CHAPTER 10

International Human Rights Implementation: Strengthen Existing Mechanisms, Establish a World Court for Human Rights, or Both?

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Introduction

Traditionally, international human rights law occupies a solid place in the programs on international public law at Utrecht University and there are strong ties between the two sections. These ties have been strengthened by the sincere interest Fred Soons showed in the achievements of SIM, the Netherlands Institute of Human Rights, which resulted in a very pleasant and inspiring cooperation. In the spirit of this cooperation this contribution to the Volume in honour of Fred Soons will consider the possible wrongs and gaps in international human rights monitoring mechanisms with special attention to the remedies. I will focus on the general remedies and the monitoring mechanisms, based on the United Nations (UN) Charter and the human rights treaties. Although the various international criminal tribunals are also most relevant from the perspective of implementation of human rights, they are not included here.

Since World War II, the establishment of the UN and the adoption of the Universal Declaration of Human Rights (UDHR), many institutions have been established at the international level, and also a large number of specific human rights treaties have been adopted at both the international and the regional level (Africa, the Americas and Europe in particular), each with their own implementation machinery. Similar developments took place at some, but not all, regional levels.

Thus, independent jurisdiction exists at some regional levels (but not all), whereas quasi-judicial functions are performed by some (but not all) of the UN treaty bodies. Both forms of remedy are open only for complaints against States.

The general picture shows a very complex agglomerate of courts, commissions and councils playing a role in the implementation of this expansive body of norms, which, however, does neither guarantee the same level of protection to all, nor the same level of accountability of violators.
This contribution focuses on the situation at the international level. Whereas more and more codification gaps in international human rights law are solved, we see that the gaps in the implementation and application thereof persist. Recently, different kinds of proposals have been developed to fill these gaps. On the one hand, the existing system of treaty bodies is submitted to reform and on the other hand a proposal to establish a World Court of Human Rights (the World Court or WCHR) has been developed by Julia Kozma, Manfred Nowak and Martin Scheinin. The two developments reflect rather different approaches: whereas the treaty body reform is a more general attempt to improve, harmonize and coordinate the working methods of the existing treaty bodies in all fields, including the “communications” procedure, the World Court project aims at the establishment of an entirely new institution. But there certainly are links between these processes: even when it is not stated explicitly by all authors, it can be derived from the proposals for a World Court that the establishment thereof will, in the long term, replace the quasi-judicial communications role of the treaty bodies. I will first reflect on the criticism on the existing system of treaty bodies, thereafter on the proposals for both treaty body reform and the World Court and will end with some personal comments.

The Treaty Body Patchwork

Apart from the various organs of the UN as such which are also involved in the field of human rights, such as the General Assembly, the Human Rights Council and the International Court of Justice (ICJ) and the international tribunals, nine specific treaty bodies exist, each with their own standards and mechanisms, based on the specific UN human rights treaties. The system of treaty bodies, each monitoring one specific human rights treaty is severely criticized a.o. because of the non-compliance of states, the overlapping procedures, backlogs, and sometimes the lack of coherence in the activities of the supervisory bodies.

The independent treaty bodies consist of (different numbers) of independent experts from the state parties, and meet at different intervals. The state reporting procedure being the only one foreseen in all treaties, the possibility for other procedures (individual complaints, inter-state complaints, inquiry, site visits) differs between the bodies and sometimes also between state parties.

1 J. Kozma et al., A World Court of Human Rights – Consolidated Draft Statute and Commentary (Neuer Wissenschaftlicher Verlag, Vienna/Graz: 2010).