1. INTRODUCTION

The rule of exhaustion of local remedies whereby “[a] State should be given the opportunity to redress an alleged wrong within the framework of its own domestic legal system before its international responsibility can be called into question”,¹ has undergone substantial development from its traditional function as a customary rule in inter-State diplomatic practice to its extended application in the field of human rights protection. With respect to the specific development of the rule, this paper will analyze the principle of exhaustion of local remedies from a dual perspective. The first part of the paper will focus on the historical development of the rule and its traditional application in the area of diplomatic protection. Thereby, special attention will be given to the interpretation of the nature of the rule and thus the practical implications of it. The second part of the paper will be devoted to the

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specific application of the rule in the field of human rights. The question that is at the centre of this analysis is whether the rule of exhaustion of local remedies is to be applied equally in the field of diplomacy and human rights.

The paper can be divided into two large parts. Section 2 analyzes the rule of exhaustion of local remedies in the light of general international law. The second part, comprising sections 3 and 4, focuses on the application of the rule in the specific context of human rights.2

2. THE RULE OF PRIOR EXHAUSTION OF LOCAL REMEDIES IN THE INTERNATIONAL LAW DOCTRINE

The clear formulation of the rule of exhaustion of local remedies, its frequent application by international courts, its recognition in inter-State practice, and its extensive scholarly analysis allow for the assumption that the existence or general validity of the rule do not have to be questioned. However, there are many aspects of its practical application that remain doubtful, contested and unclear. In fact, as Philip Jessup rightly stated, the rule of exhaustion of local remedies “is a well established but inadequately defined rule”3 Moreover, in addition to various uncertainties concerning the function, the rationale and the practical application of the principle of exhaustion of local remedies, controversy has also persisted in the discussion of the basic theoretical concept underpinning the rule.

2.1. Theoretical Concepts Underpinning the Nature of the Rule of Exhaustion of Local Remedies in General International Law

The question of the defining moment when a breach of international law incurring liability on part of a State occurs is at the centre of the debate concerning the nature of the rule of exhaustion of local remedies. Within the different schools of interpretation with respect to the origin of a State’s international responsibility, the rule of exhaustion of local remedies is either classified as a rule of substance or as a procedural prerequisite for the admissibility of an international claim. Moreover,