

Fall 2004

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### Recommended Citation

Stefan Trechsel, *A World Court for Human Rights?*, 1 Nw. J. INT'L HUM. RTS. 1 (2004).  
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## A WORLD COURT FOR HUMAN RIGHTS?

Stefan Trechsel\*

### I. Introduction

¶ 1 The title of this presentation has a question mark. Indeed, to my knowledge this is the first time that this issue is being considered, and when one thinks of the possibility of creating a new world court for human rights, a plethora of questions come to mind. I had the temerity to accept the task of tackling this subject and to set out some of the questions that arise. In part I shall attempt to give these various questions some order so as to determine whether it is justified to explore the foundations on which such a court would be built. I shall continue with a section speculating as to what a world court for human rights could look like. In fact, the first and the second question seem to me to be closely linked; it is very difficult to decide on the creation of a new institution unless one has relatively specific ideas as to what the institution would be like, in particular what tasks it ought to fulfill. I will conclude with sketches suggesting how the court could operate. I have to admit that I am perhaps not very well prepared for dealing with the subject. Indeed, I teach criminal law and procedure rather than international public law and human rights. However, for almost twenty-five years I have been active in the mechanism for the implementation of the European Convention on Human Rights (ECHR), as a member of the Commission. I was also involved in the reform of the system which came about with the introduction of Protocol Number 11. It will be no surprise, then, that my approach may seem somewhat Eurocentric.

### II. The Essential Questions

¶ 2 Without in any way aspiring to completeness, I believe that three specific questions lie at the core of our subject. First, whether a world court for human rights (WCHR) would be desirable. Second, whether there is a need for such a court and third, whether there is a reasonable chance of actually realizing the plan.

#### *A. Is a World Court for Human Rights Desirable?*

¶ 3 The first question, then, is whether it would be a good thing to have a world court for human rights. The answer tends to be an affirmative one, at least if the person who answers is someone who believes in human rights, the supremacy of law, and the possibility of conflict-solving through the judicial process. I have always found it important to make a clear distinction between human rights activists and human rights lawyers. No need to stress that I would place myself in the second group. Human rights lawyers know the human rights law and try to apply it in a correct way. Human rights activists fight for a specific cause to which—rightly or wrongly—they attach the label “human rights.” They decide themselves whether, in a particular situation, such rights

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are at issue. They fight for individuals, minorities, and causes such as abortion or the right to life of the unborn children. I would not like to pass a value judgment on these approaches—in my view both are legitimate and valuable. It is just important not to mix them up.

¶ 4 I could imagine that human rights activists would not be entirely happy about a world court for human rights. Such a court would of course not only decide in favor of those invoking human rights, but also against them, as the case may be. In so doing, the court would also limit the scope of human rights, possibly in areas where human rights activists reject the limitation. That aspect of the court's activity might cause resentment.

¶ 5 On the other hand, many governments might not regard a world court for human rights as desirable at all. However, at this stage we ought not to be greatly influenced by this; in fact, our examination of the possibility of a new world court aims to find out whether we can gather enough sufficiently convincing arguments in order to persuade governments to agree to a reform that they do not truly desire. Public opinion might lead them to overcome such reluctance.

¶ 6 The answer will finally depend on the level of abstraction one intends to adopt. If one imagines an ideal world, certainly a WCHR is desirable, or an independent institution, be it a section of the (general) World Court. If one looks at the world today, one will have very serious doubts. The conflicts which we read about every day are not of a kind that could be solved by judicial proceedings. Realistically speaking, I really wonder whether today a WCHR is really desirable, whether it would be worth the effort.

#### *B. Is There a Need for a World Court for Human Rights?*

¶ 7 It is my firm belief that desirability would not, in itself, be a sufficient reason to justify the creation of a new institution on a universal level. I am rather skeptical about excessive activism and do not regard it as acceptable to pursue such an important project unless it can be affirmed that there is a necessity for the new institution, a pressing social need. It must be shown that there is a need for judicial protection of human rights on a universal scale. There is already quite an impressive list of bodies which deal with human rights within the framework of the United Nations. Numerous committees have been set up under specialized treaties, including the Committee of Human Rights set up to implement the International Covenant on Civil and Political Rights (ICCPR),<sup>1</sup> the U.N. Human Rights Commission,<sup>2</sup> and the High Commissioner for Human Rights.<sup>3</sup> In recent times, criminal courts have been created after violent conflict and massive human rights violations in the former Yugoslavia,<sup>4</sup> Rwanda,<sup>5</sup> and—

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<sup>1</sup> International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.

<sup>2</sup> U.N. CHARTER, pmbI., arts. 1, 13, 55, 62, 68, 76. (creating the U.N. Human Rights Commission and inserting into the Charter human rights principals).

<sup>3</sup> The United Nations High Commissioner for Human Rights committee documentation is available at <http://www.unhchr.ch>.

<sup>4</sup> Statute of the International Criminal Court for the Former Yugoslavia, U.N. SCOR, 48th Sess., 3217th mtg., U.N. Doc. S/RES/827 (1993).

<sup>5</sup> Statute of the International Criminal Tribunal for Rwanda, U.N. SCOR 49th Sess., 3453rd mtg., U.N. Doc. S/RES/955 (1994).

more recently—Sierra Leone.<sup>6</sup> The Rome Statute,<sup>7</sup> creating an International Criminal Court, has entered into force and the judges have been elected.

¶ 8 However, while all these many bodies can be regarded as dealing in one way or another with the protection of human rights, none can be regarded as a substitute for a world court for human rights. Either they are not judicial bodies—this applies in particular to the various commissions and committees—or they are not directly dealing with human rights issues, which applies to the Criminal Tribunals.<sup>8</sup>

¶ 9 Of course, there is the International Court of Justice. Currently we have two regional courts of human rights. There is the Inter-American Court which so far has produced eighty-five judgments and decisions and sixteen advisory opinions.<sup>9</sup> There is also the European Court of Human Rights which has passed well over a thousand judgments and, if one adds those taken by the Commission, over forty-thousand decisions on admissibility.<sup>10</sup> Although there is not yet an operating African Court of Human Rights, all indications suggest that the continent is moving towards creating such a judicial body.<sup>11</sup> The African Charter on Human and Peoples' Rights entered into force on October 21, 1986.<sup>12</sup> Even more encouraging was the adoption on June 9, 1998, of a Protocol to the African Charter on Human and Peoples' Rights establishing an African Court on Human and Peoples' Rights to supplement the already-existing commission.<sup>13</sup> This protocol will come into force when fifteen of the States have ratified it; currently only eleven States have done so.<sup>14</sup> Neither Asia nor the Pacific region has any comparable institution—there we do not even find a convention on human rights.

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<sup>6</sup> Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone, Freetown, Jan. 16, 2002. Although the Special Court resembles the *ad hoc* Tribunals for Rwanda and for the Former Yugoslavia, it was not created by the Security Council. See William Schabas, *The Relationship between Truth Commissions and International Courts: The Case of Sierra Leone*, 25 HUM. RTS. Q. 1035 (2003).

<sup>7</sup> Rome Statute of the International Criminal Court, U.N. Doc. 32/A/Conf. 183/9 (1998) (reprinted at 37 I.L.M. 999) (hereinafter "Rome Statute").

<sup>8</sup> See STEFAN TRECHSEL, INFLATION IN THE FIELD OF HUMAN RIGHTS (2000).

<sup>9</sup> The judgments can be found on the website of the Corte Interamericana de Derechos Humanos, at <http://www.corteidh.or.cr>.

<sup>10</sup> The text of all the judgments of the European Court of Human Rights and many of the admissibility decisions of the Commission and the Court can be found at <http://www.echr.coe.int/Eng/Judgments>.

<sup>11</sup> See Nsongurua Udombana, *Towards the African Court on Human and Peoples' Rights: Better Late Than Never*, 3 YALE HUM. RTS. & DEV. L. J. 45 (2000); The Association for the Prevention of Torture, *Occasional Paper: The African Court on Human and Peoples' Rights*, at <http://www.apt.ch/africa/African%20Court.pdf>. (Jan. 2000).

<sup>12</sup> African Charter on Human and Peoples' Rights, adopted on June 27, 1981, came into force on Oct. 21, 1986, 21 I.L.M. 58 (1982).

<sup>13</sup> Protocol to the African Charter on Human and Peoples' Rights signed in Uagadougou, Burkina Faso, at the Assembly of Heads of State and Government of the Organization of African Unity (OAU) on June 9, 1998, OAU Doc. LEG/MIN/AFCHPR/PROT./rev. 2 (1997). The text, which is exactly the same as the Draft Protocol, appears in Ibrahim Ali Badawi El-Sheikh, *Draft Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights*, 9 AFR. J. INT'L & COMP. L. 943 (1997).

<sup>14</sup> As of Aug. 19, 2003 the following countries had ratified the Protocol: Algeria (April 22, 2003); Burkina Faso (Dec. 31, 1998); Burundi (April 2, 2003); Gambia (June 30, 1999); Ivory Coast (Jan. 7, 2003); Mali (May 10, 2000); Rwanda (May 5, 2003); Senegal (Sept. 29, 1998); South Africa (July 3, 2002); Togo (June 23, 2003) and Uganda (Feb. 16, 2001). Up-to-date information as to the state of ratifications can be found at the website of the Commission, at <http://www.achpr.org>. See also Jean-Bernard Marie, *International Instruments Relating to Human Rights*, 22 HUM. RTS. L. J. 149, 156 (2001).

¶ 10 It would be tempting to conclude that, as a court of human rights exists on the regional level, there ought to be a similar institution on a global level, a parallel, as it were, to the regional and world treaties. I regard it as premature to make a statement at this point as to whether the argument for necessity has been made out. Next, I want to turn to a very pragmatic question: is there a chance for a world court of human rights to come into existence?

### *C. Does a World Court for Human Rights Stand a Chance?*

¶ 11 I confess that I have rather serious doubts as to whether, at the present time, the idea of creating a new world court for human rights stands much of a chance. The United States, after the horrible attacks of September 11, is focusing on a “war against terrorism.” In the Middle East, it seems that violence is regarded as the only approach to the Palestinian problem—the United States seems to continue its support for Mr. Sharon. Russia welcomes this trend in its struggle to keep Chechnya within the Federation. Violence did not put an end to violence in Iraq. Despite the departure of Charles Taylor, Liberia seems far from appeased. One is tempted to ask which powers actually care about human rights. China? Australia in its approach to refugees?

¶ 12 It is true that the International Criminal Court receives much support notwithstanding the negative attitude of the United States. However, I do not think that this experience can be compared to the issue of a world court of human rights. For one, there were the very massive violations of human rights in various areas of the world including, but not limited to, the former Yugoslavia, Rwanda, and Sierra Leone. The atrocities committed called for an answer in criminal law. Those who decided to create the International Criminal Court were convinced that this court would be called upon to try others, individual villains. Most of the States approving the court very probably thought that it would not be used to try their nationals and, if so, were prepared to dissociate themselves from such criminals even if they were in possession of their passport.

¶ 13 A court of human rights is an entirely different matter. Here, the defendants are not individuals but States. Back in 1950, when the European Convention on Human Rights and Fundamental Freedoms<sup>15</sup> was adopted, the High Contracting Parties were convinced that this would be of little relevance to themselves. Experience has shown that this was an error. Sweden, to take but one example, was particularly self-satisfied for many years. Suddenly, an application was brought by Mr. Sporrang and Mrs. Lönnroth.<sup>16</sup> The Commission and Court came to the conclusion that a number of fundamental rights had been violated.<sup>17</sup> This triggered a long series of applications regarding the lack of judicial protection in administrative matters; later on there came a series of allegations, not all of them ill-founded, regarding unjustified interferences by the State with the right to respect for family life, and many more followed.

¶ 14 It can be assumed that these developments have not gone unnoticed. Today, States will be aware of the fact that none of them are immune from allegations of violations of fundamental rights. The process of being publicly accused of having violated human rights is something that States wholeheartedly dislike. They may, today, be much more reluctant to agree to submit to such a system of control.

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<sup>15</sup> European Convention of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 221.

<sup>16</sup> Sporrang and Lönnroth v. Swed., 23 Eur. Ct. H.R. (ser. A) at 52 (1982).

<sup>17</sup> *Id.*

¶ 15 Furthermore, countries adhering to a regional system may see little purpose in joining an additional universal one; this objection, however, does not seem to be particularly strong. In fact, most of the countries that are party to the European Convention of Human Rights have also ratified the U.N. Covenant and have even accepted the possibility of individual communications under the Protocol.<sup>18</sup> The justification for this extra protection cannot lie in the operation of the system for the country; however, it must be seen as a step which demonstrates solidarity with countries in other parts of the world which participate in the universal system. The same reason might work with regard to a WCHR.

¶ 16 Yet, the European experience is not entirely encouraging if one looks at the European Union. For many years now there has been discussion as to whether the E.U. should ratify the ECHR.<sup>19</sup> It would certainly be very warmly welcomed by the Council of Europe. The European Court of Justice, however, gave an advisory opinion stating that this would presuppose an amendment to the treaty.<sup>20</sup> So far, no such amendment has been adopted; although recently it seems to have come under serious consideration. The Union has recently adopted a Charter of Fundamental Rights<sup>21</sup> which was elaborated on by a prestigious “Convention.” However, this Charter was given the form of a mere Declaration. No mechanism of implementation has been adopted.

¶ 17 Finally, on an even more practical level, it should be kept in mind that an international court is a rather expensive affair. Actually, lack of resources is one of the main problems of the European Court of Human Rights. The United Nations, like the Council of Europe and contrary to the European Union, is not exactly a model of prosperity. It may be difficult to convince States to pay further contributions to an international organization in view of the fact that the criminal tribunal will already be a rather costly affair.

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<sup>18</sup> Optional Protocol to the International Covenant on Civil and Political Rights, adopted on Oct. 16, 1966, entered into force on Mar. 23, 1976, 999 U.N.T.S. 302. For a list of countries which have made a declaration regarding Article 41 see Jean-Bernard Marie, *International Instruments Relating to Human Rights*, 23 HUM. RTS. L. J. 111, 118 (2002).

<sup>19</sup> See, e.g., Bultrini, *L'interaction entre le Système de la CEDH et le Système Communautaire*, in 4 ZEITSCHRIFT FÜR EUROPARECHTLICHE STUDIEN 493-504 (1998); Clapham, *Human Rights and the European Community: A Critical Overview 1991*, in 1 EUROPEAN UNION: THE HUMAN RIGHTS CHALLENGE (Cassese et al. eds., 1991); A. Drzemczewski, *The Internal Application of the European Human Rights Convention as European Community Law*, 30 INT'L & COMP. L.Q. 118 (1981); P. Drzemczewski, *The Council of Europe's Position with Respect to the EU Charter of Fundamental Rights*, 22 HUM. RTS. L. J. 14 (2001); Jacque, *The Convention and the European Communities*, in THE EUROPEAN SYSTEM FOR THE PROTECTION OF HUMAN RIGHTS (Macdonald et al. eds., 1993); KUTSCHER, DER GRUNDRECHTSSCHUTZ IM EUROPÄISCHEN GEMEINSCHAFTSRECHT (1982); LECLERC, L'UNION EUROPÉENNE ET LES DROIT FONDAMENTAUX (1999); MENDELSON, THE IMPACT OF EUROPEAN COMMUNITY LAW ON THE IMPLEMENTATION OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS (1984); Mendelson, *The European Court of Justice and Human Rights*, Y.B. EUR. L. 121 (1981); MOSLER, GRUNDRECHTSSCHUTZ IN EUROPA (1976); *Perspectives of an All-European System of Human Rights Protection: The Role of the Council of Europe, the CSCE, and the European Communities*, 1 ALL-EUR. HUM. RTS. Y.B. (Kędzia et al. eds., 1991); TAVERNIER, QUELLE EUROPE POUR LES DROITS DE L'HOMME? LA COUR DE STRASBOURG ET LA RÉALISATION D'UNE “UNION PLUS ÉTROITE” (35 années de jurisprudence: 1959-1994) (1996); Toth, *The European Union and Human Rights: The Way Forward*, 34 COMMON MKT. L. REV. 491 (1997); Weiler & Lockhard, *Taking Rights Seriously: The European Court of Justice and its Fundamental Rights Jurisprudence* 32 COMMON MKT. L. REV. 51, 579 (1995).

<sup>20</sup> Opinion 02/94, Accession by the Cmty. to European Convention for the Prot. of Human Rights and Fundamental Freedoms, 1996 E.C.R. I-01759.

<sup>21</sup> Charter of Fundamental Rights of the European Union, 2000 O.J. (C 364) 1.

¶ 18 At the end of this first chapter, I leave the question mark and even print it bold. Although it does not seem premature to say that the case for a WCHR is a rather weak one and the prospects of creating such an institution are bleak, let us now examine what a WCHR could look like.

### III. What Kind of a Court?

¶ 19 I do not think that there is any chance of “selling” a WCHR unless one gives the product a shape and constructs a model of what such a court would actually look like. Let us not forget that the International Association for Penal Law and the International Law Association had been working on draft statutes for an International Criminal Court many years before the impetus started that led to the adoption of the Rome Statute.<sup>22</sup> The possibilities I wish to explore, again, without pretending that this is definitive, include the status of the court, its competence, its proceedings and its relationship to other institutions.

#### A. *The Status of the Court*

¶ 20 I can imagine three different models, as far as the status of the court is concerned: a sibling to the ICJ; a court in its own right like the ICC; and a court as the top part of a world-wide judicial pyramid. For simplicity I shall call them the “Sibling Model,” the “ICC-Model,” and the “Pyramid Model.”

##### 1. The Pyramid Model

¶ 21 Some twenty-years ago, in a lecture on “[h]uman rights in the twenty-first century,”<sup>23</sup> I already ventured to propose a world court for human rights. I am a recidivist on this subject. The idea corresponds to what I now call the “Pyramid Model.” The idea was that the system of regional instruments for the protection of human rights ought to be expanded throughout the whole world. In particular, the African, American, and European models ought to be followed in Asia and the Pacific region, including Australia. It goes without saying that the regional systems gradually ought to be assimilated to each other on the European standard. The role of the WCHR would be to ensure a uniform interpretation of the world human rights law. On the “substantive side” there would have to be codification of the world human rights law which would take as a starting point the international covenants, in particular the ICCPR, adjusting it here and there, as the case may be, with elements taken from regional instruments. The world court, in other words, would be an ultimate court of appeals.

¶ 22 This model is certainly not a short-term project. I guess it might take thirty to fifty-years to realize, as it is meant to grow from the bottom up. If the construction could successfully be done, it would be a relatively solid and simple model. But it is so far-reaching that I find it difficult to discuss it in any detail. I seem to understand that the present conference is a modern one in the sense that it is built on impatience rather than patience. A flaw in the “Pyramid Model” might also be its “straightness.” It follows the plan of organic and harmonic growth. Yet, in the theory of economic

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<sup>22</sup> Rome Statute, *supra* note 7.

<sup>23</sup> Stefan Trechsel, *International Implementation of Human Rights in the 21st Century*, KEIO L. REV. 121 (1993).

development, an interesting theory was put forward by Albert O. Hirschman in the middle of the last century: the model of unbalanced growth.<sup>24</sup> In order to get ahead it may often be preferable not to go step-by-step but to go too far in one sector, so that there is an incentive for other sectors to follow suit. It is from this perspective that I shall examine the two other models.

## 2. The ICC Model

¶ 23 One could envisage the creation of a world court for human rights on the model of the ICC. After appropriate preparative work, an international conference would be called, such as that which was held in Rome. A statute would be adopted which would enter into force after a certain number of ratifications had been obtained. This might have the advantage of containing the opposition against such a court. There would be no requirement of a two-thirds majority.<sup>25</sup> The statute could enter into force for a certain number of states willing to submit to international jurisdiction in the area of human rights. That court would, however, be an “international” rather than a “World” Court.

## 3. The Sibling Model

¶ 24 Finally, the WCHR could be built in accordance with the model of the ICJ. This would require an amendment to the Charter of the United Nations. It could be a very tortuous and difficult road as a two-thirds majority would be required. On the other hand, however, this road would provide the highest authority for a human rights court, authority that might be dearly needed.

¶ 25 The following discussion will be based on the Sibling Model, although there would not be considerable differences if the ICC Model were chosen.

### *B. The Competencies of the World Court for Human Rights*

#### 1. Ratione personae

¶ 26 The competence of a court *ratione personae* can be divided into active and passive aspects. The active aspect answers the question regarding who would be able to take a matter to the court. The passive aspect asks who could be a defendant.

##### *a) The active aspect*

¶ 27 Who should be entitled to bring applications alleging violations of human rights before the world court? Various options must be examined.

¶ 28 First, the natural answer in an international setting would be that States and only States have the right to apply to the world court. This is the procedure with regard to the ICJ. It would, therefore, seem to be the appropriate answer if one were to opt for the “sibling to the ICJ-model.”

¶ 29 However, experience makes me skeptical as to the soundness of this proposal. One might expect that the inter-state application as an instrument of collective responsibility for the collective protection of human rights would be put to use.

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<sup>24</sup>ALBERT O. HIRSCHMAN, 4 THE STRATEGY OF ECONOMIC DEVELOPMENT (1958).

<sup>25</sup> Compare U.N. CHARTER art. 108.

However, this has happened only rarely. During the first fifty-one years of the existence of the European inter-state model, only nineteen such applications were brought.<sup>26</sup> If one looks at them more closely, it turns out that with the exception of three cases, the background of the application was always a serious conflict between the applicant and the defendant State; this applies to the two applications brought in 1956 by Greece against the United Kingdom in connection with Cyprus;<sup>27</sup> to the application of Austria v. Italy<sup>28</sup> concerning problems in the Southern Tyrol; to Ireland v. United Kingdom,<sup>29</sup> and to the applications brought by Cyprus against Turkey.<sup>30</sup> The exceptions are two applications brought by four countries against Greece during the Colonels' regime established in 1967<sup>31</sup> and the application brought by five countries against Turkey after the military had taken over in 1982.<sup>32</sup> Finally, there is the application brought by Denmark against Turkey,<sup>33</sup> which concerned the case of a Danish journalist who had been imprisoned and which lies between the two poles.

¶ 30 One specific feature of these applications must be mentioned: They have demonstrated that States are not always very diligent applicants when they act merely in the public interest.<sup>34</sup>

¶ 31 I am prepared to accept that on the universal level there are considerably more problems between States which could lead to a larger number of inter-state applications. Still, I am afraid that restricting access to the court to States would not justify the creation of such an institution. Article 41 of the ICCPR sets out a provision permitting inter-state applications.<sup>35</sup> This is an optional clause and only permits applications where a State has expressly and separately stated its willingness to comply with the article. By the end of 2001, forty-seven of 144 member-states had signed Article 41.<sup>36</sup> The effectiveness (or otherwise) of this procedure is aptly described by Alston and Steiner who, in 2000, state that, "no inter-state application has ever been brought under any of the U.N. based treaty procedures."<sup>37</sup> The American Convention on Human Rights also provides an optional clause for the possibility of an inter-state procedure in Article 45,<sup>38</sup> however, to date only ten member-states have signed this.<sup>39</sup>

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<sup>26</sup> P. VAN DIJK AND G.J.H. VAN HOOF, *THEORY AND PRACTICE OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS* 43 (3<sup>rd</sup> ed. 1998).

<sup>27</sup> Greece v. UK, App. no 299/57, 2 YB 186 (1957); Greece v. UK, report of 5 Nov. 1969, Yearbook XII (1969).

<sup>28</sup> Aus. v. Italy, 1963 Y.B. Eur. Conv. on H.R. 740 (Eur. Comm'n on H.R.).

<sup>29</sup> Ir. v. U. K., 25 Eur. Ct. H.R. (ser. A) (1978).

<sup>30</sup> Cyprus v. Turk., App. no. 6780/74 and 6950/75, 4 Eur. H.R. Rep. 482 (1976) (Comm. Rep.); Cyprus v. Turk., App. no. 8007/77, 13 Eur. Comm'n H.R. Dec. & Rep. 85, 146 (1978).

<sup>31</sup> Den., Nor., & Swed. v. Greece, App. no. 4448/70, 13 Y.B. Eur. Conv. on H.R. 108 (Eur. Comm'n of H.R. (1970)).

<sup>32</sup> Fr., Nor., Den., Swed. & Neth. v. Turk., App. no. 9940/82, 1983 Y.B. Eur. Conv. on H.R. 1 (Eur. Comm'n on H.R.).

<sup>33</sup> Den. v. Turk., App. no. 34382/97, 2000 Y.B. Eur. Conv. on H.R. (Eur. Comm'n on H.R.), available at <http://www.echr.coe.int/Hudoc.htm>.

<sup>34</sup> Bound by the obligation of secrecy, I cannot be more specific.

<sup>35</sup> International Covenant on Civil and Political Rights, art. 41, Dec. 16, 1966, 999 U.N.T.S. 171.

<sup>36</sup> This is correct as of Jan. 1, 2002. See Jean-Bernard Marie, *International Instruments Relating to Human Rights*, 23 HUM. RTS. L. J. 111, 117 (2002).

<sup>37</sup> HENRY J. STEINER & PHILIP ALSTON, *INTERNATIONAL HUMAN RIGHTS IN CONTEXT: LAW, POLITICS, MORALS* 776 (2d ed. 2000).

<sup>38</sup> American Convention on Human Rights, art. 45, July 8, 1978, 1144 U.N.T.S. 123.

<sup>39</sup> See Jean-Bernard Marie, *International Instruments Relating to Human Rights*, 23 HUM. RTS. L. J. 111, 118 (2002). The member states are Argentina, Bolivia, Chile, Columbia, Costa Rica, Ecuador, Jamaica, Peru, Uruguay, and Venezuela.

¶ 32 The other extreme would consist of following the examples of the Inter-American<sup>40</sup> and European Conventions,<sup>41</sup> where we find the right to individual applications. Here the recent European experience must serve as a warning. In fact, for quite a number of years now there has been a steady and alarming increase in applications each year. At present, more than sixty-five thousand applications are pending before the Court.<sup>42</sup> Efforts are being made to reform the system so as to reduce the back-log and process the avalanche of incoming applications. However, this is a very difficult task if one is not prepared to drastically limit the practical scope of the right to individual applications. I do not envisage a world court for human rights with a right to individual applications as being practically reasonable.

¶ 33 Could there be an intermediary solution? It seems to me that at least this terrain ought to be explored. The States' right to apply would remain the backbone of the system. In addition, the right might be granted to certain institutions of the United Nations. One might think of the Human Rights Committee. I would be very hesitant, because this has been clearly shown to be a political organ to which no judicial functions ought to be entrusted.

¶ 34 One might give the right to file applications to the Commissioner for Human Rights. This could be an efficient instrument, but it would lie in the hands of a single person. It is true that there is also one single public prosecutor entitled to indict war criminals before international criminal courts and tribunals. On the other hand, this concerns actions against individuals and not against States. I rather doubt whether States would be prepared to vest so much power in one official. One might also consider the Secretary General of the United Nations or the Security Council, but these are necessarily even more political than the Human Rights Commission.

¶ 35 To enlarge the competence of the WCHR, one could also grant the right to apply to international organizations such as the European Union or the Organization of American States. However, the probability that such institutions would act usefully as plaintiffs is even more doubtful than is the case in relation to State parties.

¶ 36 What I would regard as an interesting possibility would be to grant a right of petition to a limited number of non-governmental organizations such as Amnesty International, the International Helsinki Foundation for Human Rights, or the International Commission of Jurists. If that road were further explored, strict criteria ought to be established for an international non-governmental organization ("NGO") to be included in the list of those permitted to apply. I see a considerable danger in this variant. Individuals could approach the organizations and implore them to bring applications in their case. They might write to several or all NGOs who are able to apply. There would then be a problem of coordination. Also, the NGOs would probably have to develop some sort of rules as to which cases they would take to the WCHR. In effect, they might, as private organizations, assume a role similar to that of the European Commission of Human Rights during its existence. I confess that I do not regard such a mixed set-up for the world-wide protection of human rights as very desirable.

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<sup>40</sup> Inter-American Convention on Human Rights, O.A.S. T.S. No. 36, 1144 U.N.T.S. 123.

<sup>41</sup> Convention for the Protection of Human Rights and Fundamental Freedoms, opened for signature on Nov. 4, 1950, E. T.S. No. 4.

<sup>42</sup> According to the information supplied to the author by the Registry of the European Court of Human Rights, as of Oct. 21, 2003, there were 65,019 cases pending on that date.

¶ 37 I think that the problem of who should have the right to apply to the WCHR might be one of the most difficult problems to be solved. Either the list is too narrow and the court might risk being under-occupied as was the case for the ICJ for a long time; or it is too broad and there is a risk of the system spiraling out of control, as is the case in Strasbourg today.

*b) The passive aspect*

¶ 38 Who should have locus standi as a defendant before the WCHR? Again, the first and obvious answer is: States. However, it might be worthwhile considering whether the list ought to be extended. In particular, the question arises whether international organizations should be included. For very many years, there has been a lively discussion as to whether the European Union should ratify the European Convention on Human Rights.<sup>43</sup> The Council of Europe has always held the view that this would be the best solution.<sup>44</sup> I cannot expand on this, but it seems rather obvious to me that the issue ought at least to be thoroughly examined in the context of the creation of a world court for human rights. The same might apply to NATO. I wish to recall that the European Court of Human Rights has rejected an application—Bankovic—against a number of High Contracting Parties.<sup>45</sup> The complaint concerned the bombing of RTS Belgrade. In a very elaborate and learned reasoning, the Court declared the application inadmissible because the defendant-States had not exercised their jurisdiction.<sup>46</sup> With due respect, while the legal arguments may look convincing, it is hard to understand why a State should be able to kill people abroad by dropping bombs and then escape responsibility for the violation of the most valuable human right—the right to life—under the pretence that it did not exercise jurisdiction.

¶ 39 In a more visionary perspective, one could imagine a further extension. It is a fact that nowadays enormous power lies with the largest economic entities. I do not only think of the World Bank and the International Monetary Fund, but also of the largest corporations such as Nestlé, Coca-Cola, General Motors, British Petroleum, Phillip Morris or Mitsubishi. Of course, specific and detailed criteria would have to be established in order to identify those corporations which could be a target for applications to a world court for human rights. I would hardly hesitate to say that, as far as the substance is concerned, such an innovation would be entirely justified. One cannot seriously doubt the fact that multinational corporations have an enormous amount of power which in many ways is likely to interfere with human rights. On the other hand, however, I wish to state that I do not regard the prospect of expanding the competence of the court we are discussing to that field as particularly realistic.

2. Ratione materiae

¶ 40 When we speak about a world court of human rights, we also have to specify what we mean by “human rights.” Again, a number of options present themselves. There is the possibility of taking the U.N. Covenants of 1966, at least the

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<sup>43</sup> See Bultrini, *supra* note 19.

<sup>44</sup> For example, see the press release issued by the Registrar of the European Court of Human Rights on Jan. 28, 2003 in which the president of the Court renewed his call for the E.U. to accede to the ECHR, available at <http://www.echr.coe.int/eng/press/2003/jan/pressconference2003.htm>.

<sup>45</sup> Bankovic v. Belg. & 16 Other Contracting States, App. no. 52207/99, 41 I.L.M. 517 (2002), available at <http://www.echr.coe.int>.

<sup>46</sup> *Id.*

second one regarding civil and political rights.<sup>47</sup> However, even here some caution is indicated. I am thinking of Article 1, which we also find in the first Covenant,<sup>48</sup> which guarantees the right to self-determination. I have very serious doubts as to whether this right can be regarded as justiciable. Let us take the example of the so-called “TRNC,” the Turkish part of the Island of Cyprus. The Turkish Cypriots discuss the issue of self-determination but agree that such a right could hardly be enforced by an international body.<sup>49</sup> A “people” which is not a State will find it difficult to be accepted as an applicant at all. The main problem of the “TRNC” is the fact that, with the exception of Turkey, no State has recognized it. The “TRNC,” therefore, leads the life of a phantom state, only marginally independent of Turkey. Could it be for a world court to decide on their status, to disentangle the problems of this island?<sup>50</sup> I have the most serious doubts, especially considering that recognition is mainly a political act.<sup>51</sup>

¶ 41 At any rate, nowadays it would hardly be acceptable to limit the notion of human rights to the civil and political rights of the Second Covenant. There is no reason to exclude totally and from the outset the economic, social and cultural rights of the First Covenant. Furthermore, in my view, racial discrimination, religious discrimination, discrimination against women, the rights of the child, the prohibition of torture, etc., should all be included in the special instrument.

¶ 42 One of the particularly difficult questions is the issue of justiciability to which I have already referred. It arises particularly in the context of the First Covenant. Does it make sense to have the court decide whether, for example, the right to work,<sup>52</sup> the right of assistance to the family,<sup>53</sup> or the right to enjoy and mental health,<sup>54</sup> have been violated? I confess that the answer, in my view, ought to be in the negative. However, it would be going far too far if one were simply to exclude social rights.<sup>55</sup> The European Court of Human Rights has quite rightly pointed out that it is not possible to draw a sharp line between those two categories of fundamental rights.<sup>56</sup> One might be tempted to leave it to the court to solve the problem case-by-case. However, while this might lead to acceptable results, provided the judges are human rights lawyers rather than human rights activists, I see very serious problems with the “consumers” of human rights. The unemployed could, on reading the relevant texts, expect that the court should ensure that they be able to find remunerated work. I fear that the resulting disappointment could have a very negative effect on the reputation of the court. When establishing the statute of a world court of human rights it would therefore be necessary to identify the rights whose violation could be alleged in judicial proceedings. This might be rather complicated if it consisted of references to various human rights instruments. It might, therefore, be worthwhile to envisage a proper codification of universally recognized human rights—a comprehensive code which would make a clear distinction between rights which could be invoked before the world

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<sup>47</sup> International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.

<sup>48</sup> International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3, art 1.

<sup>49</sup> Personal communication of the advisors of President Denktas to the author.

<sup>50</sup> See *Loizidou v. Turk.* (Preliminary Objections), 310 Eur. Ct. H.R. (Ser. A) (1995).

<sup>51</sup> MALCOLM N. SHAW, *INTERNATIONAL LAW* 295 (4th ed. 1997).

<sup>52</sup> International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3.

<sup>53</sup> *Id.* at art. 10.

<sup>54</sup> *Id.* at art. 12.

<sup>55</sup> See, e.g., Ghristoph Gusy, *Les droits sociaux sont-ils nécessairement injusticiables?* in *LES DROITS SOCIAUX OU LA DEMOLITION DE QUELQUES PONCIFS* (Grewé et al. eds. 2003).

<sup>56</sup> See generally European Court of Human Rights.

court and others which could not. Among the rights to be excluded would be those set out, *inter alia*, in Article 1 of both Covenants.

### 3. Ratione loci

¶ 43 There should be no limitations on the competence of the court *ratione loci*—whenever an entity which has *locus standi* as a defendant before the court exercises its jurisdiction, the court may decide on the alleged violations of human rights. Thus, Turkey is responsible for human rights violations in the North of Cyprus.<sup>57</sup>

### 4. Ratione temporis

¶ 44 As far as the competence of the court—*ratione temporis*—is concerned, I see no specific problems. The issue is, however, far from simple—problems arise especially with regard to proceedings which commenced before the entry into force of the law but which were ongoing and which thus constituted a “continuing situation.” The issue has been dealt with in a number of decisions and academic papers in relation to the ECHR.<sup>58</sup> I see no reason to elaborate in the present context.

¶ 45 It would also be recommendable to introduce a time-limit within which an application must be brought, e.g., six months after the event complained of. Otherwise it must be expected that the court will be abused in order to regulate disputes of a historical character. The European Commission of Human Rights had to deal with quite a number of such allegations, e.g., after the accession of the former communist European countries.<sup>59</sup>

## C. *Proceedings*

### 1. Principle

¶ 46 As a matter of principle, the proceedings of the world court for human rights, at least if one adopts the “sibling model,” should follow those of the International Court of Justice with a few exceptions.

### 2. Fact-Finding

¶ 47 It might be necessary to establish a special commission of inquiry to establish the facts in cases where they are contested. The European experience has shown that such fact-finding may be rather difficult and onerous. It may be necessary to go to the area where the violation is alleged to have taken place and where the witnesses can be found. Specific rules must be adhered to; the delegates of the Commission often made up the rules *ad hoc* following the judicial tradition of their own background and precedents in earlier missions of inquiry. It would be preferable if the world court established regulations in advance.

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<sup>57</sup> *Loizidou v. Turk.* (Preliminary Objections), 310 Eur. Ct. H.R. (Ser. A) (1995); *see also* *Bankovic v. Belg. & 16 Other Contracting States*, App. no. 52207/99, 41 I.L.M. 517 (2002).

<sup>58</sup> *See, e.g.*, Max Sorensen, *Le problème inter temporel dans l'application de la Convention Européenne des Droits de l'Homme* in *MELANGES OFFERTS À POLYS MODINOS* 304 (1986); Ronny Abraham, *Article 25 in LA CONVENTION EUROPEENNE DE DROITS DE L'HOMME* 579, 581 (Pettiti et. al. eds. 1999).

<sup>59</sup> *See* JOCHEN FROWEIN AND WOLFGANG PEUKERT, *EMRK-KOMMENTAR* n. 21 (1996).

¶ 48 One may doubt whether it would be justified to have, from the outset, a permanent instrument of inquiry. It might be preferable to establish rules which, as the case might arise, would regulate the formation of ad hoc units. This could be a procedure similar to that used in order to select judges ad litem for the ICTY, i.e., a number of personalities with appropriate skills could be appointed and trained, while they would only be actually named ad hoc for specific missions.<sup>60</sup>

### 3. Advisory Opinions

¶ 49 In human rights issues, the scope for advisory opinions is somewhat limited. The European Court has no such practice at all. I do not always find the opinions of the Inter-American Court convincing and the same applies to the “general comments” produced by the International Committee for Human Rights.

¶ 50 The problem lies in the fact that very often the details of a specific case determine the outcome of the proceedings. Cases like the “death-on-the-rock” case<sup>61</sup> concerning the killing of three suspected terrorists in Gibraltar by members of the United Kingdom SAS, or the killing of Lefteris and Elsi in the case of *Andronicou and Constantinou v. Cyprus*<sup>62</sup> are striking examples. Put in more theoretical terms: There are matters which can be dealt with in an advisory opinion. For instance, it would be possible for a court to state that the time within which an arrestee must be brought before a judge cannot exceed three days except in the case of technical impossibility. However, it might not be advisable for the court to say that criminal or civil proceedings may not exceed a length of so and so many months or years. It might be wise, if one does allow for advisory opinions, to give the court wide discretion to decide whether a question is fit to be answered in such an opinion.

¶ 51 The statute of the International Court of Justice has special rules setting out who is entitled to ask for an advisory opinion.<sup>63</sup> In particular, this includes bodies authorized “by or in accordance with the Charter of the United Nations to make such a request.”<sup>64</sup> If the right to appeal to the court were to be limited to States, such an extension might be envisaged for advisory opinions.

### 4. Provisional Measures

¶ 52 Article 41, paragraph 1, of the Statute<sup>65</sup> provides for provisional measures and in *LaGrand*<sup>66</sup> the ICJ decided that these measures are obligatory, legally binding. I would strongly suggest that the same power ought to be given to the world court of human rights. I must add that this is by no means an easy matter. In the European theatre, both the Commission and the Court adopted rules on this issue in their rules of procedure.<sup>67</sup> They gave themselves the competence to draw the attention of respondent

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<sup>60</sup> See FRANÇOISE HAMPSON, *STUDY ON HUMAN RIGHTS PROTECTION DURING SITUATIONS OF ARMED CONFLICT, INTERNAL DISTURBANCES AND TENSIONS*, prepared for the Council of Europe’s Committee of Ministers’ Steering Committee for Human Rights, Strasbourg, Oct. 31, 2001, CDDH 21 (2001).

<sup>61</sup> *McCann v. U.K.*, 324 Eur. Ct. H.R. (ser. A) (1995).

<sup>62</sup> *Andronicou and Constantinou v. Cyprus*, 1997-VI Eur. Ct. H.R. 2059.

<sup>63</sup> See International Court of Justice Statute, June 26, 1945, 59 Stat. 1055, 3 Bevens 1179.

<sup>64</sup> *Id.* at art. 65, para. 1.

<sup>65</sup> *Id.* at art 41, para. 1.

<sup>66</sup> *LaGrand (F.R.G. v. U.S.)*, 2001 I.C.J. 104 (June 27).

<sup>67</sup> See, e.g., Rule 39 (formerly Rule 36) of the Rules of the Court which provides for the imposition of interim measures, available at <http://www.echr.coe.int/Eng/EDocs/RULES%20OF%20COURTNOV2003.htm>.

governments to applications where some irreparable danger was threatening.<sup>68</sup> They concerned primarily cases of foreigners about to be expelled or extradited to countries in which they risked ill-treatment or unlawful killing.<sup>69</sup> The Commission or the Court would indicate to the parties “any interim measure the adoption of which seems desirable in the interest of the parties for the proper conduct of the proceedings before it.”<sup>70</sup> As you may know, in the case of *Cruz Varas v. Sweden*,<sup>71</sup> the Court, contrary to the Commission and by a tiny margin of ten votes to nine, decided that disregard of such an indication did not constitute a violation of the State’s duty not to interfere with the exercise of the right of petition. When the mechanism of implementation of the European Convention underwent fundamental reform—the reform which finally took the form of Additional Protocol Number 11,<sup>72</sup> abolishing the Commission and establishing a full-time Court—the issue of interim measures was also raised. Only two governments were prepared to even consider such a rule. It would have introduced a supra-natural element in the powers of the Court and affected the character of the protective mechanism as such. It might not be easy to convince States on a world level to accept a similar clause, although the ICJ has for the first time in *LaGrand*<sup>73</sup> affirmed the binding character of provisional measures ordered under Article 41 of its Statute.<sup>74</sup> Indeed, and probably under the influence of the *LaGrand* judgment, the European Court of Human Rights has changed its case law and declared “injunctions” under Rule 39 of the Rules of the Court to be obligatory.<sup>75</sup>

## 5. The Execution of Judgments

¶ 53 Let me finally approach the issue of the execution of judgments. This is a matter which does not really belong to the sphere of the judiciary but to that of the executive. In the Council of Europe, the Committee of Ministers is charged with the supervision of the execution of the Court’s judgments. It does so mainly by asking the States concerned for information until it gets satisfactory answers which allow it to take a resolution according to which no further steps must be taken in the matter.<sup>76</sup> By and large, all judgments of the Court have been executed; although this was not always easy or speedy. For instance, after the *Marckx v. Belgium*<sup>77</sup> judgment, which found a violation due to the unsatisfactory status Belgian law granted to children born out of wedlock, it took no less than ten-years as well as a second similar application to bring

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<sup>68</sup> For an overview of the mechanism, see Norgaard & Krüger, *Interim and Conservatory Measures under the European System of the Protection of Human Rights*, in *FESTSCHRIFT FÜR ERMACORA: FORTSCHRITT IM BEWUSSTSEIN DER GRUND UND MENSCHENRECHTE* 109 (Nowak et al. eds. 1988).

<sup>69</sup> See, e.g., *Mamatkulov and Abduasulovic v. Turkey*, App. Nos. 46827/99 and 46951/99, Eur. Ct. H.R. judgment of Feb. 6, 2003.

<sup>70</sup> Rules of Procedure of the European Commission on Human Rights, 36 Y.B. on H.R. 140 (1994); 1978 International Court of Justice Rules of the Court, R. 30, Acts and Docs. 133-35.

<sup>71</sup> *Cruz Varas v. Swed.* No. 201, 14 Eur. H.R. Rep. 1 (ser A) (March 1991).

<sup>72</sup> Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, E.T.S. No. 155, May 11, 1994.

<sup>73</sup> *LaGrand (F.R.G. v. U.S.)*, 2001 I.C.J. 104 (June 27).

<sup>74</sup> International Court of Justice Statute, art. 41, June 26, 1945, 59 Stat. 1055, 3 Bevans 1179.

<sup>75</sup> See *Mamatkulov and Abduasulovic v. Turkey*, App. Nos. 46827/99 and 46951/99, Eur. Ct. H.R. judgment of Feb. 6, 2003. For the Rules of the Court, see *supra* note 70.

<sup>76</sup> The Committee of Ministers supervises the execution of judgments of the European Court of Human Rights. The Deputies hold regular meetings (“DH meetings”) to exercise the Committee’s functions under Articles 32 and 54 of the European Convention on Human Rights and Article 46 of the Convention as amended by Protocol No. 11. Documentation for these meetings takes the form of the Annotated Agenda and Order of Business, which is made public following each meeting. For details of the Resolutions see [http://cm.coe.int/site2/ref/dynamic/resolutions\\_hr](http://cm.coe.int/site2/ref/dynamic/resolutions_hr).

<sup>77</sup> *Marckx v. Belgium*, 31 Eur. Ct. H. R. (ser. A) (1979).

about a change in the legislation.<sup>78</sup> In the case of *Stran Greek Refineries and Stratis Andreadis v. Greece*,<sup>79</sup> the Court awarded compensation for confiscation and expropriation amounting to some thirty-million dollars. It took a long time to persuade the government concerned to execute this judgment, in particular as the applicant was anything but politically popular—he had in-fact collaborated with the Colonels’ Regime between 1967-1974.<sup>80</sup> At present, a very difficult matter is unsolved; it concerns the case of *Loizidou v. Turkey*,<sup>81</sup> where a compensation of roughly one-million dollars is now due. The problem lies in the fact that some 580 analogous cases are currently pending before the Court.<sup>82</sup> They all concern property in the northern part of Cyprus to which access is denied due to the fact that the owners live in the Southern part of the island. It is of crucial importance to a court that its judgments are honored. Therefore, it would be necessary to regulate in a solid manner the execution of the judgments of a world court for human rights.

#### **IV. The Relations Between the World Court of Human Rights and Other Institutions**

##### *A. The WCHR and the ICJ*

¶ 54 If one follows the “Sibling Model,” the relationship between the WCHR and the ICC will be that of two parallel bodies of equal status. One could even imagine the courts being closely connected on an organizational level. For instance, they could have one administrative body of support, one registry. They could transfer cases to each other if they were brought to the institution which is not competent to deal with the matter.

¶ 55 The “ICC-Model” and the “Pyramid Model” would not allow for such a close link, but equality would also be required—it would not be compatible with the concept of a WCHR to have an appeal from its decisions and judgments to the ICJ.

##### *B. The WCHR and the ICC*

¶ 56 The relationship between the WCHR and the ICC is a more difficult issue. The question is whether there ought to be a possibility of appeal from the ICC to the WCHR alleging violations of human rights, e.g., by conditions and formalities of deprivation of liberty or disregard for the rules of fair proceedings. The Statute of the ICC was certainly not drafted with such a possibility in mind. It might make its proceedings more complicated and somewhat diminish its authority if it were under the “supervision” of a WCHR. On the other hand, the same standards ought to apply to the ICC as to national criminal tribunals. It would certainly not be acceptable if the standards of the ICC were lower. If one thinks ahead and imagines a Constitution of the United Nations, one could compare the ICC with a supreme court, while the WCHR would correspond to a constitutional court. The possibility of an appeal to a

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<sup>78</sup> See An Act of 31 March 1987 amended "various legal provisions relating to affiliation", and thereby eliminated all discrimination concerning illegitimate children (Resolution DH (88) 3 of March 4, 1988).

<sup>79</sup> *Stran Greek Refineries and Stratis Andreadis v. Greece*, 301-B Eur. Ct. H.R. (ser. A) (1994).

<sup>80</sup> *Id.*

<sup>81</sup> *Loizidou v. Turk.*, 81 Eur. Ct. H.R. 1807 (1998).

<sup>82</sup> According to information supplied to the author by the Registry of the Court of Human Rights on Dec. 9, 2003.

constitutional court against a decision of a supreme court, as in Germany, is not excluded, although different solutions are certainly possible.

### *C. The WCHR and the “Treaty Bodies”*

¶ 57 There can be no doubt that the WCHR would stand above the “Treaty Bodies” set up under various Conventions and Covenants. Here, however, a different problem arises: One could imagine an alternative or a cumulative competence. The alternative would mean that the court would only be accessible where a specialized body is not available. This would be hardly acceptable. In fact, it must be assumed that protection by the WCHR would be more valuable than that of a mere committee. It would not make any sense to reserve this protection for cases where the “weaker protection” is not available.

¶ 58 It would be more logical to opt for the opposite subsidiary: Treaty Bodies would only remain competent in cases not covered by the court—mainly for individual application, if one follows the proposals made here.

¶ 59 One might want to consider cumulative competence in the sense that the WCHR would become something like a second instance on the world level. The Treaty Bodies would then always be the first remedy. This would give them a position similar to that which the European and American Commissions of Human rights held or hold. Thus, the proceedings would certainly not be streamlined. However, the WCHR might see its work considerably facilitated by this variant. One might, if one were to pursue this approach, consider whether it would be preferable to merge the various bodies into a single one. However, this might be difficult in view of the fact that the list of States having ratified the different Conventions is not uniform.

### *D. The WCHR and Regional Courts of Human Rights*

¶ 60 Finally, what would the relation between the WCHR and courts like the American or European Courts of Human Rights be? This question is, of course, best answered under the “Pyramid Model.” Here, the WCHR would be the ultimate court of appeals. It might be given the right to decide freely on which applications it would be prepared to hear—the rules might be modeled after those of the U.S. Supreme Court.<sup>83</sup>

¶ 61 With the other models we come upon a considerable difficulty. I have the most serious doubts as to whether the Europeans would be prepared to accept, at the time being, any “supervision” by a WCHR. There would be great hesitations because it would be feared that world standards would be considerably lower than the European ones. The same might apply for the Inter-American Court, although I do not feel competent to make any comment on this part of the world.

## **V. Concluding Remarks**

¶ 62 I started off by asking whether there was a need for a world court for human rights. In this context, I have also addressed the question of whether the idea stood a

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<sup>83</sup> See *Rules of the Supreme Court*, adopted on Jan. 27, 2003, effective on May 1, 2003, available at <http://www.supremecourtus.gov/ctrules/rulesofthecourt.pdf>.

fair chance of realization. I have then discussed a number of features of the new court. Let me now return to the initial question.

¶ 63 One essential point has not been discussed so far: It is the question of the effectiveness of a possible world court for human rights. I wonder if finally this is not the essential issue. For one, I would suggest that it is only worth having a world court for human rights if that court is established in a way which can guarantee its effective operation. It is preferable not to have a world court for human rights at all than to have a half-hearted patched-up institution with insufficient competence and feeble authority. The world court for human rights would only be effective if its judgments would actually be honored. These judgments might be limited to finding a violation as is the case for the European Court. Still, there is in Europe a mechanism of implementation which clearly goes beyond making sure that compensation is actually paid to the victims.

¶ 64 Has the European system been a success? To a large extent I would not hesitate to answer in the affirmative. But there are a number of limitations. For many years now very serious violations of human rights continue in Turkey despite a large number of judgments of the Court.<sup>84</sup> As to the *Cyprus v. Turkey* case,<sup>85</sup> it is difficult to identify any positive result. Perhaps the fact that all investigations and findings in this problem area were made against Turkey gives a somewhat distorted image of the whole situation with an unfair advantage to the Greek Cypriot side. Even if Turkey is to be blamed for not having brought applications against the other side, the situation remains unsatisfactory and the court proceedings did not contribute to a solution.

¶ 65 There have been applications against Russia in relation to the war in Chechnya.<sup>86</sup> Can we seriously expect those proceedings to be effective?

¶ 66 On a less dramatic level: With regard to Italy there have been hundreds and hundreds of judgments and decisions finding a violation of the right to a speedy trial, but still no effective improvement has materialized.

¶ 67 On the other hand, there have, of course, been very many—indeed an overwhelming majority—of successful cases which led to amendments of the legislation in most Member States.<sup>87</sup> Still, this is Europe, a relatively peaceful corner of the world.

¶ 68 I am particularly worried about the execution of judgments on the universal level. What should the consequences be, if, to take an example which is fully detached from reality, state “A” has filed an application against state “B” alleging widespread torture and the court has found this allegation to be justified. Let us further assume that execution is within the competence of the Security Council. There will, in a first phase, be negotiations. The government of state “B” will be asked what it intends to do about this problem. Its answer will again be assessed by the Security Council which may find

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<sup>84</sup> See *Demirel v. Turkey*, App. no. 39324/98, Eur. Ct. H. R., judgment of Jan. 28, 2003 and cases cited therein.

<sup>85</sup> *Cyprus v. Turk.*, App. nos. 6780/74 and 6950/75, 4 Eur. H.R. Rep. 482 (1976) (Commission report); *Cyprus v. Turk.*, App. no. 8007/77, 13 Eur. Comm'n H.R. Dec. & Rep. 85, 146 (1978).

<sup>86</sup> See *Khashiyev v. Russia*, App. no. 57942/00; *Akayeva v. Russia*, App. no. 57945/00; *Isayeva v. Russia*, App. no. 57947/00; *Yusupova v. Russia*, App. no. 57948/00; *Bazayeva v. Russia*, App. no. 57949/00; *Isayeva v. Russia*, App. no. 57950/00, all of which were declared admissible on Dec. 19, 2002.

<sup>87</sup> See the website of the Court of Human Rights, which has a section on the effects of the judgments on the laws of the member-states at <http://www.echr.coe.int/Eng/EDocs/EffectsOfJudgments.html>.

it to be satisfactory. Country “B” may have an elaborate and convincing program to fight torture, i.e., by creating a body authorized to visit all places of detention; by granting generous compensation to victims of torture; by establishing effective means of investigating all allegations of torture; by enforcing severe penal and administrative sanctions against officials having been found guilty of torture.

¶ 69 Maybe, however, state “B” does not respond or refuses to take any action, alleging that torture is necessary in the fight against terrorism. In this case, sanctions would have to apply. This is not entirely satisfactory because if the sanctions are of an economic character they might increase the suffering of those who suffer anyway, including those who are the most likely victims of torture. This is what seems to have happened, for example, in Iraq. What more can be done? Certainly, no one would seriously envisage actions such as those taken in the Kosovo conflict. Neither has the war on Iraq brought very convincing results so far. I think you will agree that here we reach something like a dead end. In order to make the issue operational, it would be necessary to embark upon an in-depth situation of the actual state of the world. How many countries are there which might be prepared to reject any control by the court? I fear that the result would be something like this: The more likely a State is to be found in violation of human rights by a WCHR, the less probably it is that it will comply with its judgments.

¶ 70 My conclusion, for all these reasons—to my great regret—must be in the negative. Realistically speaking, the creation of a world court for human rights is, at the present time, neither desirable, nor necessary, nor probable. There are hardly any arguments which would let us believe that such a court could contribute to peace and security in the world today. What should, however, be pursued is a long-term development which would bring the regions of the world onto the same level as Europe, and to the extent that the parallel is justified, the Americas. Once a solid basis has been established, it will be at least desirable to establish a world court which would secure the uniform protection of human rights on the whole planet.