CHAPTER 1

The International Court of Justice and Human Rights Treaty Bodies

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It is a matter of deep satisfaction to me to be invited to contribute this essay to honour the work of Sandy Ghandhi. The title of this book could not have been more apposite in the light of his consistent scholarship on the work of courts and quasi-judicial bodies mandated to adjudicate issues under international human rights law. As a member and current Chairperson of the UN Human Rights Committee (HRC), a body whose activity has been the subject of so much of Sandy’s shrewd, authoritative analysis, it is a privilege to be able to acknowledge the value of his contribution in this way.

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It is often forgotten that, as the preeminent judicial authority of general international law, the International Court of Justice (ICJ or World Court) is also a forum for the adjudication of international human rights law as much as any other area of international law. In fact, from its earliest days, the Court was called upon to address human rights issues, indeed consider the scope of applicability of the first post-World War II international human rights treaty: the Genocide Convention.1 Equally rarely noted is the fact that the compensatory clauses of some human rights treaties, including a majority of the nine

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“core” human rights treaties, render the Court itself as a human rights treaty body,\(^2\) although in only one case has it acted as such, namely *Belgium v. Senegal*.\(^3\)

The International Human Rights Committee of the International Law Association has considered the relationship in a recent study prepared by its Co-Rapporteur, Dr Eva Rieter, that has been of considerable assistance for the preparation of the present chapter.\(^4\) The decision of the Committee in 2008 to undertake that study was prophetic, as until then there had only been one case in which the ICJ had directly considered the practice of a treaty body, namely the *Wall* opinion in 2004.\(^5\) Since then, there have been three others, two of them involving extensive consideration of UN treaty body practice: the *Diallo* case,\(^6\) the *Belgium v. Senegal* (or Hissène Habré) case,\(^7\) and the *IFAD* case.\(^8\)

Two questions should be illuminated by our inquiry. One relates to the juridical status of the outputs of the treaty bodies. The other relates to concerns about the possible fragmentation of different fields of international law.

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\(^3\) *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal) (Hissène Habré)*, judgment, 2012, I.C.J 422.


\(^5\) *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, advisory opinion, 2004, I.C.J 136.


\(^7\) Hissène Habré, supra note 3.

\(^8\) Judgment No 2867 of the Administrative Tribunal of the International Labour Organization upon a Complaint Filed against the International Fund for Agricultural Development, advisory opinion, 2012, I.C.J 10.