obvious:²⁵ “The very idea of a *right* means that somebody has a claim against somebody else, and the other one has a duty to meet this claim. If the duty-bearer does not live up to his or her obligations, the rights-holder has a *remedy* to hold the duty-bearer accountable. Otherwise, the right would be meaningless. A remedy means that the rights-holder can sue the duty-bearer before an independent neutral body, which has the power to decide in a binding manner whether or not the duty-bearer violated his or her obligations. Such an independent neutral body is usually called a court. If the court finds that the duty-bearer violated certain obligations, it has the power to order the duty-bearer to provide *reparation* to the rights-holder.”

This simple logic represents the very essence of the rule of law, on which all domestic and international legal frameworks are built, whether in the fields of civil law, criminal law, labour law, administrative law, constitutional law or any other area governed by law. Why is it so difficult to accept this simple logic with respect to human rights law? Have we not been told since the French and American revolutions that human rights are the most fundamental of all rights, based on the recognition of “the inherent dignity and of the equal and inalienable rights of all members of the human family”?²⁶ Does this simple logic not apply to human rights because duty-bearers usually are sovereign States or specific governmental authorities? This might have been a valid argument during the reign of absolute monarchies. But was the

²⁴ Statement by the Australian representative on an International Court of Human Rights, undated, in NAA A 432/82, Item 1947725 Pt 3, quoted in Devereux, “Australia” (note 7), p. 56; see also Devika Hovell, “Lifting the Executive Veil: Australia’s Accession to the First Optional Protocol to the International Covenant on Civil and Political Rights”, 24 *Adelaide Law Review* (2003), p. 190.

²⁵ Nowak, in Alfredsson et al., *Monitoring Mechanisms* (note 23), p. 321.

very idea of human rights not developed for the purpose of breaking the power of dictators and holding governments accountable to their peoples and the world community as a whole? We might continue arguing back and forward, but we will not find any logical legal answer to our question apart from the simple lack of political will of governments to be held accountable for their human rights violations by the victims. But we can find some indications for this lack of political will by analyzing legal texts.

International human rights law did establish the right of all human beings to *equal access and a fair trial before independent courts and tribunals* in the fields of civil and criminal law.²⁷ Major legal disputes arose as to how the terms “civil rights and obligations” in Article 6 European Convention on Human Rights (ECHR) or “suit at law” in Article 14 CCPR should be interpreted and whether these terms also included human rights litigation.²⁸ Article 8 American Convention on Human Rights (ACHR) is more precise and guarantees a right to a fair trial before an independent and impartial tribunal “for the determination of his rights and obligations of a civil, labour, fiscal, or any other nature”, which certainly can be interpreted as also encompassing human rights and obligations. Nevertheless, the same human rights treaties contain special provisions relating to *human rights litigation* which clearly fall short of demanding independent courts to decide about human rights claims. Even Article 13 ECHR speaks in this respect simply of a right to “an effective remedy before a national authority”. Similarly, Article 7 African Charter on Human and Peoples’ Rights (AfCHPR) only provides for an “appeal to competent national organs” and reserves the right to a court or tribunal to criminal trials. Article 2(3) CCPR is more forthcoming by requiring States to “develop the possibilities of judicial remedy” for human rights litigation and to “ensure that the competent authorities shall enforce such remedies when granted”. Article 25 ACHR repeats these requirements but adds the following obligation in paragraph 1: “Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.” The last part of this sentence with its counterparts in Article 13 ECHR and Article 3(2)(a) CCPR (“notwithstanding that the violation has been committed by persons acting in an official

²⁶ First preambular paragraph of the Universal Declaration of Human Rights 1948 (UDHR).

²⁷ Articles 10 UDHR, 14 CCPR, 6 ECHR, 8 ACHR, 7 AfCHPR.

²⁸ Cf., e.g., Pieter van Dijk, Fried van Hoof, Arjen van Rijn, Leo Zwaak (Eds.), *Theory and Practice of the European Convention on Human Rights*, 4th edition, Antwerpen/Oxford 2006, pp. 535 et seq.; Manfred Nowak,

capacity”) reveals the true reason for the reluctance of States to grant a right to an effective human rights litigation before domestic courts. If human beings are accused of a crime, they must be tried by an independent criminal court. If human beings file tort claims against other private human beings, they shall also enjoy the right to have this claim decided by an independent court. But if they file a human rights claim against a governmental authority (“persons acting in an official capacity” or “in the course of their official duties”), such a case might simply be decided by “competent administrative or legislative authorities”, as provided for in Article 3(2)(b) CCPR.

If we move to the international level, the right of victims of human rights violations to a judicial remedy remains the exception rather than the rule. It is only the ECHR which grants in Article 34 to every person, non-governmental organization or group of individuals claiming to be the victim of a violation of any civil and political right listed in the ECHR by any of the 47 member States of the Council of Europe, including Turkey, the Caucasus Republics and the Russian Federation, an unrestricted right to lodge an individual application to the *European Court of Human Rights* in Strasbourg. This only full time international human rights court composed of 47 professional judges receives and examines thousands of individual applications every year. Its judgments are legally binding, and their execution is supervised by the Committee of Ministers, the highest political body of the Council of Europe. Most member States in fact abide by the final judgments of the Court, as required by Article 46 ECHR. But this right of Europeans to directly complain to the European Court of Human Rights was only achieved with the entry into force of the 11th AP to the ECHR in 1998, i.e. almost 50 years after the adoption of the ECHR.

The human rights complaints procedure of the Organization of American States (OAS) still follows the former European system. Not every Member State of the OAS is required to ratify the ACHR, and in fact 10 of the 34 current member States, including the US, are not Parties to the ACHR. But even States Parties have the right to choose whether or not they accept the jurisdiction of the *Inter-American Court of Human Rights* in San José in accordance with Article 62 ACHR. In fact, only 21 of the 24 States Parties have made this optional declaration. This still does not mean, however, that victims of human rights violations in these 21 States have the right to directly submit a complaint to the Court. They first have to file petitions with the Inter-American Commission of Human Rights in accordance with Article

U.N. Covenant on Civil and Political Rights – CCPR Commentary, 2nd revised edition, Kehl/Strasbourg/Arlington 2005, pp. 314 et seq.

44 ACHR, but the opinions, conclusions and recommendations of this quasi-judicial expert body reached pursuant to Article 51 are not legally binding. Even if a petitioner is successful before the Commission, he or she has no right to seize the Court. According to Article 61 ACHR, only States Parties and the Commission have the right to submit a case to the Court. Although the Commission has recently changed its practice and submits most successful petitions to the Court, victims still lack standing before the Court. Neither the Commission nor the Court functions as a full time body. This outdated and complicated procedure explains why only a comparatively small number of cases are finally decided by a judgment of the Court, which is final and binding and which “may be executed in the country concerned in accordance with domestic procedure governing the execution of judgments against the state.”²⁹

In 1998, the Organization of African Union (OAU), the predecessor of the African Union (AU), has adopted a Protocol to the AfCHPR on the Establishment of an *African Court on Human and Peoples’ Rights* in Arusha. The procedure is similar to the Inter-American system, and victims of human rights violations must first lodge a complaint with the African Commission on Human and Peoples’ Rights. Due to the reluctance of African States to subject their human rights performance to external scrutiny, the African Court is still in *statu nascendi* and has not yet issued any judgment. But its judgments will be final and binding, and States Parties are required by Article 30 of the Protocol to comply with the judgments and to guarantee their execution. No regional organization or treaty for the protection of human rights has been established in the *Asian-Pacific region*, let alone any judicial body holding Asian Governments accountable for their human rights violations. Sub-regional initiatives, such as in the context of the League of Arab States or in the ASEAN region,³⁰ are at least at the current stage not directed towards any judicial or even quasi-judicial protection of human rights. Victims in this region can only lodge complaints to United Nations treaty monitoring bodies if the respective States have accepted the competence of these quasi-judicial expert bodies.

²⁹ Article 68 ACHR. Between 1979 and 2008, the Inter-American Court of Human Rights has handed down 192 judgments. See Annual Report of the Inter-American Court of Human Rights 2008, available at <http://www.corteidh.or.cr/docs/informes/eng2008.pdf> [11 June 2009].

³⁰ See, e.g. the Arab Charter of Human Rights of 2004, which entered into force in 2008, but which only provides in Article 45 for an Arab Human Rights Committee. See also the ASEAN Charter relating to the promotion and protection of human rights and fundamental freedoms of 2008 which in Article 14 foresees the creation of an ASEAN “Human Rights Body”: cf. Jonas Grimheden, ‘Human Rights in the Asia-Pacific’, in Felipe Gómez Isa and Koen de Feyter (Eds.), *International Human Rights Law in a Global Context*, Bilbao 2009,

This short survey of regional and international human rights treaties illustrates that the right of victims of human rights violations to a judicial remedy before a domestic, regional or international court is indeed extremely limited. The chance that this situation will soon change at the regional level is highly unlikely, at least in the African, Arab and Asian-Pacific regions. If we take the logic serious that there is no human right without a remedy, it is high time to take up the discussions of the UN Commission on Human Rights' Working Group on Implementation of 1947 and to proceed to the creation of a World Court of Human Rights with comprehensive jurisdiction.

2. The World Court does not require any treaty amendment

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. Experience shows, however, that the amendment procedure is so complicated and cumbersome that there is only very little chance of success.³¹ Our proposal of establishing a World Court of Human Rights could be achieved smoothly without any treaty amendment and without abolishing the present treaty monitoring bodies. Similar to the ICC, the World Court would be based on a new treaty, the Statute of the World Court of Human Rights. As other human rights treaties, this Statute should be drafted by the Human Rights Council and adopted by the General Assembly. If States would prefer, it could also be drafted and adopted by a special State Conference, similar to the Rome Statute of the ICC. In any case, the Statute shall enter into force after a sufficient number of States, as provided for in the Statute, will have deposited their instruments of ratification, accession nor succession.³² The World Court 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 procedure.

pp. 943-962; Vitit Muntarbhorn, 'Human Rights Monitoring in the Asia-Pacific Region', in Alfredsson et al., *Monitoring Mechanisms* (note 23).

³¹ On the procedural requirements of treaty amendments see, e.g., Nowak, *CCPR-Commentary* (note 28), pp. 811 et seq. and pp. 904 et seq.; Manfred Nowak and Elizabeth McArthur, *The United Nations Convention against Torture – A Commentary*, Oxford 2008, pp. 845 et seq. and pp. 1172 et seq.

³² We propose 20 States Parties as requirement for the entry into force of the Statute: see below, Article 35 of the draft Statute.

The separation of the complaints from the State reporting procedure has also another advantage. The existing treaty bodies are composed of experts with different professional backgrounds and a specific expertise in the particular field of their respective treaty. For example, the CAT-Committee needs doctors, psychologists, trauma experts, lawyers, social workers and other experts with a particular experience in police and prison systems in order to carry out inquiry missions and to assess whether States Parties comply with their various obligations under CAT to prevent torture, to provide victims of torture with rehabilitation and other forms of reparation, and to bring the perpetrators of torture to justice. Similarly, the CEDAW-Committee requires gender-specific expertise of experts coming from different professions dealing with as diverse aspects as political participation, equal pay for equal work, domestic violence, trafficking, FGM and other traditional practices; the CRC-Committee requires children-specific expertise in the fields of education, youth welfare, juvenile justice, family matters and adoption; the Committee on Economic, Social and Cultural Rights needs experts in the fields of labour issues, social security, housing, food, health and education etc. On the other hand, decisions on individual complaints require specific legal expertise in order to assess whether or not the facts of a particular case amount to a violation of a specific legal norm. In other words, plurality of professional backgrounds is an asset for the purpose of examining State reports and conducting inquiry missions, but doctors, housing experts, psychologists and schoolteachers lack the specific legal expertise to hand down admissibility decisions and judgments on individual complaints.

With the ratification of the Statute, States will accept the binding jurisdiction of the World Court in respect of those human rights treaties to which they are already Parties. But the draft Statute in Article 36 also provides for the possibility of reservations in order to exclude certain treaties or treaty provisions from the jurisdiction of the Court. Such reservations may be withdrawn at any later stage. This flexible “opting-out” system provides States with an opportunity to only gradually accept the full jurisdiction of the Court. In order to avoid parallel jurisdiction of the World Court and existing treaty bodies, States Parties to the Statute have an obligation to withdraw the respective optional declarations in respect of those treaties which they subject to the jurisdiction of the Court.³³

3. The principle of complementary jurisdiction strengthens domestic jurisdiction

In “Protecting Dignity: An Agenda for Human Rights”, the “Panel of Eminent Persons” made two important institutional proposals: the establishment of a World Court of Human Rights and of a Global Fund for National Human Rights Protection Systems.³⁴ Both proposals respond to two fundamental shortcomings and challenges and are complementary in nature. The human rights implementation gap, as diagnosed in the report, has two main dimensions: the lack of effective judicial and non-judicial national institutions for the protection of human rights and the implementation of international obligations and the lack of effective international organs and procedures to hold States accountable for their non-compliance with international obligations. The draft Statute of a World Court of Human Rights aims at addressing both dimensions by introducing the principle of complementary jurisdiction, similar to the Statute of the ICC. As the Rome Statute aims at strengthening domestic criminal jurisdiction, the Statute of the World Court aims at strengthening domestic human rights jurisdiction. Article 10 of the draft Statute obliges States Parties to establish, maintain or designate a *national court of human rights* with the task of adjudicating individual complaints in relation to alleged violations of those international human rights treaties which the respective State has ratified. This requires implementing legislation to the effect that the relevant human rights treaties can be directly applied by the national human rights court. In principle, these courts shall be vested with the same powers as the World Court. The exhaustion of an appeal to the national human rights court is a precondition for the admissibility of a complaint by the World Court. The Global Fund for National Human Rights Protection Systems, which shall be established at the same time by the United Nations, shall assist States Parties to the Statute in their task of developing an effective system of human rights litigation before national human rights courts. Finally, this system of complementary jurisdiction shall have the effect of avoiding the World Court from being overloaded with complaints.

4. Non-State actors must be held accountable

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

³³ For more details, cf. Nowak, “Need for a World Court” (note 23), p. 255.

³⁴ Agenda (note 18), p. 8.

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”.³⁵ During the time of the Cold War, a comprehensive legal framework for the protection of human rights has been developed which, however, only considers States as duty-bearers, i.e. as guarantors and at the same time possible violators of human rights.³⁶ With the rapid trend towards globalization, this State-centred model of human rights became increasingly outdated and unrealistic. States are no longer, and in fact never have been, the only violators of human rights, and States can no longer be assumed as the only guarantors of human rights. The recent international food, financial and economic crises illustrate with urgent force that global problems, such as poverty, climate change, migration and urbanization, demand global solutions. States are no longer able and willing to address human rights violations that their populations suffer because of the actions or policies of entities beyond their control, whether these are inter-governmental organizations, such as the World Bank, the WTO or the EU, trans-national corporations or global financial market players.

The “Panel of Eminent Persons”, therefore, concluded that international law must move from the model of exclusive State responsibility to a *21st century approach of shared responsibility*.³⁷ This 21st century approach is what the Universal Declaration of Human Rights envisaged 60 years ago when it proclaimed in Article 28 the entitlement to a social and international order in which all human rights can be fully realized. “All of us, the international community, i.e. inter-governmental and non-governmental organizations, civil society, business, the media, the donor community and other organs of society, foreign governments as well as private individuals, have a shared responsibility to find effective ways to facilitate the implementation of human rights for all.”³⁸ This shared responsibility implies, however, that States can no longer be considered as the only actors that can be held accountable for human rights violations. As the ICC has the power to try and convict individual perpetrators of gross and systematic human rights violations, irrespective of whether they act as agents of a government, an inter-governmental or non-governmental organization, a rebel group or trans-national corporation, the World Court of Human Rights should become the focal point

³⁵ See UN Doc E/600, pp. 58 et seq. and Herbert W. Briggs, „Implementation of the Proposed International Covenant on Human Rights“, 42 AJIL (1948), p. 395, note 27.

³⁶ The only exception from this State-centred model of human rights emerged in CRPD, which is open for signature by regional integration organizations and in the tripartite system of the ILO: see William R. Simpson, “The ILO and tripartism: some reflections”, 117 Monthly Labor Review (1994), pp. 40-46. Cf. ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, Doc. OB Vol. LXI, 1978, Series A, No. 1, November 1977.

³⁷ Agenda (note 18), p. 14.

³⁸ Ibid, p. 15.

for non-criminal accountability of both States and non-State actors. It would, thereby assume the double role of an international civil and human rights court.

Article 7 of the draft Statute reflects this broad jurisdiction of the Court. With the entry into force of the Statute, the Court will assume jurisdiction vis-à-vis States Parties as well as the United Nations and its specialized agencies. This power is based on the assumption that the United Nations, their subsidiary bodies and specialized agencies are already today legally bound to observe international human rights treaties adopted by the United Nations and specialized agencies. Other inter-governmental organizations, such as NATO, the WTO or the EU, can only be held accountable before the World Court if they make an explicit declaration under Article 37 recognizing the jurisdiction of the Court. The same holds true for non-governmental organizations, business corporations and other non-State actors willing to accept the jurisdiction of the Court. But Article 7(3) of the draft Statute also provides for the possibility that non-State actors, which are subject to the jurisdiction of a State Party, such as trans-national corporations in both the seat State and in the State of operation, can be sued before the Court for human rights violations.

5. Victims have a right to adequate reparation

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”.³⁹ Although these “*van Boven/Bassiouni Principles*” only apply to gross human rights violations,⁴⁰ they indicate an important shortcoming of international human rights law and litigation. Traditionally,

³⁹ GA Res. 60/147 of 16 December 2005; cf. Dinah Shelton, *The United Nations Principles and Guidelines on Reparations: Context and Contents*, in Koen De Feyter, Stephan Parmentier, Marc Bossuyt, Paul Lemmens, *Out of the Ashes – Reparations for Victims of Gross and Systematic Human Rights Violations*, Antwerpen/Oxford, 2005, pp. 11-33.

⁴⁰ The Principles do not define the term „gross violations“. It means particularly serious violations, but does in no way imply that such violations must be widespread or systematic. Traditionally, the term “gross violation” derives from ECOSOC Resolutions 1235 (XLII) of 1967 and 1503 (XLVIII) of 1970 and was restricted to the field of civil and political rights, such as enforced disappearances, arbitrary executions, torture and arbitrary detention. For some human rights violations, such as torture, enforced disappearance, arbitrary detention and miscarriage of justice, a special right to reparation has been laid down in international treaties, such as Articles 9(5) and 14(6) CCPR, 14 CAT and 24 CED. But in light of the principle of the equality, indivisibility and interdependence of all human rights, the restriction to civil and political rights has long lost its justification, and special procedures were established in relation to most economic, social and cultural rights, such as the rights to food, health, housing and education. Nobody can deny that poverty, illiteracy, starvation and homelessness rank among the most serious, i.e. gross, human rights violations. In other words, the restriction of the *van Boven/Bassiouni Principles* to gross human rights violations shall not be over-estimated. For the traditional notion of “gross violations” cf., e.g., Cecilia Medina Quiroga, *The Battle of Human Rights: Gross, Systematic Violations and the Inter-American System*, Dordrecht 1988.

human rights litigation before domestic or international courts, as opposed to civil litigation, was understood in the narrow sense of empowering constitutional and other domestic courts as well as regional human rights courts to decide, whether or not a particular governmental behaviour violated human rights. But these human rights courts were not entitled to order any enforceable reparation to the victim for the harm suffered. Their judgments were more of a declaratory nature and facilitated further remedies to be pursued by the victim before domestic civil courts. Sometimes, judgments by constitutional or regional human rights courts also triggered criminal investigations and prosecutions against the individual perpetrators, but in principle it was up to the States whether or not to take further action to provide justice to the victim.

Article 41 ECHR entrusts the *European Court of Human Rights*, “if necessary”, to “afford just satisfaction to the injured party”, but under the condition that “the internal law of the High Contracting Party concerned allows only partial reparation to be made”. In other words, this assumes that the Court first issues a judgment on the alleged violation of human rights, then waits whether or not the victim receives full reparation in accordance with domestic law, and then, if necessary, decides on just satisfaction, which is interpreted in the narrow sense of monetary compensation.⁴¹ This restricted mandate clearly reflects the traditional approach that granting the victim adequate reparation was not a main objective of human rights litigation. In many cases the European Court actually did rule that the finding of a violation itself should be regarded by the victim as just satisfaction!

Article 63(1) ACHR provides the *Inter-American Court of Human Rights* with a much broader mandate to remedy the consequences of the human rights violation, to ensure that the victim can again enjoy those human rights that were violated before and is paid fair compensation. In practice, the Court has been fairly innovative in ordering far-reaching types of reparation to the victims.⁴² Under Article 27(1) of the Protocol to the AfChHPR, the *African Court on Human and Peoples’ Rights* is also entitled to “make appropriate orders to remedy the violation, including the payment of fair compensation or reparation”.

⁴¹ Cf. van Dijk, *European Convention* (note 28), pp. 261 et seq.

⁴² Cf., e.g., Douglas Cassell, ‘The Expanding Scope and Impact of Reparations awarded by the Inter-American Court of Human Rights’, in De Feyter et al. (note 39), pp. 191-223; Dinah Shelton, ‘The Award of Damages by the Inter-American Court of Human Rights’, in David J. Harris, *The Inter-American System for the Protection of Human Rights*, Oxford 1998, pp. 151-172; Idem, *Remedies in International Human Rights Law*, 2nd edition, Oxford 2005, pp. 285 et seq.

Since the decisions of *UN treaty monitoring bodies* on individual complaints are not legally binding, they also have no power to order any form of reparation to the victim. But in practice, the Human Rights Committee and other treaty bodies indicate to the respective States Parties which type of reparation, in their opinion, would be adequate for the harm suffered. The Human Rights Committee bases this practice on Article 2(3) CCPR, according to which States Parties have a duty to ensure that “the competent authorities shall enforce such remedies when granted”.⁴³ The CAT-Committee has even the power to find a violation of Article 14 CAT if victims of torture had not been provided adequate reparation, above all rehabilitation.⁴⁴ But in practice, these non-binding decisions and recommendations are all too often ignored by States Parties, both in the South and in the North.⁴⁵

In our opinion, the *right to a judicial remedy for human rights violations must include the right of the victim to receive adequate reparation by the same court* that decides about the alleged human rights violation. 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 courts.

We, therefore, have to take the van Boven/Bassiouni Principles and Guidelines on the Right to Remedy and Reparation seriously by establishing a proper body to apply them in practice. Article 17(2) of the draft Statute, therefore, empowers the World Court of Human Rights to “order the respondent party, *ex officio* or upon request, to afford the victim adequate reparation for the harm suffered, including restitution, rehabilitation, compensation and satisfaction”. The four types of reparation mentioned above follow the classification in the van Boven/Bassiouni Principles. The words “*ex officio* or upon request” have been inserted to ensure that it is an obligation of the Court to order adequate reparation in any case in which it finds a human rights violation, even if the victim has not requested any specific compensation or other form of reparation.

⁴³ Cf. Nowak, CCPR-Commentary (note 28), p. 75.

⁴⁴ Cf. Nowak/McArthur, CAT-Commentary (note 31), pp. 472 et seq.

⁴⁵ See, e.g., the case of *Perterer v. Austria*, application number 1015/2001, view of the UN Human Rights Committee of 20 August 2004.

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. It is particularly in this respect that the World Court will also assume to some extent the role of an *International Civil Court*. In view of the principle of complementary jurisdiction, this should also lead to the effect that domestic courts take their responsibility more serious to provide victims of human rights violations committed by both governmental authorities and non-State actors with adequate reparation for the harm suffered.

6. The Human Rights Council needs a judicial counter-part

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. 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 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.

One of the strengths of the United Nations human rights system was the *triangular relationship between States, non-governmental organizations (NGOs) and independent experts*. While States were the only decision-makers in the former Commission on Human Rights, NGOs were always actively involved and in fact determined the agenda of the Commission to a large extent. For background studies and independent fact finding the Commission recruited independent experts, both in the former Sub-Commission and as so-called special procedures, i.e. country-specific and thematic Working Groups, Special Rapporteurs, Representatives and Experts. In addition, the monitoring of States’ compliance with their treaty obligations was entrusted to bodies composed of independent experts.

With the creation of the Human Rights Council, this power relationship has been changed in favour of States and to the detriment of the influence of NGOs and independent experts.⁴⁶ This change can be illustrated by many examples, such as the adoption of the Code of Conduct aimed at stronger controlling and censuring special procedures, the reduced role of the Advisory Committee as compared with the former Sub-Commission, the exclusion of NGOs and experts from actively participating in the UPR procedure, or the duplication of the function of examining State reports in the UPR in competition with treaty bodies.⁴⁷

This power shift towards States seems anachronistic in view of the general trend of international human rights law and monitoring towards independent bodies and more objectivity, as can be seen in most regional organizations. In our view, it needs to be balanced by also strengthening the independent treaty monitoring procedures. At the same time, the division of labour between political bodies and expert bodies needs to be strengthened by introducing a stronger supervisory function of States' compliance with respective decisions and recommendations of treaty bodies. The creation of a truly independent, professional and powerful World Court of Human Rights would be the ideal solution to provide the Human Rights Council with an equally powerful, but independent counterpart.

The draft Statute provides various *provisions which link the World Court with the Human Rights Council*. First of all, the Council shall be entitled under Article 8(1) to submit a third party complaint to the Court relating to alleged systematic human rights violations. This competence would provide the Council with an opportunity to depoliticize certain discussions by simply referring allegations for adjudication to the Court. Secondly, Article 9 provides the Council with an opportunity of requesting the Court for an advisory opinion regarding the interpretation of the Statute or any of the human rights treaties listed in Annex 1. Finally, the Council should play an important role in enforcing the implementation of the Court's judgments and provisional measures. Although Article 18 primarily entrusts the High Commissioner for Human Rights with the supervision of the execution of the Court's judgments, the High Commissioner shall seize the Council with a request to take the

⁴⁶ For a critical assessment of the Human Rights Council see, e.g., Rachel Brett, *Righting Historic Wrongs*, Geneva 2006; *Idem*, *Neither Mountain nor Molehill*, Geneva 2007; *Idem*, *Digging Foundations or Trenches?*, Geneva 2008. See also the Council Monitor published by the International Service for Human Rights.

⁴⁷ The original hope that the UPR, in order to avoid duplication of treaty body functions, could be restricted to the function of merely supervising the implementation of the various decisions, conclusions and recommendations of treaty bodies and special procedures (cf. Nowak, "Need for a World Court" (note 23), p. 251), did not materialize as the Council in fact takes up the role of assessing the overall human rights situation in the countries reviewed.

necessary measures that will bring about the enforcement of the judgment in case that any State or non-State actor fails to abide by any judgment.

III. DRAFT STATUTE OF THE WORLD COURT OF HUMAN RIGHTS

PREAMBLE

The States Parties to this Statute,

Reaffirming the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby all human beings may enjoy their civil and political rights, as well as their economic, social and cultural rights,

Considering that a comprehensive legal framework of international human rights treaties has been established by the United Nations and its specialized agencies,

Recalling that human rights entail legal obligations of States and other duty bearers to respect, protect and fulfil such rights, and that legal obligations demand accountability of duty bearers,

Deeply concerned about the fact that, notwithstanding the comprehensive legal obligations of all States and other duty bearers to respect, protect and fulfil international human rights, hundreds of millions of human beings in all parts of the world are suffering every day of violations of their human rights,

Equally concerned about the fact that the vast majority of human beings around the world have no access to any effective domestic, regional or universal remedy against violations of their human rights and have no chance of being provided with adequate reparation for the harm suffered by these human rights violations,

Determined to effectively address this enormous implementation gap and the lack of effective international enforcement of human rights, and to this end establish an independent permanent World Court of Human Rights in relationship with the United Nations system, with comprehensive jurisdiction to decide in a final and binding manner about violations of human rights by States and relevant non-State actors and to provide the victims with adequate reparation,

Emphasizing that the World Court of Human Rights established under this Statute shall be complementary to national human rights jurisdiction and shall not serve as an appeals court to regional human rights courts,

Have agreed as follows:

Part 1: Establishment of the Court

Article 1: The Court

1. A World Court of Human Rights (“the Court”) is hereby established. It shall be a permanent institution and shall have the power to decide in a final and binding manner on all complaints about alleged human rights violations brought before it in accordance with this Statute.
2. The jurisdiction of the Court shall be complimentary to that of national courts of human rights to be established, maintained or designated in accordance with Article 9.

Article 2: Relationship of the Court with the United Nations

1. The Court shall be brought into relationship with the United Nations through an agreement to be approved by the Assembly of States Parties to this Statute and thereafter concluded by the President of the Court on its behalf.
2. The expenses of the Court shall be borne by the regular budget of the United Nations. The General Assembly shall approve the budget on the basis of a draft prepared by the President of the Court.

Article 3: Seat of the Court

1. The seat of the Court shall be established at The Hague in the Netherlands (the “host State”).
2. The Court shall enter into a headquarters agreement with the host State, to be approved by the Assembly of States Parties and thereafter concluded by the President of the Court on its behalf.
3. The Court may sit elsewhere, whenever it considers it desirable.

Alternative for para 1: The seat of the Court shall be established at Geneva in Switzerland (the “host State”).

Article 4: Legal status and powers of the Court

1. The Court shall have international legal personality. It shall also have such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes.
2. The Court may exercise its functions and powers, as provided in this Statute, on the territory of any State Party and, by special agreement, on the territory of any other State.

Article 5: Composition of the Court

1. The Court shall consist of 21 judges, nationals of the States Parties to the Statute, elected in an individual capacity from among jurists of the highest moral authority, impartiality and integrity, and of recognized competence in the field of human rights, who speak English fluently and possess the qualifications required in their respective States for the exercise of the highest judicial functions. All judges shall serve as full-time members of the Court and shall be available to serve on that basis from the commencement of their terms of office.
2. During their term of office the judges shall not engage in any activity which is incompatible with their independence, impartiality or with the demands for a full-time office; all questions arising from the application of this paragraph shall be decided by the Court.
3. The judges, the Registrar and other staff of the Court shall receive such salaries, allowances and expenses as may be decided by the General Assembly.
4. The President of the Court, acting on behalf of the Court, may propose an increase in the number of judges specified in paragraph 1, indicating the reasons why this is considered necessary and appropriate. The Registrar shall promptly circulate any such proposal to all States Parties.
5. Any such proposal shall then be considered at a meeting of the Assembly of States Parties. The proposal shall be considered as adopted if approved at the meeting by a vote of two-thirds of the members of the Assembly of States Parties and shall enter into force at such time as decided by the Assembly of States Parties.

Article 6: Election of the judges

1. The judges shall be elected by the Assembly of States Parties by secret ballot from a list of persons possessing the qualifications prescribed in Article 5 and nominated for that purpose by the States Parties to the Statute. States Parties shall nominate only their own nationals and not more than one person.
2. The judges shall be elected for a term of six years. They shall be eligible for re-election if re-nominated. However, the terms of nine of the judges elected at the first election shall expire at the end of three years; immediately after the first election, the names of these nine judges shall be chosen by lot by the Chairperson of the Assembly of States Parties.
3. In the election of judges, States Parties shall take into account the need for the representation of the principal legal systems of the world, for equitable geographical representation and for a fair representation of female and male judges.
4. The initial election shall be held no later than six months after the date of entry into force of the present Statute.
5. At least four months before the date of each election, the Secretary-General of the United Nations shall address a written invitation to the States Parties to submit their nominations of judges within three months. The Secretary-General shall prepare a list in alphabetical order of all the persons thus nominated and shall submit it to the States Parties no later than one month before the date of each election.
6. Elections of the judges shall be held at an Assembly of States Parties convened by the Secretary-General of the United Nations at the Headquarters of the United Nations. At that Assembly, for which two thirds of the States Parties to the present Statute shall constitute a quorum, the judges elected shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.
7. In the event of a vacancy, an election shall be held in accordance with the provisions of this Article. A judge elected to fill a vacancy shall serve for the remainder of the predecessor's term.
8. The judges shall continue in office until the expiration of their term. However, they shall continue to serve with regard to cases that they have begun to hear and that are still pending, for which purposes they shall not be replaced by the newly elected judges.

Part 2: Jurisdiction, Admissibility and Applicable Law

Article 7: Individual complaints

1. The Court may receive and examine complaints from any person, non-governmental organization or group of individuals claiming to be the victim of a violation by one of the States Parties to the present Statute of any human right provided for in any human rights treaty of the United Nations and its specialized agencies listed in Annex 1 to which the respective State is a Party.
2. The Court may also receive and examine complaints from any person, non-governmental organization or group of individuals claiming to be the victim of a violation of any human right provided for in any human rights treaty listed in Annex 1 by the United Nations or by any of its specialized agencies.
3. The Court may also receive and examine complaints from any person, non-governmental organization or group of individuals claiming to be the victim of a violation of any human right provided for in any human rights treaty listed in Annex 1 by any non-State actor subject to the jurisdiction of a State Party, provided that the respective State Party has made a declaration/not entered a reservation in accordance with Article 36 regarding the invoked human rights treaty and that the human right invoked lends itself to a violation by the respective non-State actor.
4. The Court may also receive and examine complaints from any person, non-governmental organization or group of individuals claiming to be the victim of a violation of any human right provided for in any human rights treaty listed in Annex 1 by any inter-governmental and non-governmental organization, including any business corporation, which has made an explicit declaration under Article 37 that it recognizes the jurisdiction of the Court in relation to human rights enlisted in such treaties.
5. Upon ratification of this Statute, States Parties shall take the necessary action to ensure that other human rights treaty monitoring bodies of the United Nations are no longer competent to receive and consider human rights complaints or communications from individuals, non-governmental organizations or groups of individuals within their jurisdiction.

Article 8: Third party complaints

1. The Court may also receive and examine complaints by any State Party to the present Statute, by the United Nations High Commissioner for Human Rights, the Security Council and by the Human Rights Council of the United Nations relating to alleged systematic human rights violations by any State Party to the present Statute, inter-governmental or non-governmental organization, including business corporation, subject to the jurisdiction of the Court in accordance with Article 7.
2. In case of allegations of particularly serious human rights violations which may be considered as constituting a threat to international peace and security, the Security Council, acting in accordance with its powers under Chapter VII of the UN Charter, may refer such complaints to the Court also in respect of States which are not Parties to the present Statute or non-State actors not having made the declaration under Article 39. The Court shall give highest priority to such complaints and decide them as speedily as possible.

Article 9: Advisory opinions

1. Any Member State of the United Nations, the UN Human Rights Council and the UN High Commissioner for Human Rights may consult the Court regarding the interpretation of this Statute or of any human rights treaty listed in Annex 1.
2. The Court, at the request of a Member State of the United Nations, may provide that State with opinions regarding the compatibility of any of its domestic laws with the aforesaid international instruments.

Article 10: National court of human rights

1. Each State Party shall maintain, designate or establish, at the latest one year after the entry into force of the present Statute or of its ratification or accession, a national court of human rights. The functions of the national court of human rights as described thereafter can also be carried out by more than one domestic court. The national court shall be competent to receive and examine complaints from any individual, non-governmental organization or group of individuals claiming to be the victim of a violation of any human right provided for in any human rights treaty listed in Annex 1 by any authorities of the respective State Party or by any non-State actor subject to the

jurisdiction of that State Party, provided that the State Party is also a party to the human rights treaty concerned and that the human right invoked lends itself to a violation by the respective non-State actor.

2. The national court of human rights shall decide in a final domestic manner whether there has been any violation of any human right provided for in any human rights treaty listed in Annex 1 by the respondent party.
3. The national court of human rights shall be granted the competence to order interim measures as it considers necessary to avoid irreparable damage to a victim or victims of an alleged human rights violation.
4. If the national court of human rights finds a human rights violation, it shall afford the victim adequate reparation for the harm suffered, including restitution, rehabilitation, compensation and satisfaction.
5. The judgments of the national court of human rights shall be enforced by the respective domestic law enforcement bodies as any other binding judgment of a domestic court.
6. Each State Party shall regulate the organization and procedure before the national court of human rights, ensure that the international human rights treaties listed in Annex 1 can be directly applied before the national court of human rights, and establish the respective domestic remedies that need to be exhausted before a complaint can be submitted to the national court of human rights.

Article 11: Admissibility criteria

1. The Court may only deal with any individual complaint submitted under Article 7 if the complaint has first been submitted to the national human rights court in the respective State Party and the applicant is not satisfied with the judgment of the national court of human rights, including the reparation afforded. This admissibility requirement does not apply if the national human rights court has not yet been established or if the procedure before the national human rights court is not effective or does not afford due process of law for the protection of the right or rights that have allegedly been violated.
2. The Court shall not deal with any individual or third party complaint submitted under Articles 7 or 8 that
 - a) is anonymous; or

- b) is substantially the same as a matter that has already been examined by the Court or has already been submitted to another procedure of international investigation or settlement, including before a regional court of human rights; or
 - c) is incompatible with the provisions of the human rights treaty invoked; or
 - d) is manifestly ill-founded; or
 - e) constitutes an abuse of the right to individual complaint.
3. The Court shall reject any complaint which it considers inadmissible under this Article. It may do so at any stage of the proceedings.

Article 12: Third-party intervention

1. The Court may, in the interest of the proper administration of justice, admit written comments by any third party interested in the case.
2. The Court may also invite interested third parties to take part in hearings.
3. If the respondent party is a non-State actor, the State Party under the jurisdiction of which the alleged human rights violation has been committed, shall participate in the proceedings as a third party.

Article 13: Striking out complaints

1. The Court may at any stage of the proceedings decide to strike a complaint out of its list of cases where the circumstances lead to the conclusion that:
 - a) the applicant does not intend to pursue his or her complaint; or
 - b) the matter has been resolved; or
 - c) for any other reason established by the Court, it is no longer justified to continue the examination of the complaint.
2. However, the Court shall continue the examination of the complaint if respect for human rights so requires.
3. The Court may decide to restore a complaint to its list of cases if it considers that the circumstances justify such a decision.

Article 14: Examination on the merits

1. If the Court declares a complaint admissible, it shall pursue the examination of the case, together with the representatives of the respondent parties.

2. If the Court decides to undertake an in depth investigation of the facts of a case, the respondent party and, in cases concerning any non-State actor, the State Party under the jurisdiction of which the alleged human rights violation has been committed, shall cooperate and furnish all required documents and necessary facilities.
3. If the Court decides to carry out a fact finding mission, the respondent party and, in cases concerning any non-State actor, the State Party concerned shall provide all necessary cooperation and facilitate the investigation, including by granting access to all places of detention and other facilities.
4. Decisions on admissibility may be joined with the judgment on the merits.

Article 15: Friendly settlement

1. At any stage of the proceedings the Court shall place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for human rights.
2. If a friendly settlement is effected, the Court shall strike the case out of its list by means of a decision which shall be confined to a brief statement of the facts and of the solution reached.

Article 16: Public hearings

1. The Plenary Court shall always hold hearings before rendering judgments on third party complaints and on those individual complaints which with it has been seized. Chambers are free to decide whether or not to hold a hearing.
2. Hearings shall be public unless the Court in exceptional circumstances decides otherwise.
3. In addition to the applicants and the respondent parties, the Court shall hear such witnesses and experts as it deems necessary. Witnesses may be summoned to appear before the Court.
4. The Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. For this purpose, it shall establish a Victims and Witnesses Unit within the Office of the Registrar.
5. Documents deposited with the Registrar shall be accessible to the public unless the President of the Court decides otherwise.

Article 17: Judgments of the Court

1. The Court shall decide whether or not the respondent party has violated an obligation to respect, fulfil or protect any human right provided for in any applicable human rights treaty listed in Appendix 1.
2. If the Court finds a human rights violation, it shall also order the respondent party, ex officio or upon request, to afford the victim adequate reparation for the harm suffered, including restitution, rehabilitation, compensation and satisfaction.
3. The Court shall give reasons for its judgments as well as for decisions declaring complaints admissible or inadmissible or for striking them off the list of cases.
4. If a judgment does not represent, in whole or in part, the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

Article 18: Binding force, execution and supervision of judgments

1. The judgments of the Court shall be final and binding under international law.
2. The States Parties and all other respondent parties are bound to abide by the judgment of the Court in any case to which they are parties. In particular, they are bound to grant the victim adequate reparation for the harm suffered, as decided by the Court, within a period of no longer than three months from the delivery of the judgment, unless the Court specifies a different deadline.
3. The States Parties undertake to directly enforce the judgments of the Court by the respective domestic law enforcement bodies.
4. Any judgment of the Court shall be transmitted to the UN High Commissioner for Human Rights who shall supervise its execution. The States Parties, other respondent parties and the applicants shall report to the High Commissioner all measures taken to comply with the judgment and to enforce its execution.
5. If the High Commissioner concludes that any State Party or other respondent party fails to abide by or enforce any judgment of the Court, he or she shall seize the Human Rights Council or, if he or she deems it necessary, the Security Council with a request to take the necessary measures that will bring about the enforcement of the judgment.

Article 19: Provisional measures

1. In cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent in matters it has under consideration.
2. Such provisional measures are binding with immediate effect upon the respondent party and shall be enforced and supervised in the same manner as judgments in accordance with Article 17.
3. The Court shall withdraw provisional measures if they are no longer necessary to avoid irreparable damage to persons.

Part 3: Organization of the Court

Article 20: Organs of the Court

The Court shall be composed of the following organs:

- a) Plenary Court
- b) Chambers and Committees
- c) Presidency
- d) Registry

Article 21: The Plenary Court

The Plenary Court shall:

- a) Elect its President, its first and second Vice-President for a period of three years. They may be re-elected.
- b) Set up three Chambers, constituted for a fixed period of time.
- c) Adopt the Rules of Procedure of the Court and other Regulations as deemed necessary.
- d) Elect the Registrar and two Deputy Registrars.
- e) Take a decision to remove a judge, the Registrar or a Deputy Registrar from office in accordance with Article 27.
- f) Take a decision to waive the privileges and immunities of a judge, the Registrar or a Deputy Registrar in accordance with Article 28 paragraph 2.

- g) Exercise judicial functions in accordance with Article 22 paragraphs 9 and 10.
- h) Issue advisory opinions in accordance with Article 9.

Article 22: Chambers and Committees

1. The Court shall establish three Chambers of seven judges each.
2. Chamber 1 shall be chaired by the President of the Court, Chamber 2 by the first Vice-President, and Chamber 3 by the second Vice-President.
3. Each Chamber shall establish two Committees of three judges each. The President and the Vice-Presidents of the Court shall not be members of a Committee.
4. Each Committee shall elect its own chairperson.
5. A Committee may, by a unanimous vote, declare inadmissible or strike out of its list of cases an individual complaint submitted under Article 7 where such a decision can be taken without further examination. The decision shall be final and binding.
6. If no decision is taken by a Committee in accordance with the preceding paragraph, the respective Chamber shall decide on the admissibility and merits of individual complaints submitted under Article 7.
7. A Chamber shall decide on the admissibility of third party complaints under Article 8.
8. The Plenary Court shall decide on the merits of third party complaints.
9. Where a case pending before a Chamber raises a serious question affecting the interpretation of any provision of a human rights treaty under consideration or where the resolution of a question before it might have a result inconsistent with a judgment previously delivered by the Court, the Chamber may, at any time before it has rendered its judgment, relinquish jurisdiction in favour of the Plenary Court.
10. Within a period of three months from the date of the judgment of a Chamber, any party to the case may, in exceptional cases, request that the case be referred to the Plenary Court. This request shall be submitted to another Chamber of the Court which shall accept the request only if the case raises a serious question affecting the interpretation or application of any provision of a human rights treaty under consideration, or a serious issue of general importance. If this Chamber accepts the request, the Plenary Court shall decide the case by means of a judgment.

Article 23: Final judgments

1. The judgment of the Plenary Court shall be final.

2. The judgment of a Chamber shall become final:
 - a) when the parties declare that they will not request that the case be referred to the Plenary Court; or
 - b) three months after the date of the judgment, if reference of the case to the Plenary Court has not been requested; or
 - c) when another Chamber of the Court rejects the request of a party to refer the case to the Plenary Court.

Article 24: The Presidency

1. The President and the First and Second Vice-Presidents of the Court shall be elected by an absolute majority of the judges. They shall each serve for a term of three years or until the end of their respective terms of office as judges, whichever expires earlier. They shall be eligible for re-election.
2. The First Vice-President shall act in place of the President in the event that the President is unavailable or disqualified. The Second Vice-President shall act in place of the President in the event that both the President and the First Vice-President are unavailable or disqualified.
3. The President, together with the First and Second Vice-Presidents, shall constitute the Presidency, which shall be responsible for the proper administration of the Court and all other functions conferred upon it in accordance with this Statute.
4. The President shall also function as chair of the first Chamber, the First Vice-President as chair of the second Chamber, and the Second Vice-President as chair of the third Chamber. As chairs of the Plenary Court and the three Chambers, the President and the two Vice-Presidents may adopt provisional measures in accordance with Article 19. As soon as the Plenary Court or the respective Chamber is in session, it shall either confirm or withdraw such provisional measure.

Article 25: The Registry

1. The Registry shall be headed by the Registrar, who shall be the principal administrative officer of the Court. The Registrar shall exercise his or her functions under the authority of the President of the Court.
2. The Registrar and the two Deputy Registrars shall be persons of high moral character, be highly competent and have an excellent knowledge of English. They shall be

elected by an absolute majority of the judges for a period of five years and shall be eligible for re-election. They shall serve on a full-time basis.

3. The Registrar shall appoint such qualified staff as may be required. In the employment of staff, the Registrar shall ensure the highest standards of efficiency, competency and integrity and shall take into account the need for the representation of the principal legal systems of the world.
4. The Registrar shall set up a Victim and Witnesses Unit within the Registry. This Unit shall provide protective measures and security arrangements, counselling and other appropriate assistance for witnesses, victims who appear before the Court and others who are at risk on account of testimony given by such witnesses. The Unit shall include staff with expertise in trauma.

Article 26: Solemn undertaking

Before taking up their respective duties under this Statute, the judges, the Registrar, deputy Registrars and all other staff employed by the Court shall each make a solemn undertaking in open court to exercise his or her respective functions impartially and conscientiously.

Article 27: Exclusion of judges and removal from office

1. A judge shall not participate in any case in which his or her impartiality might reasonably be doubted. At the request of a judge or any party to the proceedings, a judge may be excluded from participating in a case by a decision of a majority of the judges in the respective Committee, Chamber or in the Plenary Court.
2. In case of a serious breach of his or her duties under this Statute or inability to exercise the respective functions under this Statute, a judge, the Registrar or a Deputy Registrar shall be removed from office by a decision of the Plenary Court taken by a two-thirds majority of all judges. The person whose conduct is challenged shall have full opportunity to present and receive evidence and to make submissions in accordance with the Rules of Procedure of the Court.

Article 28: Privileges and immunities

1. The Court shall enjoy in the territory of each State Party such privileges and immunities as are necessary for the fulfilment of its purpose.

2. The judges, the Registrar and the Deputy Registrars shall, when engaged on or with respect to the business of the Court, enjoy the same privileges and immunities as are accorded to heads of diplomatic missions and shall, after the expiry of their terms of office, continue to be accorded immunity from legal process of every kind in respect of words spoken or written or acts performed by them in their official capacity. These privileges and immunities may be waived by a decision of the Plenary Court taken by an absolute majority of all judges.
3. The staff of the Registry, counsel, experts, witnesses or any other person required to be present at the seat of the Court shall be accorded such treatment as is necessary for the proper functioning of the Court, in accordance with the agreement on the privileges and immunities of the Court.

Article 29: Representation before the Court

1. Applicants have the right to appear before the Court in person or to be represented by legal counsel or by any other duly authorized person or organization.
2. If the interests of justice so require, the Court, upon request of the applicant or another party, may grant legal aid to the applicant or another party without sufficient means to pay for legal counsel.

Article 30: Official and working languages

1. The official languages of the Court shall be Arabic, Chinese, English, French, Russian and Spanish. Important official documents of the Court, including its Rules of Procedure, all judgments of the Plenary Court and leading judgments of the Chambers shall be published in all official languages of the Court. The Presidency shall determine which documents and judgments fall in this category.
2. The working language of the Court shall be English. Hearings shall be conducted in English and, if requested by a party, in the official language of the State on the territory of which the alleged human rights violation was committed.
3. Any decision declaring a complaint admissible or inadmissible or striking it out and any judgment shall be published in English and, if requested by a party, in the official language of the State Party on the territory of which the alleged human rights violation was committed.

Part 4: Obligations of States Parties

Article 31: Cooperation with the Court

1. States Parties shall, in accordance with the provisions of this Statute, cooperate fully with the Court in its examination of complaints submitted under Articles 7 and 8.
2. If the Court conducts a fact finding mission to the territory of a State Party, the authorities shall fully cooperate with the Court. In particular, the Court shall enjoy full freedom of movement and inquiry throughout the territory of the State Party, unrestricted access to State authorities, documents and case files as well as the right of access to all places of detention and the right to hold confidential interviews with detainees, victims, experts and witnesses.
3. The Court shall have the authority to make special requests to States Parties for cooperation and judicial assistance, and the requested States Parties shall provide such assistance and cooperation to the best of their abilities.

Article 32: Compliance with and enforcement of judgments and provisional measures

1. States Parties shall fully comply with any judgments and provisional measures in any proceedings to which they are a party. States Parties shall ensure that any judgments and provisional measures of the Court can be directly enforced by their domestic authorities in the same way as any judgments and binding decisions of national courts of human rights or any other domestic courts.
2. With respect to the enforcement of binding judgments against any inter-governmental or non-governmental organization or any other non-State actor, States Parties shall provide full cooperation and judicial assistance, as requested by the Court.
3. States Parties shall enact special laws for the implementation of their obligations under this Statute.

Part 5: Obligations of non-State actors

Article 33: Compliance by non-State actors

1. Any inter-governmental and non-governmental organization, including any business corporation, which has made a specific declaration recognizing the jurisdiction of the Court in accordance with Article 37, shall fully cooperate with the Court in any proceedings to which they are a party and shall comply with any judgment and provisional measure issued by the Court.
2. Any other non-State actor which is a party to any proceedings before the Court shall fully cooperate with the Court in accordance with the provisions of this Statute and the respective laws of States Parties under the jurisdiction of which they operate. They shall comply with any judgment and provisional measure issued by the Court.

Part 6: Final clauses

Article 34: Signature, ratification, accession and succession

1. The present Statute is open for signature, ratification, accession and succession by all States.
2. Signatures as well as any instruments of ratification, accession and succession shall be deposited with the Secretary-General of the United Nations.

Article 35: Entry into force

1. The present Statute shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification, accession or succession.
2. For each State ratifying the present Statute or acceding or succeeding to it after the deposit of the twentieth instrument of ratification, accession or succession, the present Statute shall enter into force on the thirtieth day after the deposit of its own instrument of ratification, accession or succession.

Article 36: Reservations

1. Each State may, at the time of ratification of this Statute or accession thereto, declare that it does not recognize the jurisdiction of the Court in relation to certain human rights treaties listed in Annex 1 or certain provisions thereof.
2. Any State Party having made a reservation in accordance with paragraph 1 of this Article may, at any time, withdraw this reservation by notification to the Secretary-General of the United Nations.
3. Other reservations shall not be made to this Statute.

Alternative Article 36: Declaration on jurisdiction and reservations by States Parties

1. Each State may, at the time of ratification of this Statute or accession thereto, declare which human rights treaties listed in Annex 1 shall be subject to the jurisdiction of the Court.
2. Any State Party may at any later time declare that it also recognizes the jurisdiction of the Court with respect to other treaties listed in Annex 1.
3. A declaration made under this Article cannot be withdrawn.
4. No reservations to the present Statute shall be permitted.

Article 37: Declaration by non-State actors

1. Any inter-governmental or non-governmental organization, including any business corporation and organized group, may at any time declare under this Article that it recognizes the competence of the Court to receive and examine complaints from any person, non-governmental organization or group of individuals claiming to be the victim of any human right provided for in any human rights treaty listed in Annex 1 by the respective organization.
2. When making such a declaration, the organization may also specify which human rights treaties listed in Annex 1 and which provisions thereof shall be subject to the jurisdiction of the Court.
3. Such declaration shall be deposited with the Secretary-General of the United Nations.
4. Such declaration may be withdrawn at any time by notification to the Secretary-General of the United Nations. The withdrawal shall take effect one year after the date of receipt of the notification, unless the notification specifies a later date. Such

withdrawal shall not prejudice in any way the continued examination of any complaint which was already under consideration by the Court prior to the date on which the withdrawal became effective.

Article 38: Withdrawal

No withdrawal from the present Statute shall be permitted.

Article 39: Amendments to Annex 1

On the proposal of a State Party any additional treaty can be included in Annex 1 by decision of two-thirds of the Assembly of States Parties.

Article 40: Other amendments of the present Statute

3. After the expiry of seven years from the entry into force of this Statute, any State Party may propose amendments thereto. The text of any proposed amendment shall be submitted to the Secretary-General of the United Nations, who shall promptly circulate it to all States Parties.
4. No sooner than three months from the date of notification, the next Assembly of States Parties shall, by a majority of those present and voting, decide whether to take up the proposal.
5. The adoption of an amendment at a meeting of the Assembly of States Parties requires consensus of all States Parties.
6. An amendment shall enter into force for all States Parties thirty days after instruments of ratification or acceptance have been deposited with the Secretary-General of the United Nations by two-thirds of the States Parties.

Article 41: Authentic texts

The original of this Statute, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States.

ANNEX 1: International human rights treaties under the jurisdiction of the World Court of Human Rights

International Covenant on Civil and Political Rights 1966

Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the death Penalty 1990

International Covenant on Economic, Social and Cultural Rights 1966

Slavery Convention 1926

Protocol Amending the Slavery Convention 1953

ILO Convention No. 29 Concerning Forced Labour 1930

Convention on the Prevention and Punishment of the Crime of Genocide 1948

ILO Convention No. 87 Concerning Freedom of Association and the Right to Organise 1948

ILO Convention No. 98 Concerning the Right to organise and Collective Bargaining 1949

Convention Relating to the Status of Refugees 1951 and Protocol Relating to the Status of Refugees 1967

Convention on the Political Rights of Women 1952

Convention relating to the Status of Stateless Persons 1954

Supplementary Convention on the Abolition of Slavery 1956

ILO Convention No. 105 Concerning the Abolition of Forced Labour 1957

ILO Convention No. 111 Concerning Discrimination in Employment and Occupation 1958

Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages 1962

UNESCO Convention on the Elimination of Discrimination in the Field of Education 1962

International Convention on the Elimination of All Forms of Racial Discrimination 1965

Convention on the Elimination of All Forms of Discrimination against Women 1979

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984

Convention on the Rights of the Child 1989

Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts 2000

Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography 2000

ILO Convention No. 169 Concerning Indigenous and Tribal Peoples 1989

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 1990

ILO Convention No. 182 Concerning Worst Forms of Child Labour 1999

ILO Convention No. 183 Concerning Maternity Protection 2000

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol) 2000

Convention on the Rights of Persons with Disabilities 2006

IV. COMMENTARY

Article 1: The Court

Although the Statute is a treaty which only binds the States Parties, the World Court of Human Rights (hereinafter referred to as “the Court”), as the International Court of Justice (ICJ) and the International Criminal Court (ICC), shall be an independent and permanent institution in close relationship with the United Nations. The Statute shall be adopted by the General Assembly of the United Nations or, if adopted by a Conference of States, the Court shall be brought into relationship with the United Nations through a special agreement as outlined in Article 2. The ICJ is the main judicial organ of the United Nations deciding upon disputes between States on the basis of their obligations under general international law. The ICC is a permanent court holding individual perpetrators of war crimes, genocide and crimes against humanity accountable under international criminal law. The World Court of Human Rights shall be the main judicial organ of the United Nations holding States and certain non-State actors accountable for violations of international human rights law and providing victims of such human rights violations with the right to a remedy and reparation for the harm suffered. It thereby combines the functions of a classical human rights court with those of an International Civil Court in relation to the rights and obligations deriving from international human rights law. The judgments of the Court shall be final and binding and will be enforced by domestic law enforcement bodies in the same way as judgments of domestic courts.

The complimentary nature of the jurisdiction of the World Court and that of national courts of human rights is an important principle of the Statute, similar to that of the ICC Statute, and will be further elaborated in respect to Article 10.

Article 2: Relationship of the Court with the United Nations

As other human rights treaties, the Statute of the World Court shall be drafted by the Human Rights Council and adopted by the General Assembly of the United Nations. Although the World Court is independent of the United Nations, it shall thereby become a permanent institution of the United Nations, similar to the ICJ. While the Statute of the ICJ is annexed to the Charter of the United Nations, of which it forms an integral part, the Statute of the World Court could only be annexed to the Charter by means of an amendment to the Charter. Nevertheless, even without such an amendment, the World Court could be considered as a

permanent institution of the United Nations, similar to the existing treaty monitoring bodies of human rights treaties adopted by the General Assembly of the United Nations. Strictly speaking, the Human Rights Committee and similar monitoring bodies are not UN bodies, but treaty bodies with a mandate restricted to the States Parties of the respective treaties. But they are independent bodies established by a United Nations treaty and serviced by the UN Office of the High Commissioner for Human Rights. Furthermore, with the trend towards universal ratification and towards financing of these treaty bodies out of the general budget of the United Nations, they are increasingly considered as United Nations bodies. The same holds true for the World Court of Human Rights which shall have jurisdiction only in relation to human rights treaties adopted by the United Nations or their specialized agencies.

The Statute of the ICC was not adopted by the General Assembly but by a State Conference. Nevertheless, the drafters clearly were determined, as expressed in the Preamble of the Rome Statute, to “establish an independent permanent International Criminal Court in relationship with the United Nations system”. Since the Rome Statute was not adopted by the General Assembly, such a relationship needed to be established through an agreement between the Assembly of States Parties and the United Nations, as provided for in Article 2 of the ICC-Statute. The draft of the present Statute of the World Court contains a similar provision in case that the Statute will also be adopted by a State Conference.

The close relationship between the Court and the United Nations will strengthen the organization’s competences to promote and encourage respect for human rights as foreseen in the UN Charter. On the other hand, the link with the United Nations will also enhance the effectiveness of the Court, which could not operate without the full support of the Organization. For practical reasons, the Statute foresees a number of provisions making use of the United Nation’s administrative framework. As becomes clear from the Final Clauses, the UN Secretary-General shall function as depository for the Statute. The Assembly of States Parties shall be convened by the Secretary-General at the Headquarters of the United Nations. More importantly, the budget of the Court shall be decided by the General Assembly and all expenses shall be borne out of the general budget of the United Nations. Third party complaints under Article 8 can be submitted by States Parties, but also by the UN High Commissioner for Human Rights, the Security Council and the Human Rights Council. In case of particularly serious human rights violations, the Security Council may even refer complaints to the Court in respect of States which are not parties to the Statute. Article 18 explicitly entrusts the UN High Commissioner for Human Rights with the supervision of the

execution of judgments. He or she can seize the Human Rights Council or the Security Council in case a State fails to implement a judgment. Thus, the functioning of the Court will be dependent on the political powers of the United Nations in order to guarantee the implementation and enforcement of its judgments.

Relationship agreements usually contain provisions on observance of UN recommendations, mutual assistance, budgetary cooperation, personnel and mutual representation and information. The procedure for the conclusion of such an agreement is twofold: the Assembly of States Parties will approve of the wording of the agreement before its conclusion. The actual conclusion is enacted solely by the President of the Court, who acts on behalf of the Court. On behalf of the United Nations, it is likely that the UN Secretary-General, the General Assembly, the Human Rights Council and the Office of the High Commissioner for Human Rights will be involved in developing the relationship agreement with the Court.⁴⁸

Although the Statute only binds States Parties, the expenses of the World Court shall be borne by the regular budget of the United Nations, similar to the expenses of all present human rights treaty monitoring bodies of the United Nations. The system by which the expenses of certain human rights treaty bodies (e.g. CERD-Committee and CAT-Committee) were to be borne only by the States Parties of the respective treaties did not prove effective in practice.⁴⁹ In addition, the responsibility of the United Nations to provide the financial resources underlines the great importance of the World Court of Human Rights for the protection of human rights worldwide.

Article 3: Seat of the Court

The Hague in the Netherlands has established a reputation of becoming the “judicial capital of the world”. In addition to hosting the ICJ and various arbitration courts, The Hague also became the seat of the ICC and of certain ad hoc criminal tribunals, such as the International Criminal Tribunal for the former Yugoslavia (ICTY), the Appeals Chamber of the International Criminal Tribunal for Rwanda (ICTR) and the ad hoc seat of the Special Court for Sierra Leone (SCSL) during the trial of former Liberian President Charles Taylor. It is,

⁴⁸ Cf. Luigi Condorelli and Santiago Villalpando, ‘Relationship of the Court with the United Nations’, in Antonio Cassese, Paola Gaeta, John R.W.D. Jones (Eds.), *The Rome Statute of the International Criminal Court*, Volume 1, Oxford 2002, pp. 219-234.

⁴⁹ See Nowak/McArthur, *CAT-Commentary* (note 31), pp. 593 et seq.

therefore, only consequent to also establish the seat of the World Court of Human Rights in The Hague.

Equally convincing arguments may be cited in favour of Geneva in Switzerland, which functions as “human rights capital of the world”. In addition to being the second seat of the United Nations, Geneva hosts the Office of the UN High Commissioner for Human Rights, the Human Rights Council as the main political UN body dealing with human rights, and all UN human rights treaty monitoring bodies. Furthermore, the Office of the UN High Commissioner for Refugees and some of the relevant specialized agencies, such as the International Labour Organization (ILO) and the World Health Organization (WHO), have their seat in Geneva.

Similarly to Article 3 of the ICC Statute, which was not subject of serious discussions during the drafting of the Rome Statute, the present article is divided into three parts: First, the location of the Court is identified. Before including this provision into the Statute it will obviously be necessary to negotiate an agreement with the Dutch (or Swiss) Government. Secondly, the headquarters agreement shall be concluded in a similar procedure as described above under Article 2. The headquarters agreement (or host agreement or seat agreement) between the Court and the host State will contain – similar to other agreements concluded between international organizations and the host States – *inter alia* provisions on the inviolability of the premises of the Court; on the control and authority of the Court over the premises; on measures taken by the government to ensure the security, safety and protection of the Court; on privileges and immunities of the Court, of judges, registrars and officials of the Court, as well as of persons taking part in the proceedings before the Court; on privileges regarding the Court’s communication facilities; and on the allocation of public services for the premises of the Court.⁵⁰

According to paragraph 3, the Court may also sit elsewhere whenever it considers it desirable. For the purpose of establishing the facts of certain cases in the most effective manner, it may be useful to hold public hearings in the country where the alleged human rights violations were committed. Furthermore, the holding of a hearing in a certain State might also enhance the Court’s profile in this country and foster the implementation of its judgments. On the

⁵⁰ Cf. Basic principles governing an agreement to be negotiated between the International Criminal Court and the Kingdom of the Netherlands regarding the headquarters of the Court, UN Doc. PCNICC/2001/WGHQA/L.1 of 16 July 2001.

other hand, holding public hearings in the country where the alleged human rights violation took place also bears certain risks, such as security concerns for the judges, the staff or witnesses. For these reasons, the International Law Commission, commenting on the ICC draft statute, recommended that “trials may take place in a State other than the host State only when it is both practicable and consistent with the interests of justice to do so”.⁵¹

According to this provision the Court can choose to sit in the territory of States Parties or even in the territory of States not parties to the Statute, by special cooperation arrangement. Apart from the Rome Statute, similar provisions can also be found in the statutes of the ICJ, the ICTY and the ICTR. None of the mentioned courts, however, has ever conducted a trial outside of their court seat.⁵²

According to the UN human rights treaties, the respective treaty bodies shall normally meet at the Headquarters of the United Nations or at the United Nations Office at Geneva or at any other convenient place.⁵³ In reality, for practical purposes, most meetings take place at the Office of the UN High Commissioner for Human Rights in Geneva. Only in exceptional cases have treaty bodies decided to meet outside Geneva or New York.⁵⁴

Article 4: Legal status and powers of the Court

Article 4 deals with two issues: the status of the Court as subject of international law and the scope of the Court’s powers. As the ICC, the World Court shall have international legal personality. Its legal status and powers shall follow the model of the ICC, as laid down in Article 4 of the ICC Statute.

Based on this provision, States Parties to the Statute are obliged to recognize the Court as a subject of international law, which can act independently and autonomously in international relations, independent of the will of the States. However, since treaties have binding force only *inter partes* and cannot create obligations *erga omnes*, a treaty provision is not sufficient to create an international legal person. The Statute does therefore not automatically create a

⁵¹ Report of the International Law Commission on the work of its forty-sixth session, 2 May - 22 July 1994, UN Doc. A/49/10, p.52.

⁵² Adriaan Bos, ‘Seat of the Court’, in Cassese et al., *The Rome Statute* (note 48), pp. 200 et seq.

⁵³ See, e.g., Art.37(3) CCPR, lit. (d) ECOSOC Res. 1985/17 of 28 May 1985 (establishing the Committee on Economic, Social and Cultural Rights), Art. 20 (2) CEDAW, Art. 43 (10), Art. 43 (10) CRC.

⁵⁴ For example, the Human Rights Committee has held one of its earliest sessions (14th) in Bonn, Germany: See Manfred Nowak, *CCPR-Commentary* (note 28), p. 701.

new subject of international law but rather obliges the States Parties to establish preconditions for the Court's fullest autonomy. It will ultimately depend on the number of ratifications of the Statute as well as on the manner third States will interact with the Court whether the Court will acquire international legal personality.⁵⁵

In the second sentence of paragraph 1, the Statute provides that the Court shall "have such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes". This provision, modelled after Article 104 of the United Nations Charter, is commonly interpreted as recognition of legal capacity of an entity in the domestic legal order of the contracting States.

Finally, paragraph 2 of the present article determines that, once the Court has established that it has jurisdiction over a certain human rights violation, it can exercise its powers on the territory of any of the States Parties to the Statute and is not limited to the State where the alleged violation took place.

Article 5: Composition of the Court

While the European Court of Human Rights consists of a number of judges equal to the number of States Parties to the ECHR (presently 47), the Inter-American Court of Human Rights only consists of 7 judges, and the African Court of Human and Peoples' Rights of 11 judges. The present human rights treaty monitoring bodies of the United Nations are composed of individual experts numbering between 10 and 23 experts. The proposed number of 21 judges for the World Court of Human Rights takes into account the expected global ratification of the Statute and the growing workload of the Court. It enables the Court to establish three Chambers of 7 judges and six Committees of three judges, excluding the President and the two Vice-Presidents of the Court (Article 22). Similar to the ICC, which presently consists of 18 judges, the proposed Statute contains a provision, modelled on that of Article 36 (2) of the ICC Statute, which enables the Assembly of States Parties, on the proposal of the President of the Court, to increase the number of judges without an amendment of the Statute.

⁵⁵ Francesca Martines, 'Legal Status and Powers of the Court', in Cassese et al., *The Rome Statute* (note 48), pp. 205-212, 217.

While the present human rights treaty monitoring bodies of the United Nations, taking into account the need for diverse backgrounds required to examine State reports, are composed of experts from different professions, the World Court of Human Rights as the highest judicial body deciding on human rights complaints, shall be composed only of jurists with the required competence in the field of human rights and the qualifications for the exercise of the highest judicial functions in their respective countries. As full-time judges, they shall not engage in any other activity during their term of office which is incompatible with their independence and impartiality. They shall receive professional salaries similar to those of the judges of the ICJ and the ICC.

Article 6: Election of the judges

The judges shall be nominated by the States Parties to the Statute and elected by secret ballot by the Assembly of States Parties for a term of six years. The need for balancing the need for both continuity and rotation is expressed in the relatively short term of office and the possibility of unlimited re-election. It is up to the States Parties whether they wish to re-nominate certain judges with outstanding performance and to the Assembly of States Parties whether they wish to re-elect them more than once.

The fact that the judges are elected by the Assembly of States Parties rather than by the General Assembly of the United Nations shall provide an incentive for States to ratify the Statute. The procedure for the election of judges follows that of the expert members of the present human rights treaty monitoring bodies of the United Nations (e.g. Articles 28 to 34 CCPR). Only certain provisions which turned out not to be useful in practice, such as the possibility of States Parties to nominate more than one national, were modified accordingly.

Article 7: Individual Complaints

This is the central provision establishing the broad jurisdiction of the Court. It shall have the power to decide about individual complaints (emanating from any person, non-governmental organization or group of individuals similar to Article 34 ECHR and Article 44 ACHR) against States Parties, the United Nations and its specialized agencies, other global or regional inter-governmental organizations, non-governmental organizations, business corporations and other non-State actors. The applicants must claim to be a victim of a violation of a human

right provided for in one of the human rights treaties of the United Nations, the ILO or UNESCO explicitly enumerated in Annex 1 of the Statute.

States which ratify the Statute recognize the competence of the Court to examine individual complaints directed against themselves in relation to those human rights treaties to which they are parties. But Article 36 provides for an “opting out” reservation at the time of ratification or accession. In other words: States may specify those human rights treaties to which they are a party or specific provisions thereof which nevertheless shall not be invoked before the Court by any individual applicant. Alternatively, States may be provided with the positive opportunity to specify in a special declaration which of the treaties listed in Annex 1 they wish to submit to the jurisdiction of the Court (see below, Article 36).

With the entry into force of the present Statute, the Court shall also be competent to examine individual complaints directed against the United Nations and its specialized agencies, including the ILO, FAO, WHO, UNESCO, and the Bretton Woods institutions (IMF and the World Bank Group). If the United Nations, e.g. in exercising power in the context of an Interim Administration as UNMIK in Kosovo, violates a human right guaranteed by any of the human rights treaties enumerated in Annex 1, it can be held accountable by the alleged victim before the World Court of Human Rights. The same holds true for human rights violations allegedly committed by an act of the World Bank or the IMF.

Other global or regional *inter-governmental organizations*, such as the WTO, NATO, the OAS, African Union or the European Union, can only be held accountable before the World Court for alleged violations of international human rights treaties if the respective organization has made an explicit declaration recognizing the jurisdiction of the Court in relation to human rights enlisted in such treaties. However, the Court shall decide on a case by case basis whether the specific human rights invoked by an individual complaint can by their very nature be applied in relation to an inter-governmental organization. For example, it is difficult to imagine that NATO might be held accountable for a violation of the right to marry whereas such a violation could be claimed in relation to a United Nations interim administration. But NATO may be held accountable for torture methods applied by NATO troops in the context of a UN peace operation.

Non-governmental organizations, including business corporations, can be held accountable before the Court for alleged human rights violations only if they have made a declaration

explicitly recognizing the jurisdiction of the Court or if they are subject to the jurisdiction of a State party. Members of the Global Compact shall be explicitly encouraged to make a declaration under Article 37 recognizing the jurisdiction of the Court. Such a step might provide them with a competitive advantage in comparison to other trans-national corporations and might serve as best practice to be followed by others. A transnational corporation, which is a member of the Global Compact, may voluntarily accept the jurisdiction of the Court in relation to specific human rights, such as the right of its employees to form and join trade unions or the prohibition of the worst forms of child labour. But even without such a declaration, the respective business corporation may be held accountable before the Court for exploiting child labour if this is practiced on the territory of a State Party. The victims of such practices have the choice between bringing an individual complaint directly against the business corporation or against the respective State Party for not having taken the necessary steps, according to the due diligence principle, aimed at preventing the exploitation of child labour by the respective business corporation. The same holds true for other non-State actors, such as media enterprises, trade unions, political parties, religious associations, paramilitary organizations, rebel groups and other non-governmental organizations and even individuals. Again, the Court will have to decide on a case by case basis whether the human rights invoked can by their very nature be applied to the respective non-State actor.

When becoming a party to the Statute, States shall take the necessary action to ensure that individual complaints can no longer be lodged with other human rights treaty monitoring bodies of the United Nations. According to the respective treaties, individual communication procedures are never mandatory but require additional optional declarations or even ratifications which can easily be withdrawn. If a State Party to the 1st OP to the CCPR ratifies the Statute, it is required to denounce this OP in accordance with Article 12 OP. If a State Party to the Statute made a declaration in accordance with Article 14 CERD or Article 22 CAT, it shall withdraw such declarations.

Article 8: Third party complaints

In addition to individual complaints, the Court shall also have jurisdiction to examine inter-State complaints as well as complaints lodged by the UN High Commissioner for Human Rights, the Security Council or the Human Rights Council relating to alleged systematic human rights violations by any State Party, inter-governmental or non-governmental organization, including business corporation, subject to the jurisdiction of the Court in

accordance with Article 7. The Court shall only examine such third party complaints if they relate to alleged systematic violations of human rights, not to individual violations. Complaints against inter-governmental and non-governmental organizations shall only be examined if the respective jurisdiction requirements of Article 7 (alleged systematic violations committed on the territory of a State Party, by the United Nations or its specialized agencies or by an organization that has voluntarily accepted the jurisdiction of the Court) are fulfilled.

Inter-State complaints are provided for, e.g., in the ECHR, the ACHR, in the ILO system and in most core human rights treaties of the United Nations. In practice, this procedure plays, however, only a marginal role. States are not particularly eager to damage their diplomatic relations with other governments because of human rights litigation. If they wish to raise their concerns about the human rights situation in another country, there are many less formal alternatives available. But the reluctance of States to make use of the inter-State complaints procedure may also be explained by the extremely weak provisions of UN human rights treaties in this regard.⁵⁶

The present draft, therefore, proposes a much more effective system of inter-State complaints leading to a binding judgment of the Court with the same legal effects as judgments on individual complaints. However, inter-State complaints shall only be admissible if they relate to allegations concerning systematic human rights violations. In addition, the draft Statute also provides for third party complaints alleging systematic violations to be initiated by the Security Council, the Human Rights Council or the High Commissioner for Human Rights. This is a new procedure which may enable the political bodies of the United Nations and the High Commissioner to depoliticize certain discussions by requesting a decision from an independent Court. In case of particularly serious violations, the Security Council, in accordance with Article 8(2) and its powers under Chapter VII of the UN Charter, may even request a judgment of the Court in relation to States or non-State actors which had not previously accepted the jurisdiction of the Court.

With the exception of the exhaustion of domestic remedies, all admissibility criteria for individual complaints listed in Article 11(2) shall equally apply to third party complaints. In order to avoid that the Court will be flooded with politically motivated complaints, the

⁵⁶ Cf. Nowak, CCPR-Commentary (note 28) pp. 753-776; Nowak/McArthur, CAT-Commentary (note 31), pp. 699-718.

requirement of not dealing with manifestly ill-founded or abusive complaints will have to be strictly applied. Admissibility decisions can only be taken by a Chamber, and judgments only by the Plenary Chamber in accordance with Article 22(8). For third party complaints, hearings are always required by Article 16(1). In addition, the Court may decide to carry out a fact finding mission in accordance with Article 14(3) to the territory of the State where the alleged human rights violation occurred. Complaints referred by the Security Council under Article 8(2) shall be treated with absolute priority and as speedily as possible.

Article 9: Advisory opinions

The advisory jurisdiction of an international court is of great importance for the uniform interpretation and development of its legal basis as well as of the substantive laws it applies. The present article is based on Article 64 of the Inter-American Convention on Human Rights, which gives the Inter-American Court much broader powers in this respect than, e.g., the European Convention on Human Rights.

The Court's advisory function enables it to respond to consultations submitted by any Member State of the United Nations, the UN Human Rights Council or the UN High Commissioner for Human Rights regarding the interpretation of the Statute or any human rights treaty listed in Annex 1. Furthermore, the article empowers the Court to give advice on domestic laws and proposed legislation, and to clarify whether or not they are compatible with provisions of the Statute or those contained in any of the human rights instruments in Annex 1. This advisory jurisdiction is available to all Member States of the United Nations, not only those that have ratified the Statute and accepted the Court's adjudicatory function. The Court's replies to these consultations are published separately from its judgments, as *advisory opinions*. Functionally, the responsibility for issuing an advisory opinion lies with the Plenary Court.

Article 10: National court of human rights

Some of the more recent UN human rights treaties require States Parties to establish specific national human rights monitoring bodies in addition to supervision by the respective international treaty monitoring bodies. For example, the CRPD of 2006 provides for an international expert committee and national monitoring mechanisms to supervise States Parties' compliance with the respective obligations of the Convention. Similarly, the OP to CAT of 2002 created a UN Subcommittee for the Prevention of Torture and at the same time

requires States Parties to establish so called National Preventive Mechanisms (NPMs). Both bodies carry out preventive visits to places of detention and conduct confidential interviews with detainees. They function in a complimentary manner. If a NPM is fully independent and conducts its visits to places of detention in a comprehensive and effective manner, the Subcommittee will usually refrain from carrying out missions to this country and restrict its function to cooperation with and monitoring of the NPM. If the domestic counterpart fails, however, to perform its functions properly, the Subcommittee may decide to visit this country.

This principle of complementary jurisdiction is more formally expressed in Articles 1 and 17 of the ICC Statute. The ICC is only competent to try a person for a particular crime if the respective State authorities are either unwilling or unable to prosecute the person concerned. This principle serves a double function. It respects State sovereignty and prevents the ICC to become overloaded with cases. At the same time, it shall serve as an incentive for the domestic criminal justice authorities to prosecute persons suspected of having committed war crimes, genocide and crimes against humanity.⁵⁷ The draft Statute of the World Court of Human Rights follows this model by requiring States Parties to establish national courts of human rights. These domestic courts shall have the same powers as the World Court⁵⁸ and applicants must have first complained to the national human rights court in the country where the alleged human rights violation occurred before they lodge a complaint with the World Court (Article 10(1)). This admissibility criterion presupposes that States Parties, when regulating the organization and procedure before the national courts of human rights in their domestic laws, must ensure that all human rights provisions in the treaties listed in Annex 1 can be directly applied by such courts. This requirement will have an important effect on the domestic implementation of international human rights treaties. Many States ratify international human rights treaties without incorporating them into domestic law. This leads to the consequence that such treaties are in effect ignored by domestic courts and administrative authorities, and victims often have no other opportunity than directly complaining to international courts or expert monitoring bodies. This may lead to overloading international or regional bodies, such as the European Court of Human Rights, with too many cases. The obligation to establish national courts of human rights with the power to directly

⁵⁷ See John T. Holmes, 'Complementarity: National Courts *versus* the ICC', in Antonio Cassese et al., *The Rome Statute* (note 48), pp. 667-686.

⁵⁸ For example, the States Parties are obliged to grant the national courts of human rights the competence to order interim measures and reparation to the victims of a human rights violation, similarly to the competence of the World Court of Human Rights.

apply international human rights law, to assess whether any domestic authority has violated any human right contained in the respective international human rights treaty, and to provide victims with adequate reparation shall have the effect of preventing the World Court from becoming overloaded with cases by transferring human rights adjudication to highly qualified national human rights courts. The better the national human rights courts apply international human rights treaties and thereby provide an effective remedy and reparation to the victims of human rights violations, the fewer cases will be submitted to the World Court. This will not only relieve the World Court from becoming the “victim of its own success”, as is often stated with respect to the 100.000 cases presently pending before the European Court of Human Rights; it will also strengthen national human rights monitoring and implementation, which is the ultimate goal of international human rights protection.

The relationship between the World Court of Human Rights and national human rights courts is one of complementarity that can thus be compared to the relationship between the ICC and domestic criminal courts, as laid down in Articles 1 and 17(1) of the ICC Statute. If a State Party is unwilling or unable to provide adequate protection against human rights violations because it failed to establish a national human rights court or because the procedure before the national court is not effective or does not afford due process of law, this domestic remedy does not have to be exhausted, as stipulated in Article 10(1), and the victim can directly lodge a complaint with the World Court. If the national court of human rights, however, provides effective protection by following the respective case law of the World Court and by providing the victims with adequate reparation for the harm suffered, only few cases will be submitted to the World Court and even fewer cases will be decided in favour of the applicants.

Article 11: Admissibility criteria

The most important admissibility criterion for individual complaints is the requirement that the applicant first must submit a complaint to the national human rights court in the respective State Party. This is usually the court in the country where the alleged human rights violation, whether committed by a governmental authority or by a non-State actor, has occurred. If governmental agents commit a human rights violation outside their own territory, i.e. by occupying forces, the national human rights court in the country of the respective government shall in principle be competent. However, it will be up to the World Court to decide on a case by case basis relevant questions concerning the extraterritorial applicability of the respective human rights treaties. The requirement to first lodge a complaint with a national human rights

court does not apply to complaints directed against inter-governmental organizations unless these organizations can be sued before a national human rights court.

The other admissibility criteria in Article 11(2) follow those applied by the European and Inter-American Courts of Human Rights and the relevant United Nations treaty monitoring bodies. Article 11(2)(c) makes clear that no appeal shall be permissible from a regional human rights court to the World Court. This rule applies, however, only to the same matter, i.e. the same human rights issue between the same parties. Concerning the same matter, applicants should make up their mind whether they prefer to submit their case to the World Court or to the respective regional human rights court.

The admissibility criteria of Article 11 apply equally to individual and third party complaints alleging systematic human rights violations. Third party complaints cannot be declared inadmissible by a Committee. If declared admissible by a Chamber, they shall immediately be referred to the Plenary Court for adjudication. If a complaint concerning particularly serious allegations of human rights violations is referred by the Security Council under Article 8(2), it shall be treated by the Court with the highest priority and as speedily as possible.

Article 12: Third-party intervention

As with proceedings before the European Court of Human Rights (Article 36 ECHR) and other courts, *amicus curiae* interventions by interested third parties are welcome. Often, other States Parties, inter-governmental organizations or non-governmental organizations can provide additional information or have a special interest to participate in the proceedings, either on the side of the applicant or the respondent party, or as a neutral third party.

Usually, *amicus curiae* briefs are submitted in writing, but the Court may also invite specific third parties to orally intervene during its hearings which normally are public hearings. In cases against non-State actors, the respective States Parties, under the jurisdiction of which the non-State actors concerned fall, have a right and an obligation to take part in the written and oral proceedings. Since human rights complaints against non-State actors constitute a new development in international law, it seems important that the respective States Parties take part in order to help clarifying the precise human rights obligations of States and non-State actors under their jurisdiction.

Article 13: Striking out complaints

This provision is modelled on Article 37 ECHR. In practice, quite a few cases remain pending for quite a long time, usually in the pre-admissibility stage, because the applicant has lost the interest after a certain period of time, because the matter somehow can be considered as resolved thanks to new legislation or other developments, or for various other reasons. It is easier and simply less time-consuming to resolve these cases by means of short striking out decisions than by means of inadmissibility decisions, friendly settlements or similar alternatives. Strike out decisions will usually be taken by Committees of three judges in accordance with Article 22(5).

A request to strike out a complaint can be put forward by the complainant, or the respondent State Party, organization or non-State actor. In addition, the Court has the *proprio motu* powers to strike a case off the list, if it becomes aware of circumstances, which lead it to conclude that it is no longer justified to continue the examination of the complaint. Similar to the Rules of Procedure of the European Court of Human Rights, a third party complaint (Article 8) can only be struck out if the complainant State Party, the Human Rights Council, the Security Council or the UN High Commissioner for Human Rights notifies the Court that it does not wish to proceed with the case and the respondent State Party agrees to the discontinuance.⁵⁹ However, even in cases where both parties agree to strike out a complaint, the Court must continue *ex officio* with its examination if respect for human rights in general so requires.

If a case has entered the examination on the merits phase, a decision to strike it off the list of cases must be given in form of a judgment. Thus, the provisions governing the form of judgments (Article 17, paragraphs 3 to 5) are *mutatis mutandis* applicable to the decision to strike out a case.

The Court has the possibility to restore a case to the list if it is justified by the circumstances. This might be for example the case if an applicant can prove that he or she was not failing to respond to the Court due to a lack of interest but because his or her lawyer has died.⁶⁰

⁵⁹ Van Dijk et al., European Convention (note 28), p. 207.

⁶⁰ Cf., e.g., the case of M v. Italy before the European Commission of Human Rights, Application No. 13549/88.

Article 14: Examination on the merits

The proceedings on the merits must be distinguished from the admissibility stage although in practice both decisions may be joined. Such proceedings are usually conducted in writing only, but the Court may also hold public hearings in accordance with Article 15 whenever it deems this necessary. If the facts are disputed, the Court may also undertake an investigation which may even include a fact finding mission on the spot. Experience, e.g. with the European Court of Human Rights, shows however that such in depth investigations and fact finding missions only take place in exceptional cases.⁶¹

All proceedings must be conducted in accordance with the principle “*audiatur et altera pars*”. All parties are requested to provide relevant information, and all information before the Court shall be made available to the respective other parties. The same holds true for information received during an in depth investigation and fact finding mission on the spot. If the respondent party is a non-State actor, it is important that the State Party under the jurisdiction of which the alleged human rights violation was committed, equally participates in the proceedings in accordance with Article 12(3).

All parties to the proceedings, above all the respective States Parties, have an obligation to fully cooperate with the Court during the various stages of the proceedings. Non-cooperation by the applicant might lead to a decision to strike out the complaint in accordance with Article 13. Non-cooperation by the respondent party might lead to the practice that certain allegations by the applicant, if not refuted properly by the respondent party, are accepted as evidence and may lead to a judgment finding a human rights violation. Full cooperation by all parties is most important during fact finding missions. States Parties are required to facilitate such fact finding missions by all means, including unrestricted access to all places of detention and the possibility to conduct private interviews with victims, witnesses, experts and detainees. Again, non-cooperation by the respective State Party might be interpreted as an indication that the Government wishes to hide or cover up certain human rights violations.

⁶¹ Cf. the recent study by Philip Leach, Costas Paraskeva, Gordana Uzelac on “International Human Rights & Fact Finding. An analysis of the fact-finding missions conducted by the European Commission and European Court of Human Rights”, Human Rights and Social Justice Research Institute, London Metropolitan University, February 2009.

Article 15: Friendly settlement

Friendly settlements play a traditional, albeit limited, role in most human rights complaints proceedings. It is up to the parties to offer a friendly settlement, but the Court shall place itself at the disposal of the parties as a mediator. It shall also ensure that friendly settlements do not simply reflect power relationships but are based on respect for human rights. Friendly settlements usually are offered by States Parties at a late stage of the proceedings when the risk of a judgment finding a human rights violation becomes evident. But in principle, they also can be agreed upon at the pre-admissibility stage.

Friendly settlements shall be agreed upon by both parties and lead to fairly short strike out decisions with a brief statement of the facts and the solution reached.

Article 16: Public hearings

While the complaints proceedings before UN human rights treaty monitoring bodies are only written, court proceedings must provide for the possibility of public hearings, in full accordance with the human right to a fair and public trial before an independent and impartial tribunal. Nevertheless, for capacity reasons, most proceedings before the European Court of Human Rights and other courts are restricted to an exchange of relevant written information which usually are sufficient for the court to establish the facts and decide the case. Public hearings are only scheduled when the complexity of the case and/or disputes concerning the facts or the law so require.⁶² Important cases shall, however, be decided on the basis of a public hearing. This is the reason why Article 16(1) requires that the Plenary Court shall render judgments on all third party complaints and on those individual complaints that were submitted to it only after having conducted a respective hearing.

Usually, hearings are held in public but the Court may in exceptional circumstances exclude the public. Typical reasons for the exclusion of the public are the need to protect victims and/or witnesses, concerns for the protection of the right to privacy or of juvenile rights.

⁶² Cf. Van Dijk et al., European Convention (note 28), pp. 215 et seq.; According to the ECHR's Annual Report 2008, the First Section delivered 346 judgments and held oral hearings in two cases; the Second Section delivered 372 judgments and held oral hearings in three cases; the Third Section delivered 286 judgments and held an oral hearing in one case; the Fourth Section delivered 261 judgments and held an oral hearing in one case; and the Fifth Section delivered 260 judgments and held oral hearings in three cases. The Grand Chamber, delivering 16 judgments in 2008, held 18 oral hearings. See http://www.echr.coe.int/NR/rdonlyres/D5B2847D-640D-4A09-A70A-7A1BE66563BB/0/ANNUAL_REPORT_2008.pdf [12 June 2009].

Apart from these exceptional cases, hearings shall be public and the relevant documents deposited by the parties with the Registrar shall also be accessible to the public. This rule derives from the principle “Justice must not only be done; it must be seen to be done”, which shall, of course, fully apply to international human rights procedures.

Article 17: Judgments of the Court

Judgments of the World Court shall serve two important purposes. First of all, the Court shall assess, on the basis of all evidence available, whether or not the facts of the case amount to a human rights violation attributable to the respondent party, and the Court shall secondly, in case it found a violation, afford the victim with adequate reparation for the harm suffered. Strictly speaking, the World Court shall function both as a classical human rights court and as an international civil court providing redress for victims against State and non-State actors alike.

The respondent party commits a human rights violation if it fails to respect, fulfil or protect any human rights provided in any applicable human rights treaty listed in Appendix 1. These rights go beyond the civil and political rights usually subject to litigation before regional human rights courts and also include economic, social and cultural rights. This means that the positive obligations of States to fulfil and protect human rights, which also apply to civil and political rights, are becoming increasingly important.⁶³ Violations are only attributable to States if the respective authorities failed to meet the “due diligence” test, i.e. failed to take the necessary legislative, administrative, judicial or political measures that can reasonably be expected for the domestic fulfilment of the human rights concerned or for the protection of the victim against undue interference by private parties. Although there does exist international case law on the “due diligence” test,⁶⁴ it will be up to the World Court of Human Rights to develop further case law in relation to the obligations deriving from economic, social and cultural rights.

Similarly, the right of victims of human rights violations to adequate reparation for the harm suffered is in urgent need of further development through international case law.⁶⁵ Guidance

⁶³ Cf. Nowak, Introduction (note 10), pp. 48ff.

⁶⁴ Starting with the judgment of the Inter-American Court of Human Rights in *Velasquez Rodriguez v. Honduras* of 29 July 1988, (Ser. C) No. 4 (1988), para. 172.

⁶⁵ Cf. De Feyter et al., Out of the Ashes (note 39).

can be sought in the case law of the Inter-American Court of Human Rights⁶⁶ or the former Human Rights Chamber for Bosnia and Herzegovina,⁶⁷ as well as in 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 (the so-called van Boven/Bassiouni Guidelines), which were finally adopted after a long and difficult drafting process by the UN General Assembly in 2005.⁶⁸ These Guidelines provide for the following types of reparation: restitution, rehabilitation, compensation, satisfaction and guarantees for non-repetition. The part of the judgment dealing with reparation shall be formulated as a judicial order to be implemented by the respondent party within a certain period of time. Any delay on the part of the respondent party would lead to the payment of default interest.

In addition to the holding (violation of any human right and adequate reparation to the victim), the judgments of the Court shall contain detailed legal reasons which led to the respective findings. Judgments on all different issues shall be arrived upon by majority vote, but any judge shall be entitled to deliver a separate (dissenting or concurring) opinion.

Article 18: Binding force, execution and supervision of judgments

The lack of binding force of final and provisional decisions on human rights complaints and the lack of any effective supervision of State compliance with such decisions represents one of the most serious shortcomings of the present human rights treaty monitoring system of the United Nations. To narrow the wide implementation gap and to strengthen State compliance with their legally binding obligations under UN human rights treaties is, therefore, one of the principle reasons for demanding the establishment of a World Court of Human Rights.

The judgments of the Chambers and the Plenary Court shall be binding on the parties in accordance with Article 23 and shall be directly enforced by the respective domestic law enforcement bodies as any binding judgment of a domestic court. In particular, the respondent parties are bound to grant the victim within three months from the delivery of the judgment adequate reparation for the harm suffered, as specified in the holding of the judgment. If the

⁶⁶ See Cassel, in De Feyter et al.(note 42), pp. 191-223.

⁶⁷ See Manfred Nowak, 'Reparation by the Human Rights Chamber for Bosnia and Herzegovina', in De Feyter et al. (note 39), pp. 245-288.

⁶⁸ GA Res. 60/147 of 16 December 2005.

reparation ordered includes more time consuming measures, such as legislative amendments, the Court may also grant a longer period for their implementation.

While the existing human rights treaty monitoring bodies of the United Nations feel themselves responsible for the follow up and supervision of the implementation of their own decisions, this function shall be entrusted to the High Commissioner for Human Rights in relation to judgments of the World Court. On the basis of follow up reports by the respondent parties and the applicants, the High Commissioner shall assess whether or not the judgments of the Court have in fact been complied with. If there are doubts, they shall be referred to the Court for clarification.

Cases of non-compliance shall be reported by the High Commissioner to the Human Rights Council with a request to take the necessary measures that will bring about the enforcement of the judgment. The Universal Periodic Review is one but certainly not the only procedure in which the Human Rights Council may deal with States that fail to comply with judgments of the World Court. If the Human Rights Council fails to take the necessary measures or the State concerned fails to comply with the measures taken, the High Commissioner may also request the Security Council to take action.

Article 19: Provisional measures

As other human rights courts,⁶⁹ the World Court shall have the power to order binding provisional measures in urgent cases when necessary to avoid irreparable damage. This will, e.g., be the case if persons who have been sentenced to death or whose expulsion to another State has been ordered, lodge a complaint with the Court. The respective proceedings before the Court would not provide an effective remedy if the applicant was in the meantime executed or deported. Orders for provisional measures are binding with immediate effects and shall be directly enforced by the respondent parties as are final judgments.

On the other hand, complaints to the Court shall not be misused by applicants for the sole purpose of delaying the execution of lawful domestic decisions. The Court shall, therefore, be

⁶⁹ Cf. Article 63(2) ACHR; Rule 39 of the Rules of Court, ECtHR; Article 27 (2) of the Protocol to the AfCHPR on the Establishment of an African Court on Human and Peoples' Rights; Article X (1) Annex 6 of the General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton Peace Agreement).

bound to regularly review the legitimacy and further necessity of provisional measures in force. If they are no longer necessary, they shall be withdrawn.

Article 20: Organs of the Court

Part 3 on the organization of the World Court follows partly the organizational structure of the European Court of Human Rights and partly that of the ICC and other courts. Article 20 lists as organs of the Court the Plenary Court, the Chambers and Committees, the Presidency and the Registry. Each of these organs has specific duties and responsibilities, which are outlined below.

Article 21: The Plenary Court

The Plenary Court has to fulfil certain functions which are included in an exhaustive list. These functions on the one hand entail organizational tasks, such as the election of the President and the Vice-President (lit. a), as well as the Registrar and the two Deputy Registrars (lit. d); the dismissal of a judge or Registrar (lit. e) or the waiving of privileges and immunities; and the adoption of the Rules of Procedure, where organizational issues not provided for in the Statute shall be regulated (lit. c). Furthermore, the Plenary Court is responsible to set up the Chambers and provide for a fixed allocation of duties of the Chambers. Similar tasks for the Plenary Court of the ECtHR can be found in Article 26 ECHR.

On the other hand, the Plenary Court also acts as a guarantor of consistency in cases where a Chamber before rendering a judgment decides that a case raises questions affecting the interpretation of a provision of a human rights treaty under consideration, or where the Chamber wishes to depart from the findings of an earlier judgment in a similar case (Article 22 (9)). The decision whether such a situation has arisen lies with the respective Chamber, who may relinquish jurisdiction in favour of the Plenary Court *proprio motu* without giving reasons.⁷⁰ Different than under Article 30 ECHR, which contains a comparable provision, the parties to a case are not given the right to object to the decision of the Chamber.

After a Chamber has issued a judgment, a party to the dispute can eventually appeal to the Plenary Court, which in these cases acts as last instance. Within three months from the date of

a judgment of a Chamber, any party can request a referral of the case to the Plenary Court. However, this provision does not allow for a general appeal in all cases, but rather limits them to exceptional cases that raise serious questions affecting the interpretation or application of any provision of a human rights treaty under consideration, or a serious issue of general importance. According to the Explanatory Report to Protocol No. 11 of a committee of experts of the Council of Europe, “serious questions affecting the interpretation of the Convention are raised when a question of importance not yet decided by the Court is at stake, or when the decision is of importance for future cases and for the development of the Court's case-law. Moreover, a serious question may be particularly evident when the judgment concerned is not consistent with a previous judgment of the Court. A serious question concerning the application of the Convention may be at stake when a judgment necessitates a substantial change to national law or administrative practice but does not itself raise a serious question of interpretation of the Convention. A serious issue considered to be of general importance could involve a substantial political issue or an important issue of policy”.⁷¹ Whether a case meets this condition, which have to be applied strictly in order to avoid overburdening the Court, has to be decided by another Chamber than the one that issued the judgment (Article 22 (10)).

Finally, the Plenary Court is also assigned to decide on the merits of third party complaints lodged under Article 8 (Article 22 (8)), and to issue advisory opinions requested in accordance with Article 9 (lit. h).

Article 22: Chambers and Committees

In order to effectively deal with the case load reasonably to be expected, the Court shall consist at the beginning⁷² of 21 judges who shall be divided into three Chambers of seven judges and six Committees of three judges each. It is the responsibility of the Plenary Court to set up the Chambers (Article 21 (b)). In turn, the Chambers shall establish two Committees within their own ranks, excluding the President and the two Vice-Presidents, who are each chairing one of the Chambers.

⁷⁰ Cf. Rule 72 (1) of the ECtHR's Rules of the Court.

⁷¹ Explanatory Report to Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, restructuring the control machinery [sic] established thereby (ETS No. 155), paras. 100-102.

In paragraphs 5 to 7, the distribution of functions to the Committees and Chambers is regulated. The Committees' function is to dispose of applications that are clearly inadmissible, while the Chambers are mainly designated to deliver judgments on the merits.

The power of the Committees to declare, by a unanimous vote, individual complaints inadmissible or to strike out an application of the list follows Article 28 ECHR.⁷³ The Committees' decision is final. Apart from this quick procedure, which is supposed to greatly relieve the Court,⁷⁴ Chambers shall usually deal with the admissibility and the merits of individual complaints as well as the admissibility of third party complaints, whereas the Plenary Court shall decide about the merits of inter-State and other third party complaints. In addition, the Chamber may relinquish jurisdiction to the Plenary Court which shall also function, in exceptional cases, as Appeals Chamber, similar to the functions of the Grand Chamber of the European Court of Human Rights, in accordance with Articles 30 and 43 ECHR.

Article 23: Final judgments

In accordance with the functions of the Plenary Court and the Chambers described above, a judgment of the Plenary Court becomes final immediately after its delivery, while a judgment of a Chamber only becomes final when the parties explicitly waive their right to request a referral of the case to the Plenary Court; or three months after the date of the judgment if the parties have not requested a referral within this time frame; or when the parties have requested a referral but the respective Chamber has not found the case to meet the condition of raising serious questions affecting the interpretation or application of any provision of a human rights treaty under consideration, or a serious issue of general importance in accordance with Article 21 (10).

With the exception of a declaration of inadmissibility or the striking out of the list of complaints by a Committee in accordance with Article 22 (5), as well as a decision taken by a

⁷² If this number turns out to be insufficient, it may be increased at a later stage in accordance with Article 5 paragraphs 4 and 5.

⁷³ Note that with the entry into force of Additional Protocol no. 14 to the ECHR the procedure will change considerably, making a single judge responsible for a declaration of inadmissibility or striking an application out of the list.

⁷⁴ E.g., in 2008, 93% of all applications to the ECtHR have been declared inadmissible or struck out of the list by the Committees. See the ECtHR's Annual Report 2008, available at http://www.echr.coe.int/NR/rdonlyres/D5B2847D-640D-4A09-A70A-7A1BE66563BB/0/ANNUAL_REPORT_2008.pdf [15 June 2009].

Chamber on a request for referral to the Plenary Court in accordance with Article 22 (10), judgments of the Court have to be reasoned.⁷⁵ Once a judgment has become final, it is subject to publication under the responsibility of the Registrar (Article 16 (5)).

Article 24: The Presidency

Another Court organ is the Presidency, whose election procedure, responsibilities and functions are modelled slightly modified after Article 38 of the ICC Statute. The President of the Court and the first and second Vice-Presidents constitute the Presidency. They shall be elected by the absolute majority of all judges and are, differently to the ICC's model provision, eligible for re-election not only once but in principle indefinitely.

The Presidency functions as an administrative as well as a judicial body. On the one hand, it is responsible for the proper administration of the Court. Other functions conferred upon the President (or one of the Vice-Presidents representing the President in case he or she is unavailable or disqualified) by other provisions of the Statute include the conclusion of an agreement with the United Nations in accordance with Article 2 (1) or of an agreement with the host States in accordance with Article 3 (2); or the tabling of a proposal to increase the number of judges in accordance with Article 5 (4); or the decision on publication of judgments according to Article 16 (5).

On the other hand, the Presidency also fulfils judicial functions (para. 4). The President of the Court is at the same time also chair of the first Chamber, the two Vice-Presidents are chairing the second and third Chamber respectively. In general, the Chamber assigned to a certain case is also responsible for ordering provisional measures in accordance with Article 19. However, in cases of extreme urgency, the President or the Vice-Presidents, acting as chairpersons of the respective Chambers, may adopt a provisional measure also outside the session of the Chamber. The Chamber or the Plenary Court – depending on which organ meets for a session earlier – has to confirm or withdraw such a measure.

Article 25: The Registry

Based on Article 43 ICC Statute, a Registry is foreseen in the Statute of the World Court. However, the Statute does not limit the Registry to non-judicial aspects of the administration,

⁷⁵ This requirement shall be regulated in detail by the Court's Rules of Procedure. Cf. Article 45 ECHR.

as Article 43 (1) ICC Statute. Thus, concerns that were voiced after the establishment of the ICC regarding the lack of support for the Presidency in its judicial tasks are rectified.⁷⁶

The Registrar, as the highest administrative officer of the Court, shall function as support organ of the Plenary Court and Chamber 1, the two Deputy Registrars of Chambers 2 and 3. All three of them shall be elected by the Plenary Court, other staff is to be appointed by the Registrar. Again, this provision departs from Article 43 of the ICC Statute, which states that a Deputy Registrar shall only be elected if the need arises. Candidates for the posts of Registrar and Deputy Registrars must be persons of high moral character, highly competent and with an excellent command of English. A Registrar or Deputy Registrar can also be removed from office according to the procedure foreseen in Article 27 (2) of the Statute.

The tasks of the Registry are not enlisted exhaustively in the Statute, since they include a myriad of functions: the Registry of an international court “combines elements of the diverse roles played in a national system by a [...] legal aid board, court registry and diplomatic corps”.⁷⁷ However, one important function is mentioned explicitly in the Statute: the Registrar is responsible to set up a Victim and Witness Unit within the Registry, similar to the one established at the ICC.

Article 26: Solemn undertaking

A similar provision can be found in Article 38 CCPR, Article 38 AfCHPR and Article 45 of the Statute of Rome, all of which were based on Article 20 of the ICJ Statute. Although other human rights treaties do not explicitly impose on the members of their organs any such duty, most of these organs’ rules of procedure foresee a similar obligation to make a solemn declaration.

The solemn undertaking in open court is intended to stress the importance and seriousness of the Court’s tasks. The declaration must not only be made by the judges, but by all organs and staff of the Court, thereby underlining the responsibility of all persons involved in the Court’s proceedings to act impartially and conscientiously.

⁷⁶ See John R.W.D. Jones, ‘Composition of the Court’, in Cassese et al., *The Rome Statute* (note 48), p. 262.

⁷⁷ Third Annual Report of the ICTY 1996, para. 96, available at <http://www.un.org/icty/rappannu-1996/index.htm> [16 June 2009].

Article 27: Exclusion of judges and removal from office

The present article deals with two separate issues. In paragraph 1, the exclusion of a judge in a certain case is regulated. In principle, a judge should excuse him- or herself from a case where his or her impartiality is doubtful. However, a request for exclusion can also be put forward by any other judge or by any party to the proceedings, if the impartiality of the judge in question is seriously doubted. The decision to exclude the judge has to be taken by a majority of the judges of the Committee, Chamber or Plenary Court, depending before which forum the case is supposed to be heard. Different than the ECHR, which foresees that in each Committee, Chamber or the Grand Chamber “there shall sit as an *ex officio* member a judge elected in respect of the State Party concerned”,⁷⁸ no such rule applies to the World Court, for the fact alone that not every nationality of all States Parties will be represented by the judges. On the contrary, the fact that a judge holds the nationality of, e.g., the respondent State could cast a doubt on his or her impartiality. In this case, a decision as outlined above has to be taken. Nevertheless, an automatic exclusion of judges who have the nationality of a party to the procedure is not foreseen, as is the case with, e.g., Article 22 of the Protocol to the AfCHPR establishing the African Court.

The second issue dealt with in this article is the dismissal of judges, the Registrar or Deputy Registrar. While Article 46 of the ICC Statute foresees the removal from office by a decision of the Assembly of States Parties, Article 27 of the present draft Statute reserves this exceptional power to a majority vote of two thirds of all judges in the Plenary Court, similar to Article 24 ECHR. The procedure for submissions and evidence presented by the affected person shall be regulated by the Rules of Procedure.

Article 28: Privileges and immunities

The provision on privileges and immunities follows Article 48 of the ICC Statute. Similar provisions are also foreseen for the members of the diverse UN human rights treaty monitoring mechanisms, as for example by Article 43 CCPR, Article 23 CAT and Article 34 (13) CRPD, all of which refer to the Convention on the Privileges and Immunities of the UN. Furthermore, the ECHR provides for privileges and immunities for the ECtHR’s judges (Article 51), as does the ACHR for judges and members of the Commission (Article 70), and the AfCHPR for members of the Commission (Article 43). The mentioned regional statutes,

however, do not entitle the Registrars or other persons involved in the Court's proceedings to any privileges or immunities.

The present article is therefore considerably broad, as it confers privileges and immunities to the Court as such and all judges, the Registrar and the Deputy Registrars. The first paragraph, which provides for privileges and immunities of the Court, is based on Art. 48 (1) of the Statute, which in turn uses similar terms as Article 105 of the UN Charter. Privileges of international organizations entail exemption from taxation, while immunities entail jurisdictional immunity before national courts, e.g. in employment related cases, and from acts of execution.⁷⁹ This provision underlines the independent legal personality status of the Court as outlined in Article 4 of the Statute. The exact terms of these privileges and immunities have to be included in an agreement, mentioned not in paragraph 1 but only indicated in paragraph 3.

The judges, Registrar and Deputy Registrars are provided with the same immunities as heads of diplomatic missions; they continue to be immune from legal process even after their terms have expired. The detailed entitlements are regulated Articles 26 et seq. of the Vienna Convention on Diplomatic Relations of 1961. However, unlike diplomatic agents, the immunities and privileges are limited to acts performed by the judges and Registrar and Deputy Registrars in their official capacity. Thus, the provision follows a functional approach rather than providing absolute privileges and immunities to the persons in question.⁸⁰ The waiver of privileges and immunities of judges, the Registrar or Deputy Registrars requires a decision of the Plenary Court.

Staff of the Registry is accorded a lower level of privileges and immunities, which is again linked to the functions they have to fulfil for the proper functioning of the Court. Detailed provisions regarding this category of Court officials have to be decided upon in a special agreement between the Court and the Member States, in particular the host State.

A third category of specifically protected persons include counsel, experts, witnesses or any other person required to be present at the seat of the Court. Again, the scope of the "treatment" they shall be accorded is to be articulated in the agreement mentioned above. At a

⁷⁸ Art. 27 (2) ECHR.

⁷⁹ John R.W.D. Jones, 'Duties of Officials', in Cassese et al., *The Rome Statute* (note 48), pp. 290-291.

⁸⁰ *Ibid.*, pp. 291-292.

minimum, this “treatment” includes providing facilities to travel for the purpose of participating in proceedings, and judicial immunity for statements and documents.⁸¹

Article 29: Representation before the Court

Regarding comparable regional courts, the question of legal representation of the applicant, the respondent State or, in the case of the ACtHR, of the Inter-American Commission on Human Rights in proceedings before the Court, is regulated by the courts’ Rules of Procedure.⁸² Differently, the Statute of the ICC explicitly foresees the right to have legal assistance for persons during an investigation (Article 55 (2) (c)), for an accused (Article 67 (1) (d)), as well as for victims (Article 68 (3)). However, there is no obligation of the concerned parties to be represented by a lawyer. Also the Protocol to the AfCHPR establishing the AfCtHPR contains a clause on legal representation, which entitles the parties to be legally represented; free legal representation may be provided where the interests of justice so require.⁸³

Before the World Court of Human Rights, there is no requirement to be represented by legal counsel, as applicants can also argue their case before the Court themselves. If they do not have the means to afford legal counsel, they are entitled to request legal aid which shall be granted by the Court if the interests of justice so require. The same applies, in principle, to private respondent parties. States will have to be represented by their authorized agents, as foreseen for example by the ECtHR’s Rules of Court and the Rules of Procedure of the Inter-American Court of Human Rights.

Article 30: Official and working languages

The statutes of regional courts as well as international human rights treaties remain silent on the question of the official and working languages of the Courts or Committees. The use of language and the language of decision or judgment are principally contained in their Rules of Procedure. Only Article 50 of the Statute of the ICC provides in its primary document a regulation on the official and working languages.

⁸¹ Ibid. p. 294.

⁸² Cf, e.g., Rules 35 and 36 of the ECtHR’s Rules of Court, Articles 21 and 22 of the Rules of Procedure of the Inter-American Court of Human Rights.

⁸³ Article 10 (2) Protocol to the African Charter on Human and Peoples’ Rights on the Establishment of an African Court on Human and Peoples’ Rights.

The official languages of the Court shall be the same as the six official languages of the United Nations. However, in order to avoid excessive interpretation and translation costs, the draft Statute proposes a fairly radical departure from existing UN practice. While for example the Rules of Procedure of the UN Human Rights Committee foresee that Arabic, English, French, Russian and Spanish are the working languages of the Committee, i.e. all official languages except Chinese,⁸⁴ the working language of the Court will be primarily English. Public hearings can also be conducted in the official language of the State Party on the territory of which the alleged human rights violation took place, if requested by a party to the case. In practice, for financial and personnel reasons, the United Nations radically reduced its interpretation and translation services, and many documents are no longer translated but exist only in the language in which they were drafted.

Similarly, the judgments, inadmissibility decisions and decisions striking out a case of the Court shall be published in English only and the relevant State language, if requested. Since the judgments of the World Court shall be widely understood in the country concerned in order to be directly enforced by domestic law enforcement bodies in accordance with Article 18 (3) and to serve as precedent for the respective national human rights court, it is essential to provide for a possibility to translate them into the respective national language, even if this is not one of the official languages of the United Nations. Only very important official documents and leading judgments as well as all judgments of the Plenary Court shall be translated in all official languages.

If more than one national language is recognized, the respective Government shall choose which one it wishes to use. Since it would be unrealistic to demand that, in addition to the national language, two or more UN languages should be used as working languages, English was chosen as the only international language because it is today clearly the language most widely understood in different regions of the world. This demands that all judges, the Registrar and other staff shall be fluent in English.

Article 31: Cooperation with the Court

Certainly the most extensive obligations for States to cooperate with an international court are contained in the Statute of the International Criminal Court, which dedicates a whole part of

⁸⁴ With the ratification of the CCPR by China the Rules of Procedure of the Committee will probably be amended in order to include Chinese as working language.

the Statute to this issue (Part 9), starting with a general obligation to cooperate. However, the ICC has to deal with criminal cases and is therefore in need of its Member States' cooperation in a multitude of matters, from the arrest and surrender of a suspect to all kinds of investigative measures and eventually enforcement of sentences of imprisonment. The statutes of the regional human rights courts, on the other hand, do not contain a *general* obligation to cooperate; nevertheless, the vital importance of cooperation between the Courts and the Member States has been frequently stressed by the regional mechanisms.⁸⁵ Explicit obligations to cooperate can be found mainly in more recent human rights treaties, which establish national mechanisms acting as counter-parts for the respective international body, namely in Article 12 OPCAT and Article 37 CRPD.

Similarly, the Statute provides that any State Party is bound to enact a special law which establishes a national court of human rights in accordance with Article 10, which shall also ensure the direct applicability of the relevant international human rights treaties before the national human rights court and which shall provide for the necessary measures required for the implementation of the various obligations under the Statute.

In addition, two areas particularly necessitating cooperation between the Court and the States Parties are highlighted: On the one hand, States Parties shall fully cooperate with regard to individual complaints and third party complaints. A similar obligation can be found in Article 38 (1) (a) ECHR or Article 48 (1) (d) ACHR. According to the ECtHR's jurisprudence on this matter, the obligation to cooperate in the examination of cases includes submission of documentary evidence relating to the case, identifying, locating and ensuring the attendance of witnesses, commenting on documents submitted to the Court, and replying to questions posed by the Court.⁸⁶ These obligations also apply in relation to proceedings against other States Parties, inter-governmental organizations and non-State actors.

The second field of importance mentioned in the present article regards the Court's powers to conduct on-site investigations, as outlined in Article 14 (3).⁸⁷ The obligations of the concerned States Parties to "provide all necessary cooperation and facilitate the investigation" of said provision is complemented by Article 31, which lists in greater detail the obligations

⁸⁵ See, e.g., Council of Europe, Committee of Ministers, States' obligation to co-operate with the European Court of Human Rights, Resolution ResDH(2006)45, available at <https://wcd.coe.int/ViewDoc.jsp?id=1017111&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFB55&BackColorLogged=FFAC75> [16 June 2009].

⁸⁶ See Leach et al., Human Rights & Fact Finding (note 61), p. 13.

to grant the Court representatives carrying out the mission full freedom of movement and inquiry, unrestricted access to authorities and documents as well as the right of access to all places of detention and the right to hold confidential interviews with relevant persons. A State Party can thus not refer to domestic legislation that, e.g., prohibits access and private conversation with detainees.

Article 32: Compliance with and enforcement of judgments and provisional measures

As a specific form of the obligation to cooperate, States Parties shall ensure their full cooperation regarding the domestic enforcement of judgments, orders for provisional measures and reparation orders. This provision explicitly obliges the States Parties to enact domestic laws that allow for implementation of judgments and orders (para. 3). In case the Court awards reparation to a victim of a human rights violation by a State Party, the concerned State would be obliged, e.g., to pay the respective compensatory sum to the victim.

If a non-State actor falling under the jurisdiction of a State Party is found to have violated an individual's right, the State in question is also called upon to assist the Court in enforcing the judgment by means of national legal procedures. Regarding the enforcement of judgments within an inter-governmental organization, it is up to the organization's executive body to comply with the Court's findings. For further details on judgments of the Court and their binding force, execution and supervision see the commentary to Articles 17 and 18.

Article 33: Compliance by non-State actors

The present article complements the provisions on jurisdiction of the Court over inter-governmental organizations, non-governmental organizations, and other non-State actors, including business corporations, as outlined in Article 7 (3) and (4).

Similar to the obligation of States to comply with judgments and orders of the Court, inter-governmental organizations and non-State actors which have made a declaration to recognize the Court's jurisdiction and are a party to any proceedings have a direct obligation to fully cooperate with the Court and implement its judgments and decisions. Non-State actors who become party to a case due to the fact that they are under the jurisdiction of a State Party have

⁸⁷ See, further, Leach et al., Human Rights & Fact Finding (note 61).

to comply with judgments of the Court against them. National implementation laws that are required by Article 32 govern the details regarding execution of judgments and cooperation.

Article 34: Signature, ratification, accession and succession

While some of the international human rights treaties, e.g. CERD, CAT and CRC, contain two separate provisions for signature and ratification on the one hand and accession on the other, the CCPR, CESC, CEDAW and CPED regulate the respective procedures in one single article. Again differently, the CRPD provides two separate articles: one on signature by States and regional integration organizations, and one on ratification by signatory States and formal confirmation by signatory regional integration organizations or accession by States or named organizations who have not signed the Convention. This new procedure makes possible the inclusion of non-State entities in the obligations deriving from the Convention.⁸⁸ On the regional level, the ECHR only speaks of ratification, while the ACHR and the AfCHPR both contain provisions on signature, ratification and adherence.

The present article combines both the regulations on signature and ratification as well as accession; in addition, it goes one step further and adds to the list also the possibility of becoming State Party to the Statute by succession. The Statute is open for signature by all States, not limited to Member States of the United Nations, as for example both Covenants and CERD. According to Article 18 (a) of the Vienna Convention on the Law of Treaties (VCLT), the signature creates an obligation for the State to “refrain from acts which would defeat the object and purpose of the treaty”. By way of ratification, which in most States has to be preceded by an approval of the domestic legislative power, the State expresses its consent to be bound by the treaty. Accession, as an alternative to signature and subsequent ratification, leads to the same end.

Despite the fact that the major international and regional human rights treaties are silent on the question of succession, in practice a considerable number of States have become Parties to diverse human rights treaties by way of succession.⁸⁹ Therefore, succession is explicitly mentioned as one possible means of becoming State Party to the Statute.

⁸⁸ Regarding the inclusion of non-State actors into the present Statute see below, Article 37.

⁸⁹ Cf., e.g., Nowak/McArthur, CAT-Commentary (note 31), pp. 825 et seq.

The Secretary-General of the United Nations is designated depository for signatures and all instruments of ratification, accession and succession. The functions of a depository are regulated in Article 77 VCLT.

Article 35: Entry into force

Comparable statutes or international instruments deal with the question of entry into force differently. For example, the Statute of the ICC came into force on the first day of the month after the 60th day following the date of deposit of the 60th instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations (Article 126 Rome Statute). Regarding UN human rights treaties, the CERD foresaw the 30th day after deposit of the 27th instrument; the two Covenants entered into force after three months of the deposit of the 35th instrument; all the other UN human rights treaties, namely CEDAW, CAT, CRC, CPED and CRPD, entered or will enter into force on the 30th day after the deposit of the 20th instrument of ratification or accession. This model is also followed by the present Statute for the World Court of Human Rights.

On the regional level, there is also no consistency regarding the number of deposited instruments and the time that has to elapse before entry into force. The ECHR, providing for the lowest threshold regarding the number of ratifications, entered into force on the day after the deposit of ten instruments. The AfCHPR foresaw its entry into force three months after reception by the Secretary-General of the African Union (formerly: Organization of African Unity) of the instruments of ratification or adherence of a simple majority of the Member States of the Organization, whereas the Protocol establishing the AfCtHPR entered into force thirty days after the deposit of 15 instruments. Again differently, the ACHR, which also provides for a relatively low threshold and does not foresee any time period, states that the Convention shall enter into force as soon as eleven States have deposited their instruments of ratification or adherence with the General Secretariat of the Organization of American States.

Article 36: Reservations/Declaration on jurisdiction and reservations by States Parties

With regards to the choice of treaties which should fall under the jurisdiction of the Court for each State Party, two different alternatives are proposed. The first proposal foresees a provision that gives States the right to exclude the applicability of certain human rights treaties by means of a reservation. While States have this “opting out” possibility, inter-

governmental organizations and non-State actors which accept the jurisdiction of the Court by means of a declaration in accordance with Article 7(4) have the right to specify those human rights provisions in international human rights treaties which shall be applicable in proceedings before the Court. If States are more cautious at the beginning and exclude certain human rights treaties, e.g. those dealing with economic, social and cultural rights, they have, of course, the possibility to withdraw the respective “opting out” reservation at any later time. Other reservations to the Statute shall not be permissible, similar to Article 120 ICC Statute.

Alternatively, a provision could be inserted into the Statute obliging States at the time of ratification, accession to choose from a list of human rights treaties. Different to inter-governmental organizations and non-State actors, who can also choose to make a respective declaration only with regard to single rights contained in one of the treaties, States must declare the Court to be competent with regard to the whole treaty. This obligation, however, does not exclude that States enter reservations in respect of the treaty, if this is foreseen by the treaty in question. In any event, States will first have to ratify or accede to the substantive human rights treaties enlisted in Annex 1 before they can declare that they recognize the Court’s jurisdiction. No provision obliges States to choose a certain minimum number of treaties, but a State could also declare at the time of ratification or accession that it recognized the Court’s jurisdiction also with regard to merely one treaty, e.g. the CCPR. Nevertheless, such State could declare at any later stage that other treaties should fall under the jurisdiction of the Court, too. In case this alternative is chosen, paragraph 4 of Article 36 excludes the possibility of entering any kind of reservation to the Statute.

In the event of an amendment of the list of treaties contained in Annex 1, the amendment procedure depends on which alternative is chosen, i.e. whether States have to make a reservation with regard to the new treaty or if they can simply remain silent until they wish to make the respective declaration.

Article 37: Declaration by non-State actors

Other actors than States, such as inter-governmental and non-governmental organizations, including business corporations, can be brought into a relationship with the Statute insofar as they explicitly declare that they wish to subject certain rights contained in one of the human rights treaties listed in Annex 1 to the jurisdiction of the Court. Another possibility would have been to insert a provision as contained in Articles 42 and 43 CRPD into the Statute.

Article 42 CRPD opens the Convention to signature also for regional integration organizations. In a second step, such organizations have to formally confirm that they wish to be bound by the Convention. In case they have not signed the Convention, these organizations have also the possibility to accede to it.

Article 44 CRPD specifies the competences of regional integration organizations, i.e. organizations constituted by sovereign States of a given region, to which their Member States have transferred certain competences. Within the limits of their competences, the Convention confers on these organizations the same rights and obligations as on States Parties, such as the right to vote. However, the present Statute does not go that far and limits most provision, where it is not stated otherwise, to States.

In conclusion, the Court can have jurisdiction over inter-governmental and non-governmental organizations, including business corporations, insofar as they have made a declaration in accordance with this article.⁹⁰ Members of the Global Compact should be specifically encouraged to make such declaration and accept, e.g., the Court's jurisdiction over certain economic rights. In addition, these entities should declare the extent of their competence with respect to matters governed by the provisions they wish to confer to the jurisdiction of the Court. Subsequently, they shall inform the UN Secretary-General, who is acting as depositary, of any substantial modification of their competence.⁹¹

Article 38: Withdrawal

According to Article 56 VCLT, States Parties may denounce a treaty in the following cases: if the treaty in question explicitly provides for the possibility of denunciation; if the Parties to the treaty permit denunciation despite the absence of an explicit provision; or if a right to denunciation can be derived from the nature of the treaty.

The existence or omission of a denunciation clause in a human rights treaty has given rise to discussion.⁹² On the one hand, a number of human rights treaties provide explicitly for the possibility to denounce the respective treaty.⁹³ On the other hand, the Human Rights

⁹⁰ In accordance with Art. 7 (3), the Court may also receive individual complaints against non-State actors, such as NGOs and business corporations, if they are subject to the jurisdiction of a State Party, provided that the respective State Party recognized the jurisdiction of the Court regarding the particular treaty and that the human right invoked lend itself to a violation by the respective non-State actor.

⁹¹ Cf. Art. 44 (1) CRPD.

⁹² See, e.g., Nowak/McArthur, CAT-Commentary (note 31), pp. 866 et seq.

⁹³ Cf., e.g., Art. 58 ECHR, Art. 78 ACHR, Art. 21 CERD, Art. 31 CAT, Art. 52 CRC, Art. 48 CRPD.

Committee, in its General Comment on issues relating to the continuity of obligations, has taken the standpoint that at least the two Covenants, which do not contain an expressive norm on denunciation, do “not have a temporary character typical of treaties where a right of denunciation is deemed to be admitted”.⁹⁴ This argument, however, could be applied also to all the other human rights treaties. For more clarity on this issue, Article 38 explicitly provides that once a State has decided to be bound by the Statute it cannot withdraw from the deriving obligations.

Article 39: Amendments to Annex 1

The list of human rights treaties contained in Annex 1 can be amended by a simplified procedure in order to take into account the elaboration of future treaties for the protection of human rights. Depending on the procedure under Article 36, which alternatively foresees that States Parties enter a reservation regarding the treaties contained in Annex 1 for which they exclude the jurisdiction of the Court, or that they make a declaration which human rights treaties should be subject to the jurisdiction of the Court, the procedure following an amendment of the Annex will have to be regulated accordingly. In the first case, States Parties who do not wish to make the newly included treaty subject to the jurisdiction of the Court must immediately after the decision of two-thirds of the Assembly of States Parties enter a new reservation with regard to this treaty in accordance with Article 36 (first alternative). In case the second option is chosen, States must in any case first declare their recognition of the jurisdiction of the Court in relation to a certain treaty.

Article 40: Other amendments of the Statute

Amendments to the Statute of the World Court are regulated differently than the procedure for amendments of most UN human rights treaties, which provide for a rather complex and lengthy process.⁹⁵ Article 40 is partly modelled after Article 121 of the ICC Statute; however, it does not foresee that seven-eighths of States Parties can agree on an amendment, while the dissenting minority is given the opportunity to withdraw from the Statute altogether. Rather, it requires all States Parties to reach consensus regarding any proposed amendment.

⁹⁴ Human Rights Committee, General Comment 26/61 of 29 October 1997.

⁹⁵ Cf., e.g., Art. 51 CCPR, Art. 29 CESC, Art. 29 CAT, Art. 50 CRC.

The procedure is divided into three steps. First, the proposal for an amendment can be brought forward by any State Party or group of States Parties seven years after the entry into force of the Statute. These States submit the proposed text to the Secretary-General of the United Nations, who, acting as depositary of the Statute, has to circulate it to all States Parties. Second, the Assembly of States Parties at one of its next meetings decides by a simple majority of those present and voting, if the proposal is taken up for discussion. Between the notification of the proposed amendment by the Secretary-General and this decision a time period of at least three months is anticipated in order to give States the opportunity to internally review the proposal and come to a decision whether they wish to support the proposal or not. Third, the Assembly of States Parties, after having discussed the proposal – possibly also supported by a working group, which prepares a basis for decision – have to adopt the proposal by consensus. If consensus cannot be reached, the proposal is dismissed. A modified proposal would have to go through the entire procedure outlined above. Thus, it is left to the States Parties who wish to amend the Statute to negotiate with all other States Parties in order to reach consensus.

In case consensus is reached the amendment enters into force thirty days after the deposit of the instruments of ratification of two-thirds of all States Parties. A State who wishes to become Party to the Statute after consensus is reached on an amendment has to ratify or accede to the amended treaty.

Naturally, States Parties also have the possibility to adopt an additional protocol to the Statute. However, since the Statute does not contain any substantive provisions but is merely concerned with procedural articles, such a protocol would also have to be adopted by all States Parties of the Statute.⁹⁶ For its entry into force, the ratification by a qualified majority could be sufficient.

Article 41: Authentic texts

Article 41 reflects a common final clause included in all United Nations human rights treaties as well as the Statute of the International Criminal Court.⁹⁷ It provides that the six official UN languages are equally relevant for the interpretation of the Statute. It can be assumed that the

⁹⁶ Cf. the procedural Additional Protocols Nos. 2, 3, 5, 8, 9, 10, 11 and 14 to the ECHR, which provide for ratification by all States parties as a prerequisite for entry into force.

terms in the Statute have the same meaning in each authentic text.⁹⁸ However, in case terms in the authentic texts should have a different meaning, the general rules of interpretation as contained in Articles 31, 32 and 33 (4) VCLT have to be applied.

In accordance with Article 102 (1) of the UN Charter and Article 80 VCLT, the UN Secretary-General is designated to act as depositary of the Statute. He or she is required to send certified copies of the Statute to all States, not only UN Member States or States Parties to the Statute.

Research Team

The research team consists of Professor Manfred Nowak and Dr. Julia Kozma. Manfred Nowak is Professor for International Human Rights at Vienna University, Director of the Ludwig Boltzmann Institute of Human Rights and UN Special Rapporteur on Torture. He is also member and Rapporteur of the Panel of Eminent Persons entrusted with the task of drafting a Human Rights Agenda. Julia Kozma is senior researcher at the research platform of Vienna University entitled “Human Rights in the European Context”, member of the Management Board of the Ludwig Boltzmann Institute of Human Rights, leader of its research team on human dignity and public security, and independent legal expert for the EU Fundamental Rights Agency.

⁹⁷ Art. 128 Rome Statute, Art. 25 CERD, Art. 53 CCPR, Art. 31 CESCR, Art. 30 CEDAW, Art. 33 CAT, Article 54 CRC; cf. Art. 59 (4) ECHR, which provides that the French and English texts are equally authentic, while the ACHR and the AfCHPR are silent on the question of authentic texts and language in general.

⁹⁸ Cf. Art. 33 VCLT.