Chapter 18

Do We Need a World Court of Human Rights?

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1. Introduction

The international human rights supervisory machinery has in recent years undergone a state of transformation. In 2006 the Human Rights Council replaced the United Nations Human Rights Commission. The Council in fact represents a formal upgrading since the Commission was under the Economic and Social Council (ECOSOC), whereas the Council is a sub-organ of the General Assembly. Moreover, while the Commission only met once a year, it was arranged that the Council would convene throughout the year.[1] The treaty body system established by the human rights conventions to monitor implementation of the treaty obligations is also under consideration. The UN High Commissioner for Human Rights has proposed a 'unified standing treaty body' as a substitute for the existing treaty organs.[2] Finally, negotiations are currently taking place about an optional protocol to the International Covenant on Economic, Social and Cultural Rights on the establishment of an individual complaints procedure.[3] These developments have prompted Manfred Nowak[4] and Martin Schei-

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1 General Assembly Resolution 60/251 (3 April 2006).

2 Concept Paper on the High Commissioner's Proposal for a Unified Standing Treaty Body (14 March 2006) (HRI/MC/2006/CRP.1). *See also* M. O'Flaherty and C. O'Brien, 'Reform of UN Human Rights Treaty Monitoring Bodies: A Critique of the Concept Paper on the High Commissioner's Proposal for a Unified Standing Treaty Body', 7 *Human Rights Law Review* (2007) pp. 141–173, R. L. Johnstone, 'Cynical Savings or Reasonable Reform? Reflections on a Single Unified UN Human Rights Treaty Body', 7 *Human Rights Law Review* (2007) pp. 173–201 and M. Bowman, 'Towards a Unified Treaty Body for Monitoring Compliance with UN Human Rights Conventions? Legal Mechanisms for Treaty Reform', 7 *Human Rights Law Review* (2007) pp. 225–251.

3 Human Rights Council Resolution 1/3 (29 June 2006) requesting the Chairperson-Rapporteur to submit a first draft optional protocol.

4 M. Nowak, 'The Need for a World Court of Human Rights', 7 *Human Rights Law Review* (2007) pp. 251–259.

O. Engdahl and P. Wrange (eds.), Law at War – The Law as it was and the Law as it Should Be
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nin[5] to propose the establishment of a World Court of Human Rights.[6]

A World Court of Human Rights as proposed by Nowak and Scheinin would be established by a separate treaty, and thus not require amendment of any existing human rights conventions. Each state could be given the opportunity of choosing the conventions to which the Court would be authorised to exercise judicial functions, and could even choose conventions that currently do not contain any complaints procedure. They could then opt out of the complaints procedure of the same conventions. Nowak suggests that such a Court could also be empowered to judge in relation to the legality of acts by non-state actors, such as inter-governmental organisations (for example, the UN, EU, the World Bank, the WTO and NATO) and multinational companies. It could impose reparations in cases of violations, and adopt binding interim measures. Scheinin submits that the proposed Court could be either a first instance or an appeals court for decisions taken by the treaty bodies.

In this paper I shall first discuss to what extent a World Court would contribute to overcoming the present weaknesses of the supervisory system. Furthermore, the relationship between a World Court, the regional human rights courts, the treaty mechanisms and the Human Rights Council will be examined. Such a Court may also raise questions of its legitimacy: should a World Court be allocated the powers to determine with binding effect the implementation of human rights conventions in the manifold political, economic and cultural conditions throughout the world? This leads up to the final question about the realism of the proposed World Court.

2. Weaknesses of the Supervisory System

The monitoring system is by the High Commissioner for Human Rights considered to face "serious challenges".[7] This is partly due to the increase in treaties, ratifications and the number of treaty bodies. But it is of no less importance that "many States accept the human rights treaty system on a formal level, but do not engage with it, or do so in a superficial way, either as a result of lack of capacity or lack of political will".[8]

Monitoring of implementation of human rights conventions is conducted through three different procedures: examination of state reports; consideration of individual complaints (interstate complaints have never been used at the global level); and, finally, inquiry into allegations of grave or systematic violations. The aim of a World Court of Human Rights would be to strengthen the effectiveness of individual (and possibly interstate) complaints.

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5 M. Scheinin, 'The Proposed Optional Protocol to the Covenant on Economic, Social and Cultural Rights: A Blueprint for UN Human Rights Treaty Body Reform without Amending the Existing Treaties', 6 *Human Rights Law Review* (2006) pp. 131–142 at p. 142.

6 Stefan Trechsel has earlier concluded that such a Court is 'neither desirable, nor necessary, nor probable', *see* S. Trechsel, 'A World Court for Hunan Rights?', 1 *Nw. U. J. Int'l Hum. Rts.* 3, <http://www.law.northwestern.edu/journals/JIHR/v1/3/>, para. 70.

7 Concept Paper on the High Commissioner's Proposal for a Unified Standing Treaty Body, UN Doc. HRI/MC/2006/2 (2006), para. 15.

8 *Ibid.*, para. 16.

The specific objectives of individual complaints are by the High Commissioner stated as follows:

> "With regards to individual complaints, *awareness* at the national level of the possibility of complaint among rights-holders, the *efficiency* of the procedures at the international level and the *quality* of the outcomes are key, as is the *willingness* of States Parties to implement views and make necessary legislative and policy changes to comply with their obligations."[9]

These concerns can be addressed under four headings:
- Visibility of the complaints mechanism
- Efficiency, i.e. costs involved and timeliness of output
- Quality, i.e. composition, procedures and outcome
- Effectiveness, i.e. implementation by states parties.

2.1 Visibility

As regards visibility, the High Commissioner states that:

> "Despite its achievements, the system is little known outside academic circles, Government departments and officials directly interacting with the system, and specialized lawyers and NGOs. The treaty body system is rarely perceived as an accessible and effective mechanism to bring about change. Victims of human rights violations and civil society actors are unfamiliar with the system's complex procedures or are unaware of its potential. Media coverage is poor and the use of treaty body jurisprudence by lawyers and national judicial systems is limited … The number of complaints filed with the Secretariat is low in comparison to the number of individuals living under the jurisdiction of States that have accepted individual complaints procedures, and most complaints are directed toward a minority of States parties."[10]

A World Court of Human Rights may become much more visible than the existing treaty bodies and attract much attention. The problem could rather be that the Court would suffer from a substantial overload, such as the current situation of the European Court of Human Rights.[11]

2.2 Efficiency

The High Commissioner is also worried about the efficiency of the treaty body system:

> "The growth in the number of treaties and ratifications has resulted in a steep increase in the workload of the treaty bodies and the Secretariat, backlogs in the con-

9 *Ibid.*, para. 10 (emphasis added).

10 *Ibid.*, para. 21.

11 *See* 'Report of the Group of Wise Persons to the Committee of Ministers', Council of Europe, November 2006.

> sideration of reports and individual complaints, and increasing resource requirements. At the same time, the treaty bodies have been under-resourced, and their meeting time has been insufficient to handle their workload. Individual complaints procedures are underutilized, but the time between submission of a complaint and pronouncement of a final decision currently averages 30 to 33 months, which severely challenges the system's ability to provide redress for serious violations of the rights of individuals. An increase in petitions would further delay the processing of individual complaints."[12]

The establishment of a World Court would probably, as a result of an increased caseload, require more resources. On the other hand, some resources might be gained to the extent that the Court substitutes the complaints procedures under existing treaty bodies. It is of great importance to ensure that such a Court is able to provide redress within reasonable time, since it would deal with violations of fundamental rights for individual human beings.

2.3 Quality

The High Commissioner asserts that experiences with the quality and independence of members of the treaty bodies have been mixed:

> "The visibility of the system is linked to the authority of the monitoring bodies, which depends on the quality of the monitoring process, its output and decision-making, as well as the perception of independence and fairness of the procedures employed. The experience of the current system suggests that treaty bodies, composed of part-time, unremunerated experts nominated by States parties from among their nationals and elected by States parties for fixed renewable terms, have been *uneven* in terms of expertise and independence, as well as geographical distribution, representation of the principal legal systems and gender balance. Competing demands have also meant that some treaty body members have been *unable* to devote the time required to the work of their Committees, and some have been unable to attend sessions. As there is no limitation on the number of terms members may serve, several members have served for *long and unbroken periods* … The *ultimate success* of any monitoring system, including of a unified standing treaty body, depends on the *calibre* and *independence* of the experts monitoring implementation of treaty standards."[13]

James Crawford considers that "the electoral process (like most such processes within the UN) is haphazard and takes limited account of qualifications".[14] Some members have continued to serve in government positions during their function in the Com-

12 Concept Paper, *supra* note 7, para. 18.

13 *Ibid.*, paras. 22 and 61 (emphasis added).

14 P. Alston and J. Crawford (eds.), *The Future of UN Human Rights Treaty Monitoring* (Cambridge University Press, Cambridge, 2000) p. 9.

mittee.[15] Furthermore, the Human Rights Committee, as the most prominent complaints body, deals with complaints only on the basis of "written information made available to it by the individual and by the State Party concerned"[16] and does not allow oral presentations, examination of witnesses or experts, nor independent fact-finding.[17] There is no transparency in deliberations since the complaints are considered in "closed meetings".[18] As expressed by Henry J. Steiner: "[a]ll these provisions contrast sharply with characteristic requirements for judges and judicial process".[19]

If a World Court of Human Rights were to be established, it would differ in its composition from the existing treaty bodies by consisting only or pre-eminently of lawyers. What it loses in inter-disciplinary knowledge would be gained by its increased combined legal expertise. Consideration should be given to election procedures whereby parallels may be drawn with similar processes in other international courts, including regional human rights courts. The International Criminal Court has for example elaborated requirements on qualifications, nominations and election of judges.[20] The World Court would have full-time judges. Emphasis should also be placed on the need for procedures aiming at reliable assessment of the facts, oral presentations by the parties, and transparency.

2.4 Effectiveness

As regards the achievements of the individual complaints mechanisms, the High Commissioner refers both to the effects in individual cases and to the importance of jurisprudence developed:

> "Despite the fact that treaty bodies' decisions in this context are not legally binding, individual complaints procedures have often resulted in individual relief for victims. Through the decisions in individual cases, the Committees have also developed a body of jurisprudence on the interpretation and application of human rights treaties, which is referred to more frequently by national and regional courts and tribunals."[21]

Martin Scheinin gives a not too optimistic picture of the implementation of decisions based upon individual complaints to the Human Rights Committee. He submits that "[q]uite often, States simply choose to ignore the Views by not even reporting back to the Committee, let alone taking effective measures to remedy the human rights viola-

15 H.J. Steiner, 'Individual claims in a world of massive violations: What role for the Human Rights Committee?', in P. Alston and J. Crawford (eds.), *The Future of UN Human Rights Treaty Monitoring* p. 28.

16 Optional Protocol to the International Covenant on Civil and Political Rights, Article 5(1).

17 H. J. Steiner *et al.*, *International Human Rights in Context: Law, Politics and Morals: Text and Materials* (Oxford University Press, Oxford, 2006) p. 892.

18 Optional Protocol Article 5(3).

19 Steiner, *supra* note 15, p. 29.

20 Rome Statute of the International Criminal Court, Article 36.

21 Concept Paper, *supra* note 7, para. 13.

tion established by the Committee".[22] But the "Views by the Committee contribute to the accumulation of case law on the substantive interpretation of the material human rights provisions of the Covenant. Hence they may serve as a source of inspiration and even authority for the domestic courts all over the world by clarifying the evolving meaning of human rights provisions."[23]

As argued by Henry Steiner in relation to the Human Rights Committee, adjudicatory bodies may be considered to have three functions: resolving individual cases, protecting rights through deterrence, and develop jurisprudence on interpretation of the relevant rules. He doubts, however, whether making the views of the Committee binding would improve compliance with its decisions: "It is indeed unclear whether an amendment to the protocol making views binding would improve the historically spotty record of compliance. The problem stems less from uncertainty over the formal effect of the view than from unyielding attitudes of the recalcitrant states, the gross and systematic violators."[24]

Philip Alston points out the significance of applying positive incentives, particularly in relation to developing states, and he draws parallels with the experience of the implementation of environmental agreements,[25] whereas Martin Scheinin suggests that the political backing of states parties and the political organs of the United Nations is equally important as the binding force of findings of the Human Rights Committee.[26]

It should be assumed that judgments from a World Court would carry more weight than decisions from supervisory bodies, even those from the Human Rights Committee. First of all, the decisions of the Court would be legally binding (*res judicata*). As regards another international court, the International Court of Justice, Constanze Schulte concludes that "[t]he overall record of compliance with ICJ judgments should be viewed as a positive one. Only on a few occasions have states openly and wilfully chosen to disregard the Court's judgments".[27] As to the status of non-binding decisions of human rights treaty bodies in national legal systems, the International Law Association's Committee on International Human Rights Law and Practice has concluded that "courts have noted that, while the treaty bodies are not courts, their findings are relevant and useful in some contexts. However, they have usually stopped short of concluding that they are obliged to follow treaty body interpretations, even in cases in which the treaty body has expressed a view on a specific case or law from the jurisdiction in question".[28] It is submitted by the Committee that the non-binding

22 M. Scheinin, 'The International Covenant on Civil and Political Rights', in G. Ulfstein *et al.* (eds.), *Making Treaties Work: Human Rights, Environment and Arms Control* (Cambridge University Press, Cambridge, 2007) p. 66.

23 *Ibid.*, p. 67.

24 Steiner, *supra* note 15, p. 30.

25 P. Alston, 'Beyond 'them' and 'us': Putting treaty body reform into perspective', in Alston and Crawford, *supra* note 14, pp. 523–525.

26 Scheinin, *supra* note 22, p. 69.

27 C. Schulte, *Compliance with Decisions of the International Court of Justice* (Oxford University Press, Oxford, 2004) p. 271.

28 The International Law Association, 'Report of the Seventy-First Conference (Berlin)', (2004) p. 624.

character of the findings of treaty bodies may be a factor impeding the implementation of a decision in the domestic legal systems.[29]

In addition to the binding character of its judgments, a World Court would be expected to apply well-defined procedures and should be more able to overcome current deficiencies in the supervisory system, such as the qualifications and independence of its members, and lacking fact-finding and oral procedures. Its decisions may thus enjoy higher legitimacy and thereby acquire a stronger persuasive force.

Increased visibility and efficiency may also attract more cases and increase effectiveness in the sense that more people may gain access to the Court and have their rights determined within a shorter waiting time. But as already mentioned, a visible and efficient court producing judgments respected by states parties may also suffer detrimental consequences of its success in terms of overload. This may militate in favour of establishing a screening mechanism for the World Court and placing more emphasis on developing jurisprudence in the form of precedence, rather than in dealing with all cases that may fall within its jurisdiction.

3. Relationship to Regional Courts, Supervisory Mechanisms and Political Bodies

There has been much focus on the fragmentation of international law in recent years, including the views expressed by the United Nations International Law Commission.[30] The establishment of a World Court of Human Rights could be seen as a further step towards fragmentation of the international supervisory human rights system, and thus working in the opposite direction of the High Commissioner's proposal about a unified permanent treaty body.

The dangers of multiple supervisory organs and courts should not, however, be exaggerated. Rosalyn Higgins has pointed out "the tremendous efforts that courts and tribunals make … to be consistent inter se".[31] Through its case law, a World Court may in fact develop more consistency in the interpretation of human rights conventions by different organs and courts. Moreover, there are different ways of overcoming – or alleviating – challenges connected with fragmentation. First, states accepting the jurisdiction of a World Court could *denounce* the complaints procedure of human rights conventions, as proposed by Nowak and Scheinin. Second, competing jurisdiction may be avoided through *complementarity* – that is, that the complainant must choose between the mechanisms available, such as provided for in Article 35(2)(b) of the European Convention on Human Rights. Finally, the Court could be an appeals instance for decisions taken by treaty bodies, as suggested by Scheinin, or even for judgments by regional courts – that is, a principle of *hierarchy*. The establishment of a screening mechanism, as suggested above, may fit well with arrangements based upon

29 *Ibid.*, p. 635.

30 *See* the report from the International Law Commission, published as M. Koskenniemi, *Fragmentation of International Law: Difficulties Arising from Diversification and Expansion of International Law. Report of the Study Group of the International Law Commission* (The Eric Castrén Institute Research Reports 21/2007, Helsinki, 2007).

31 R. Higgins, 'A Babel of Judicial Voices', 55/4 *The International and Comparative Law Quarterly* (2006) pp. 791–805.

complementarity or the World Court as an instance for appeals. The combination of denunciation and screening may, however, leave the petitioners with lesser opportunities to have their case heard than today, and would thus merit further consideration.

It could also be claimed that there is not much need for a global human rights court in addition to the regional courts (except for Asia), and that the challenge should rather be to support the viability and effectiveness of the existing courts. But against this, it may be argued that the substantive scope of the regional human rights instruments does not cover all the human rights of the global conventions; a World Court would mean the only international human rights court available for the Asian region; the Court may give guidance to regional courts through its jurisprudence; and, finally, that a World Court of Human Rights would not prevent supporting the regional courts.

The establishment and use of international courts has in certain fields of law been seen as confrontational and counter-productive, particularly in areas concerning the protection of collective interests such as international environmental law.[32] The protection of human rights is a collective concern and both treaty bodies and political organs are relevant venues for addressing their implementation. But human rights are ultimately aiming at the protection of individual human beings. Consequently, affording the individual victims of human rights violations access to a complaints procedure – or better a court – should be seen as reflecting this individual aspect of human rights, which differs from that of, for example, climate change or arms control.

The establishment of a World Court could, however, entail a danger of disconnecting individual complaints from the dialogue and follow-up instituted as part of the examination of state reports. The challenge would be to establish an inter-action between the Court and the treaty bodies in the sense that these bodies should take on the task of follow-up – and not review – judgments by the Court in their examination of state reports.

A World Court of Human Rights should also be seen in the context of the political human rights organs of the United Nations, especially the Human Rights Council. Nowak emphasises that a main new feature of the Council is the Universal Periodic Review (UPR). As one of the purposes of establishing the Council was to depoliticise the former Commission, he argues that the UPR as a "peer review" system cannot "be meant to be an assessment of the human rights situation in States by other States. This would not only duplicate the work of treaty bodies and special procedures, it would also mean a major step backwards. The universal periodic review must, therefore, be understood as a follow-up mechanism similar to the one practised in the Council of Europe in relation to the European Convention on Human Rights (ECHR)."[33]

While the treaty bodies would represent the expert follow-up of World Court judgments, the Council should, as pointed out by Nowak, act as a political follow-up mechanism to the Court. As referred to above, the political backing of the UN organs is of crucial importance for the implementation of decisions by supervisory bodies, and

32 Ulfstein, *et al.*, *supra* note 22, p. 10. *See also* E. Hey, *Reflections on an International Environmental Court* (Kluwer Law International, The Hague, 2000) and O. K. Fauchald, 'Bør etablering av en internasjonal miljødomstol være et prioritert mål?' 31/2 *Kritisk Juss* (2005) pp. 109–131.

33 Nowak, *supra* note 4, p. 251 (footnote omitted).

would be important for ensuring the effectiveness of judgments from a World Court. Assistance to developing states may also be critical for their ability to implement such judgments. The Human Rights Council may have a pivotal role in both respects. The Council represents, however, an inherent danger of politicisation and the undermining of judgments by a World Court of Human Rights. While the procedural framework is in place for the Universal Periodic Review, it remains to be seen how the system will work in practice.[34]

4. Legitimacy of a World Court

It may be argued that a World Court of Human Rights should not be given the power to make binding judgments in contentious value-laden issues such as the rights of women, or homosexuals and other minorities, or the freedom of religion, in a world that is divided along geographical, political, social, cultural and religious lines.[35] The establishment of a World Court could also be seen as a further step in the legalisation of international human rights, at the expense of political approaches and dialogue.[36] Finally, it may be argued that the regional human rights courts face increasing scepticism because of their intrusion on national democracy, which would militate against the establishment of a World Court.[37]

As to the global diversity of values, the formal arguments would be that states have accepted the human rights standards, as contained in human rights conventions, by their adoption and ratification. The standards have furthermore been reaffirmed at global conferences such as the 1993 Vienna Conference on Human Rights ("the universal nature of these rights and freedoms is beyond question"). The 2005 World Summit declared that human rights are one of the three pillars, together with peace and security and development, of the United Nations and the foundations for collective security and well-being.[38] The Universal Periodic Review of the Human Rights Council is based upon "universality of coverage and equal treatment with respect to all States".[39] Hence, international human rights as contained in the legal instruments have been accepted in the representative national and international organs.

34 *See* Resolution 5/1 Institution-building of the United Nations Human Rights Council (18 June 2007).

35 *See* on universalism and cultural relativism: J. Steiner *et al.*, *International Human Rigths in Context* (Oxford University Press 2007) pp. 517–665.

36 *See* about legalisation of human rights: B. Cali and S. Meckled-García, *The Legalization of Human Rights* (Routledge, London, 2006).

37 The relationship between democracy and human rights has been discussed in government papers and academic debate in Norway and Denmark, *see* 'NOU 2003:19 Makt og Demokrati. Sluttrapport fra Makt- og Demokratiutredningen', I. E. Koch, *Menneskerettigheder og magtfordeling: Domstolskontrol med politiske prioriteringer* (Magtutredningen; Aarhus universitetsforlag, Aarhus, 2004) and I. E. Koch and J. Vedsted Hansen, 'International Human Rights and National Legislatures – Conflict or Balance?' 75 *Nordic Journal of International Law* (2006) pp. 3–28. On the consequences of adoption of the UK Human Rights Act 1998, *see* T. D. Campbell *et al.*, *Sceptical Essays on Human Rights* (Oxford University Press, Oxford, 2001).

38 General Assembly Resolution 60/1 World Summit Outcome, para. 9.

39 General Assembly Resolution 60/251 Human Rights Council, para. 5(e).

The establishment of a World Court of Human Rights would obviously represent a further legalisation of international human rights. But this is not an end in itself; its objective would be to serve the effective implementation of treaty obligations. Furthermore, criticism of regional courts has not been directed towards their very existence, but rather has concentrated on how they perform their function in interpreting the relevant regional instruments. The establishment of regional courts (except for Asia) should also be seen as recognition that the judicial channel is an acceptable and effective way of protecting human rights.

A World Court is meant to restrict national freedom: the Court's function is to ensure that states respect their international obligations. But, first, the Court should serve to implement obligations freely – and ideally democratically – entered into by the state. Furthermore, democratic values are not the only basis of legitimacy: the effective protection of individuals and minorities against a democratic majority is of equal importance, and should in fact be considered to be a constitutive element of democracy. International courts are also generally composed of respected and professional individuals and apply well-known procedures of high credibility – providing a further basis for legitimacy.

Of course, the possibility of having recourse to a World Court rendering binding judgments means less freedom for states to choose their own interpretations and adaptations. But several states are currently implementing the non-binding decisions by supervisory organs in good faith. Such states would have less difficulty in accepting binding judgments from a World Court. In fact, from their point of view, the situation may indeed improve, through the quality of the composition and procedure of a Court.

More reluctant states may be comforted by the need to exhaust local remedies before approaching the Court. It is also possible to establish the use of regional courts as a first instance. Both requirements may be seen as representing responses to the principle of 'subsidiarity'. This principle may be further strengthened by the use of a 'margin of appreciation' as applied by the European Court of Justice. This margin may be further extended in a global context due to the variations of cultures and political systems. But the Court should be cautious in not allowing a tendency towards lax control: its function would be intended to improve the protection of human rights. It should also see its responsibility as one of striving towards increased uniformity in the interpretation of human rights conventions through its jurisprudence.

In addition, it should be recalled that political organs such as the Human Rights Council would be able to express their views on international human rights standards – but not interfere in the judicial function of the Court. Finally, the proposals from Nowak and Scheinin allow states to choose the human rights conventions with which the Court would be delegated jurisdiction to judge in relation to the relevant state. This would leave room for states to await allocation of jurisdiction for certain conventions until they felt assured by the jurisprudence of the Court.

5. Is a World Court Realistic?

More effective international control of national implementation of human rights obligations is desirable and from this point of view a World Court of Human Rights should be welcomed. The establishment of a World Court of Human Rights may be justified by the fact that the protection of human rights is not only a matter of collec-

tive concern, but affects in the highest degree individuals and minorities. The timing is also good, with the newly established UN Human Rights Council and the debate on improvements to the treaty body system. The proposed Court would accord with a more general trend towards an increasing number of international courts. This may be seen not only as an aspect of the 'legalisation' of international law. Since the intention is to empower an international judicial organ in order to increase the respect for core values in the international community, it may even be regarded as a facet of the growing 'constitutionalisation' of international law.[40]

The establishment of a World Court would overcome several of the weaknesses of the current supervisory mechanisms, such as the lack of visibility, professionalism and independence of its members, procedural deficiencies, and – not least – the non-binding character of its decisions. Hence the Court may be expected to extend greater availability for petitioners, enjoy higher legitimacy and exert more influence in national legal systems.

The Court would at least in a transitional period add to the fragmentation of the human rights supervisory system. Furthermore, the respective functions of the Court, regional human rights courts, the treaty bodies, and the Human Rights Council as a political organ should be clarified. But although a World Court would formally represent a further fragmentation of the international human rights system, it should be expected that such a Court would promote substantive consistency through its jurisprudence. There are also different ways of overcoming the formal fragmentation through denunciation of the complaints procedures of existing treaty bodies, providing for complementarity, or hierarchy through an appeals procedure.

The problems of possible overload may be overcome by a screening procedure while respect for the different political, cultural and religious systems in the world could be accommodated through a principle of 'subsidiarity' in favour of regional courts, and the availability of a margin of appreciation. It is, however, of vital importance that screening and a margin of appreciation do not result in less availability of the complaints system, and that the Court is vigilant in its control of national implementation of human rights treaty obligations. The existing treaty bodies and the Human Rights Council should support the national implementation of judgments from the World Court through dialogue with the states, assistance and political backing.

The proposed World Court, however, faces difficulties in the sense that the global political climate in the human rights field is characterised by conflicts between different political systems, regions, cultures and religions, especially in the Human Rights Council. There is also increasing scepticism regarding what is seen as the expansive role of regional courts, such as the European Court of Human Rights. On the other hand, there are also positive signs, such as the recognition of human rights as being one of the three pillars of the United Nations at the 2005 World Summit and the upgrading of the Human Rights Council compared with the former Commission, by making it a permanent sub-organ of the General Assembly.

40 *See* for an overview, *e.g.*, R. St. John Macdonald and D. M. Johnston (eds.), *Towards World Constitutionalism: Issues in the Legal Ordering of the World Community* (Martinus Nijhoff, Leiden, 2005).

As has been demonstrated, there are different modalities available to alleviate the concerns of the sceptics. Moreover, the suggested model is technically easier to realise than the High Commissioner's unified standing treaty body, since the establishment of the Court does not require amendments of existing human rights conventions. Finally, allowing states the option to choose the human rights conventions to which the Court should be given jurisdiction mean that states may await the Court's function and jurisprudence in practice before they commit themselves. It is important to seize this opportunity when the supervisory system is being assessed and debated to widen the focus, by also considering the establishment of a World Court of Human Rights.