

Against a World Court for Human Rights

Philip Alston

Too much of the debate about how respect for human rights can be advanced on a global basis currently revolves around crisis situations involving so-called mass atrocity crimes and the possibility of addressing abuse through the use of military force. This preoccupation, as understandable as it is, serves to mask much harder questions of how to deal with what might be termed silent and continuous atrocities, such as gross forms of gender or ethnic discrimination or systemic police violence, in ways that are achievable, effective, and sustainable. This more prosaic but ultimately more important quest is often left to, or perhaps expropriated by, international lawyers. Where the politician often finds solace in the deployment of military force, the international lawyer turns instinctively to the creation of a new mechanism of some sort. Those of modest inclination might opt for a committee or perhaps an inquiry procedure. The more ambitious, however, might advocate the establishment of a whole new court. And surely the most “visionary” of such proposals is one calling for the creation of a World Court of Human Rights. A version of this idea was put forward in the 1940s, but garnered no support. The idea has now been revived, in great detail, and with untrammelled ambition, under the auspices of an eminent group of international human rights law specialists.

But a World Court of this type is not just an idea whose time has not yet come. The very idea fundamentally misconceives the nature of the challenges confronting an international community dedicated to eliminating major human rights violations. And, if it were ever realized, it would concentrate frighteningly broad powers in the hands of a tiny number of judges without the slightest consideration of the implications for the legitimate role of the state. To the extent that the proposal to create such a court is a heuristic device, public debate about it might arguably help in

identifying some of the major challenges that confront the building of a more effective international human rights regime. For the most part, however, the proposal is a misguided distraction from deeper and much more important challenges.

THE PROPOSAL

In 2011 a major initiative sponsored by the Swiss government and endorsed by some of the world's leading human rights lawyers recommended the creation of a World Court of Human Rights (WCHR). The court would be permanent, fully independent, established by treaty, and "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."¹ The proposal comes complete with a draft statute, along with a detailed "commentary" explaining and fleshing out the various choices reflected in the draft. The distinguished proponents of the court, known as the Panel on Human Dignity, include Mary Robinson, former UN High Commissioner for Human Rights; Theodor Meron, the three-term President of the International Criminal Tribunal for the former Yugoslavia; leading independent experts from the UN Human Rights Council; and prominent human rights advocates from Austria, Brazil, Egypt, Finland, Pakistan, South Africa, and Thailand.² Already, the proposal has attracted attention from international organizations³ and scholars;⁴ and its proponents have urged the United Nations Secretary-General to commission an expert study on ways to advance the creation of such a court.⁵

The proposal is not without historical roots. As early as 1947, Australia called for the creation of an international human rights court. In doing so, it showed a remarkable lack of concern that either its official "White Australia" immigration policy, which restricted immigration to Caucasians, or its domestic laws, which did not accord the vote or other full citizenship rights to its indigenous population, might be challenged before such a court. At the same time, the United Kingdom responded with an alternative proposal that the International Court of Justice could be authorized to give advisory opinions on human rights. Neither proposal was successful, but the idea has continued to surface periodically, albeit without attracting any significant support from states.

There are, however, several reasons why the 2011 proposal endorsed by the Panel on Human Dignity needs to be taken seriously. First, it emerged from an initiative sponsored by an influential government, and was also supported by

Norway and Austria. Second, it has been endorsed, after a lengthy period of study and deliberation, by some of the leading figures in the world of human rights. Third, history demonstrates that even paradigm-shifting proposals such as this one are capable of gathering support over time. Thus, the court's proponents note that previous truly visionary proposals have initially been dismissed out of hand simply because, like this one, they departed radically from established practice and represented a threat to the status quo. Yet they were ultimately taken up and are now part of the accepted institutional landscape. The first such example cited by the proponents is the creation of the office of the UN High Commissioner for Human Rights, which was originally suggested by Costa Rica in 1947, consistently rejected over the following four decades, but eventually accepted by the 1993 Vienna World Conference on Human Rights. The second is the International Criminal Court, which was initially foreseen in the late 1940s, and eventually set up by the 1998 Rome Statute. The implication is that it is, therefore, only a matter of time before previously resistant governments will be ready to concede the need for a WCHR. And if that assumption is correct, what self-respecting proponent of human rights would wish to be seen as on the wrong side of history?

A final argument sometimes suggested in favor of considering the proposal is that even if many of the elements contained in the 2011 draft statute are rejected or significantly watered down, any such development would represent a useful step forward. In other words, the proposal should not really be seen on its own merits, but rather as an opening gambit in a prolonged negotiation.

MAIN FEATURES OF THE PROPOSAL

The World Court of Human Rights would have twenty-one full-time elected judges, serving in a Plenary Court as well as in Chambers and Committees. The draft statute elaborates detailed standards to govern the eligibility, election, service, and conduct of judges and provides for the court to deal with complaints submitted by any person, NGO, or group of individuals claiming to be the victim of a human rights violation. Its judgments would be binding and would have to be enforced by domestic authorities. In essence, the proposal seems to be based upon the following assumptions:

- (1) It is desirable that there should be a comprehensive, universal, and binding scheme for ensuring rights for all individuals.

- (2) Existing international mechanisms are highly selective in their coverage and are generally ineffectual.
- (3) The universal availability of judicial remedies for otherwise unredressed human rights violations is a (or perhaps *the*) central element in building an optimal global regime.
- (4) The European Court of Human Rights provides the most advanced model for this purpose, and its most appealing features should be replicated on a global scale.⁶
- (5) At the same time, the WCHR provides an ideal opportunity to correct some of the shortcomings and limitations built into the European system, and thus to fill some of the major lacunae that weaken the existing global regime.

Scholars who have studied the idea of a world court have been generally in favor of it. And those few who have reached a negative assessment have done so largely on the basis of doubts about its feasibility. Stefan Trechsel, a former president of the European Commission on Human Rights, actually put forward a proposal for a world court in 1993, but in revisiting the issue in 2004 he concluded that the proposal was “neither desirable, nor necessary, nor probable.” Indeed, he concluded that “there are hardly any arguments which would let us believe that such a court could contribute to peace and security in the world today.”⁷ But, for the most part, Trechsel’s concerns were based on pragmatic or feasibility grounds, rather than on principle. He was concerned about whether states would accept such a project, how much it would cost, how the court would be able to secure enforcement of its judgments, and what the relationship would be with other existing bodies, such as the regional human rights courts, the International Criminal Court, and the International Court of Justice.

Even the late and much admired international judge Antonio Cassese—a figure widely known for his bold, and some critics would say excessive, advocacy of international judicial solutions to human rights challenges—rejected the notion of a WCHR, even in the context of a self-described “utopian” plea for a global community grounded in a core of human rights.⁸ He wrote that such an idea “should be discarded because it is simply naïve to think that states will submit their own domestic relations with individuals living on their territory to binding international judicial scrutiny.”⁹ As was the case with Trechsel’s approach, Cassese’s criticism was based less on principle or on a different vision of the international legal order

than on a *realpolitik* assessment of how far governments could be expected to go in limiting their own sovereignty.

I agree that political feasibility is likely to be a major stumbling block. The protracted and bruising effort that was required to give birth to an ASEAN-based human rights system—a system devoid of almost any of the attributes of implementation possessed by other comparable international bodies—serves to illustrate the continuing deep reluctance of states to create new institutions endowed with any significant capacity to restrict their freedom of maneuver in relation to human rights-related policies. Not to mention the fact that no other Asian mechanisms for the redress of human rights violations exist, and that Arab countries have so far been unable to set up a regional mechanism worthy of the name. Nevertheless, it cannot be excluded that unpredictable factors could provoke the coming together of some unlikely coalition of states willing to move ahead with a global initiative. It thus remains important to examine the full range of issues that the proposal raises.

In what follows, I argue that there are significant concerns relating not only to the scale of the proposed enterprise and to the powers it would grant to a global judiciary but, more importantly, to the vision that it reflects for the future of human rights. Although I seek to distinguish the three sets of concerns, they are of course closely related to one another.

CONCERNS OF SCALE

The sheer scale of the project raises a number of concerns, but it will suffice to identify three. The first relates to the range of standards that will form the basis of the court's jurisdiction. The authors of the report rightly assume that any effort to formulate a new and comprehensive set of global standards would not only be immensely controversial and time-consuming but would likely result in a much diluted set of norms reflecting a real regression from the agreements reached in previous decades. In order to avoid such risks, as well as to avoid debates at the national level over the acceptance of standards not hitherto endorsed by the state concerned, the court is given jurisdiction over alleged violations of any of the rights contained in a whopping twenty-one separate existing UN human rights treaties, starting with the two International Covenants, and including (among others) the key conventions relating to racial discrimination, discrimination against women, torture, children, migrant workers, persons with disabilities,

disappearances, and slavery. Far from minimizing national debate, the prospect that every right in every one of the treaties that a given state has ratified would be subject to binding international adjudication would in fact provoke hugely contentious debates in any society that takes the rule of law seriously. In addition, such a far-ranging jurisdiction would give rise to very difficult challenges for judges in terms of reconciling complex, diverse, overlapping, and perhaps inconsistent treaty provisions.

The second concern is whether the court would be competent to deal with the domestic legal systems of every state in the world, which are tremendously varied. It is one thing for a treaty body, such as the Human Rights Committee, to formulate essentially nonbinding “views” or general recommendations that take adequate account of the particularities of legal systems from Afghanistan to Zimbabwe, or Austria to Uruguay. But it is quite another for a court to hand down binding judgments on domestically controversial and contested issues to a large group of states with hugely diverse legal systems. Neither the European nor the Inter-American courts confront anything like this degree of heterogeneity. While it might be argued that the African Court of Human and Peoples’ Rights must confront substantial diversity across the fifty-five potential national jurisdictions within Africa, it remains to be seen whether that is in fact a viable undertaking. I return below to related questions of cultural sensitivity.

The third magnitude-related concern is cost. Given the procedures envisaged in the statute (such as on-site fact-finding, the use of witnesses, and the provision of reparations), the International Criminal Court (ICC) might be a more apt comparator than a regional human rights court. In 2011, with a handful of cases underway, the ICC’s annual budget was \$132 million, while that for the International Criminal Tribunal for the former Yugoslavia was \$143 million. While such sums are very minor in the overall scheme of things, states are already proving increasingly reluctant to fund large-scale human rights initiatives, and especially those that might hold them meaningfully to account. The 2013 budget for the European Court of Human Rights (ECHR), not including the costs of buildings and infrastructure, was around \$90 million. That court undertakes almost no fact-finding and covers only 800 million persons, or around one-ninth of the global population that might be covered by a world court. This is not to suggest that a nearly billion dollar price tag for a global human rights court at ECHR rates would be excessive, if it were viable, but that governmental commitments of that magnitude seem highly improbable.

CONCERNS OF POWER

One of the principal authors of the WCHR statute has suggested that “the procedure concerning individual complaints by and large follows that applied by existing regional human rights courts and UN treaty monitoring bodies.”¹⁰ This comparison does not, however, withstand scrutiny. The statute in fact adopts a maximalist approach in relation to many of the most controversial procedural dimensions of international human rights adjudication, and in so doing would produce a radically more powerful tribunal than any that currently exists. This is illustrated by considering five separate issues, although a range of others would also serve to make the point.

Fact-finding Powers

The European Court has a rather inchoate power to undertake fact-finding in a situation before it, but the resources available to it and the correlative obligations of states parties are such that the technique has not proved particularly useful in most situations. The WCHR, by contrast, is empowered to conduct on-site missions for that purpose, in which case the relevant state is obligated to “provide all necessary cooperation and facilitate the investigation, including by granting access to all places of detention and other facilities.”¹¹ But this is only the beginning. A later provision accords the court “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.”¹² While various such provisions already exist in relation to investigations pertaining, for example, to torture, the extension of such a power to any rights violation and the inclusion of “unrestricted access to State authorities [and] documents” constitutes a huge leap in terms of powers that states would see as infringing on their sovereignty. The vesting of comprehensive investigative powers plus very extensive judicial authority in a single body would be without precedent at the international level.

Exhaustion of Domestic Remedies

The WCHR includes what, at first glance, appears to be a standard clause requiring that all available domestic legal remedies be exhausted before recourse can be had to the international court. But the statute actually expands dramatically the range of situations in which such recourse can be had. It first requires that

every right in all of the twenty-one listed treaties be fully justiciable at the national level, and then permits an international appeal in any case in which the applicant is “not satisfied” either with the judgment of the national court or with the reparation granted, as well as in any situation in which a national court cannot order interim measures in cases where it is argued that irreparable damage might otherwise ensue.

Interim Measures

The capacity of human rights bodies to order states to take interim protection measures pending the examination of the allegation is considered by human rights proponents to be a vital dimension of the international human rights regime, especially, but not only, in cases involving the death penalty. But few issues have proven more controversial, as was illustrated most dramatically in 2012 by Brazil’s furious reaction to interim measures proposed by the Inter-American Commission of Human Rights in relation to the construction of the Belo Monte hydroelectric power plant. Yet the WCHR statute authorizes interim measures to be ordered by the court’s presidency at any time when they “may be necessary in exceptional circumstances to avoid possible irreparable damage,” and deems such measures immediately binding and enforceable.

Bindingness

After almost fifty years in existence, the ECHR system moved in 1998 to characterize its judgments as being binding on the state concerned, although the “enforcement” measures it applies continue to be filtered through the Committee of Ministers, which is a political body and acts accordingly. Judgments often take many years to be enforced and are frequently sidestepped. The WCHR statute, however, makes all judgments “final and binding,” and requires the provision of court-ordered reparation within three months. States’ actions are to be supervised by the UN High Commissioner for Human Rights, and if those actions are considered inadequate the matter may be referred to the Human Rights Council and even to the Security Council, which can be asked to take “necessary measures.” A system is thus put in place that goes well beyond any existing form of enforcement. The Security Council would be empowered to intervene and use the full force of its mandatory powers in response to any case referred to it by the High Commissioner. But the veto-wielding members of the Security Council would be effectively immune from any such initiative, unless they choose to submit themselves to it.

Advisory Opinions

The statute provides that the International Court of Justice may be requested to give an advisory opinion in relation to the statute itself or to any of the twenty-one listed treaties. Requests may be made by any UN member state, by the UN Secretary-General, or by the UN High Commissioner for Human Rights. This contrasts strongly with the existing situation, under which only specified UN organs and agencies may request advisory opinions. That includes neither individual states nor the Secretary-General or High Commissioner.

In sum, there is ample reason why its proponents would see the statute as visionary and pathbreaking. In virtually every area in which states have been reluctant to accord authority to existing regional and international human rights bodies, the statute opts for a maximalist position and indeed leaves no controversial stone unturned in order to ensure the creation of a truly powerful international court.¹³ Leaving aside the issue of the political realism of such proposals, the major questions are whether such a vision is in fact optimal and whether the path being proposed is one we should want to go down.

CONCERNS OF VISION

I have described a range of concerns relating to the political feasibility, magnitude, and expansiveness of the proposed WCHR. But many if not all of these concerns could be dealt with by adjusting the model in various ways. Costs could be reduced by eliminating on-site investigations and the calling of witnesses, the range of standards or treaties covered could be reduced, interim measures could be made optional, judgments could be made nonbinding, and so on. My critique is, however, more deeply-rooted. I consider the basic assumptions underlying the statute to be problematic and misconceived. In my view, the very act of putting forward a WCHR as a major stand-alone initiative skews and distorts the debate, and pursuing such a vision distracts attention, resources, and energy from more pressing endeavors. This is a harsh assessment, and I shall attempt to explain my reasons for offering it.

Legalism

The proposal privileges justiciability over all other means by which to uphold human rights. Nominally, the statute foresees some role for the UN Human Rights Council, and envisages the creation of a voluntary trust fund to assist states to “improve their domestic judicial remedies” and to assist victims. But the

Council's track record is very mixed, and such trust funds are almost always more impressive in design than in reality. Thus, in practice, judges and lawyers are effectively seen as the frontline of global human rights protection. In this regard, concerns arise both in relation to what is proposed and what is omitted. In terms of the former, it is assumed that every right in all of the treaties is appropriately subject to judicial determination, an assumption not shared in many domestic legal systems. It is also assumed that every violation of "an obligation to respect, fulfill, or protect any human right" is best dealt with by a court, thus vesting immense authority in a single body. Issues of accessibility by victims in terms of the costs involved, the language barriers, the cultural appropriateness, and so on, are barely addressed. This would be an elite court in every respect.

But the real problem is the intellectual leap from diagnosing the continued existence of massive human rights violations, whether flagrant or structurally embedded, to a vision in which courts in general, let alone a single World Court, offer the best hope of resolving complex and contested problems. Courts do not function in a vacuum. To be seen as legitimate and to aspire to effectiveness they must be an integral part of a broader and deeper system of values, expectations, mobilizations, and institutions. They do not float above the societies that they seek to shape, and they cannot meaningfully be imposed from on high and be expected to work.

Hierarchy

The proposal is both remarkable and troubling for its hierarchical nature. In effect, any national-level judgment with which an applicant is not "satisfied" can be appealed to the World Court, and the latter's judgments are definitive. This raises major questions, too numerous to be dealt with in the present essay. Practically speaking, the resulting workload would soon be overwhelming if the court proved even vaguely effective. More important, the notion that a single court would be given the authority to issue determinative interpretations on every issue of human rights on a global basis defies any understandings of systemic pluralism, diversity, or separation of powers. It is, in short, difficult to understand how or why human rights proponents would wish to vouchsafe such vast powers to a handful of judges. Given the extent of the powers to be wielded by the court, capture by state interests would be all but assured and the resulting jurisprudence would be potentially disastrous for human rights.

“Entities”

One of the most important gaps in the international human rights regime is its inability to regulate the activities of what the statute calls, in almost Orwellian language, “entities.” These are “any inter-governmental organization or non-State actor, including any business corporation”—a definition that, according to the commentary, includes “transnational corporations, international non-profit organizations, organized opposition movements, and autonomous communities within States or within a group of States.” Other nonstate actors are said to include “media enterprises, trade unions, political parties, religious associations, paramilitary organizations, rebel groups, and other non-governmental organizations.”¹⁴ Any such entities can make a declaration accepting the jurisdiction of the court in relation to specified treaty provisions. Organized crime groups appear to be excluded, even if few others are!

But there are both good and bad reasons for restricting full participation in the international human rights regimes to states and to organizations formed by them. This proposal makes no distinctions and places News Limited, the Rainforest Action Group, the FARC, Citibank, and the International Confederation of Free Trade Unions on virtually the same footing as states. Such entities will also be expected to fund the Court and can make voluntary donations as well. And the mode of enforcement envisaged for states (the UNHCR and the Security Council) is the same for entities. This wholesale according of status and personality to “entities,” very broadly defined, comes with radical implications that seem not to have been thought through or even considered.

The ability of these entities to protect and fulfill human rights varies enormously, a fact that the statute seeks to accommodate by permitting the entities to identify a limited range of rights in relation to which they can be held accountable. They can thus exercise state-like privileges in return for potentially derisory obligations. The standards by which their responsibility is to be assessed are those devised for states (the principles of state responsibility), as though there are no fundamental differences between a corporation, a religious association, an armed opposition group, and a state. The statute suggests that “the wrongfulness of an act or omission by [an] Entity” can be determined by the court “through the interpretation of international human rights law,” notwithstanding the fact that the existing legal framework is notoriously incapable of dealing adequately with the differences in status and obligation among such entities. In relation to entities, the basic principle that domestic legal remedies must be exhausted

before an individual can have recourse to an international procedure is more or less wished away by the statute, which calls upon entities to identify their own “internal remedies” for addressing alleged violations of human rights. If the court opts to undertake an in-depth investigation of an entity, whether a trade union, religious group, or a transnational corporation such as Apple, the latter must “co-operate and furnish all required documents and necessary facilities,” despite the complex and diverse implications for the relevant groups.

In brief, the provisions relating to entities blur so many important distinctions and have the potential to generate so many unintended consequences that they make this aspect of the proposal especially unconvincing, even if the motivation behind it is understandable.

Universality

Another problematic aspect of the vision for the court is its approach to the question of universality. In global human rights doctrine, and especially in the United Nations context, universality is generally acknowledged as a foundational goal and principle. Its precise implications, however, are rarely spelled out beyond a clear commitment to ensuring that every state and ideally every individual is a part of the overall system that is being developed. But if we survey the contours of the forms of universality that exist, we will note that they include not only the obvious reliance on regional and subregional mechanisms to undertake or to filter much of the work—or the measures, such as the margin of appreciation doctrine, designed to ensure that national perspectives are taken into account in certain circumstances—but also various techniques that are implicitly designed to allow states leeway in the ways in which they apply international standards and respond to international assessments. There is, in short, some scope for diversity, as opposed to a strict uniformity, and for the necessary interplay between politics and law. This is not the case, of course, in relation to mass atrocities; violations of physical integrity rights through disappearances, killing, torture, or violence against women; or various other violations. But when it comes to a great many of the rights that are recognized in the twenty-one treaties included within the jurisdiction of the WCHR, the notion that there should be a single, universally valid answer to complex questions involving competing rights, and that those answers should be uniformly and strictly enforced, both by domestic law enforcement agencies and by the Security Council, goes far beyond the assumptions that have been carefully built into the existing system.

The court's proponents would respond that these concerns are not significant for two reasons. First is the principle of complementarity between the international and national levels, which seeks to ensure the primacy of the latter. Second, this general principle is further reinforced by a principle of deference to regional human rights bodies such as the Inter-American Court of Human Rights. In this respect, the drafters insist that the system is carefully designed to "complement rather than duplicate existing regional courts." But these reassurances are not convincing. While complementarity is mentioned in the preamble, it finds no direct expression in the operative provisions of the statute, in contrast to the approach of the ICC. In terms of the relationship with regional courts, if the World Court is intended solely as a court for those states that are not yet part of a regional system, then it would be largely a court for Asia and the Middle East, the two regions that have thus far proved resistant to substantive initiatives in this field. In reality, the broader jurisdiction, the greater accessibility, and the far stronger enforcement powers would quickly persuade complainants to file before the World Court rather than before one of the regional courts, and the latter would be gradually marginalized. In addition, since the European and Inter-American systems provide minimal judicial protection for economic, social, and cultural rights, the range of rights subject to binding adjudication in each of those regions would be dramatically expanded.

CONCLUSION

Behind any vision for a future system of international human rights protection lies a theory of change, a set of assumptions as to the dynamics that make significant reforms possible. The proponents are probably inspired by two different models. The first is the International Criminal Court, which seemed like a hopelessly utopian proposition as late as the early 1990s, only to become a reality by 1998. It might thus be seen to exemplify a process by which the international community can move from close to zero (in terms of crimes that could be adjudicated by international courts) to close to a maximalist vision (in which dozens of crimes are now subject to the court's jurisdiction). But the prosecution of a handful of individuals for heinous crimes is a radically less ambitious proposal than is the WCHR. This is especially so when seen in terms of the threat posed to the deepest interests of the state and the ability of governing elites to determine central policy preferences.

The second model is the European Convention system, and the World Court's proponents could reasonably respond to the present critique by arguing that all they are seeking to do is to extend globally a system that already functions well in Europe. But in fact this is not what is being sought. The World Court model goes far beyond that of the European Court in many crucial respects, and it would establish a regime with much greater reach and impact than the existing European system. But even if that were not the case, and the proposal was simply to replicate the European Court on a global basis, the problem is the absence of any plausible theory of change that would explain how such a dramatic leap could be achieved at the world level. The history of state engagement with human rights regimes is one of determined incrementalism, not one of dramatic leaps forward. In the past, the factors that have facilitated significant new initiatives include a conviction that a proposal is largely toothless (in the sense that it will not soon return to bite the governments that voted for it), a coherent geopolitical or ideological bloc that comes together to provide strong support for it, or a sense of overwhelming public concern or unrest over the failure of governments or the international community to act in a given situation. Otherwise, organic evolution has been the hallmark of change. Public opinion needs to be prepared, forms of mobilization need to occur, pressures on elites need to crystallize, and proposals need to be relatively manageable, at least in their initial form.

To suggest that there is no appetite for a truly global human rights court would seem to be an understatement. African governments have made minimal progress toward setting up a regional court for human rights, and have become increasingly antipathetic toward the ICC. And Asian governments, which account for 57 percent of the world's population, have been determinedly lukewarm toward almost every actual and proposed international human rights institution with even the slightest authority. It is difficult to envisage the circumstances under which they might be expected to embrace a WCHR in the decades ahead.

Of course, the rejection of an appealing utopian vision inevitably prompts the question as to what is the alternative. The first answer is that there is no magic solution to challenges that are so vast and complex, and that the quest for one is itself misleading. The second answer is that the WCHR proposal points to the key challenges that must be addressed, albeit through different means than by the creation of an all-powerful global court. In a nutshell, a culture of human rights needs to be nurtured at all levels. Effective but tailored national accountability mechanisms are needed, regional systems (not just courts) must be

developed, mechanisms for holding corporations to account should be established, international organizations must acknowledge an obligation to abide by human rights in all of their activities, the UN Human Rights Council's Universal Periodic Review should be transformed into a more targeted and demanding process, and the unwieldy and unsustainable UN system of treaty monitoring bodies needs to be reformed.

The central problem with the WCHR proposal is not its economic or political feasibility or its pie-in-the-sky idealism. It is that by giving such prominence to a court, the proposal vastly overstates the role that can and should be played by judicial mechanisms, downplays the immense groundwork that needs to be undertaken before such a mechanism could be helpful, sets up a straw man to be attacked by those who thrive on exaggerating the threat posed by giving greater prominence to human rights instruments at the international level, and distracts attention from far more pressing and important issues.

NOTES

- ¹ *Protecting Dignity: An Agenda for Human Rights, 2011 Report*, (hereinafter *Protecting Dignity*), Conclusions and Recommendations, p. 40, paras. 110–111, www.udhr60.ch/docs/Panel-human-Dignity_rapport2011.pdf.
- ² The full Panel consists of Mary Robinson, Hina Jilani, Theodor Meron, Vitit Muntarbhorn, Paulo Sérgio Pinheiro, Pregs Govender, Saad Eddin Ibrahim, and Manfred Nowak. Former Deputy High Commissioner for Human Rights Bertrand Ramcharan also participated in the project and fully endorsed the proposed statute. The panel emerged from a Swiss Government-sponsored panel, supported by the Governments of Norway, Austria, and Brazil, to mark the sixtieth anniversary of the Universal Declaration of Human Rights in 2008. In its subsequent work, the Panel endorsed four major initiatives: (1) a World Court of Human Rights; (2) legal empowerment and access to justice; (3) new forms of protection for those in detention; and (4) the need for climate justice in response to the impacts of climate change on human rights.
- ³ Parliamentary Assembly of the Council of Europe, "Accountability of International Institutions for Human Rights Violations," Doc. AS/Jur (2013) 17, May 10, 2013, para. 38.
- ⁴ See, generally, Julia Kozma, Manfred Nowak, and Martin Scheinin, *A World Court of Human Rights: Consolidated Statute and Commentary* (May 2010). Jesse Kirkpatrick, "A Modest Proposal: A Global Court of Human Rights," *Journal of Human Rights* (forthcoming 2014) examines recent proposals and puts forward a suggestion for a "Global Court of Human Rights." For literature discussing precursor drafts to the 2011 proposal, see Manfred Nowak, "It's Time for a World Court of Human Rights," in M. Cherif Bassiouni and William Schabas, eds., *New Challenges for the UN Human Rights Machinery: What Future for the UN Treaty Body System and the Human Rights Council Procedures?* (Antwerp: Intersentia, 2011), p. 17; and 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: Martinus Nijhoff, 2008), p. 261. See also "Conclusion: Towards a World Court of Human Rights," in Manisuli Ssenyonjo, *Economic, Social and Cultural Rights in International Law* (Oxford: Hart, 2009), p. 401.
- ⁵ *Protecting Dignity* (see no. 1 above), p. 40, para. 112.
- ⁶ An earlier proposal for such a court acknowledged that the vision was a "somewhat Eurocentric" one and envisaged the gradual assimilation of other regional systems "on the European standard." Stefan Trechsel, "A World Court for Human Rights?" *Northwestern Journal of International Human Rights* 1, no. 1 (2004), scholarlycommons.law.northwestern.edu/njihr/vol1/iss1/3.
- ⁷ *Ibid.*, para. 70.

- ⁸ As the first president of the International Criminal Tribunal for the former Yugoslavia, his *Tadic* judgment transformed the field, and as the first president of the Special Tribunal for Lebanon his approach was not exactly modest or constrained.
- ⁹ Antonio Cassese, "A Plea for a Global Community Grounded in a Core of Human Rights," in Cassese, ed., *Realizing Utopia: The Future of International Law* (Oxford: Oxford University Press, 2012), p. 136, at p. 141.
- ¹⁰ Nowak, "It's Time for a World Court of Human Rights," in *New Challenges for the UN Human Rights Machinery*, p. 17, at p. 29.
- ¹¹ *Protecting Dignity*, WCHR Statute, Art. 14(3), p. 50.
- ¹² *Ibid.*, Art. 40(2), p. 56.
- ¹³ Although the drafters of the statute actually indicate that they discarded a range of even more ambitious proposals in the interests of realism.
- ¹⁴ *Protecting Dignity*, Commentary on the Draft Statute, p. 66.