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Woe to the Vanquished? A Comparison of the Reparations Process after World War I (1914–18) and the Gulf War (1990–91)

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I) Introduction

"Scipio Africanus dicere solitus est
hostis non solum dandam esse viam ad fugiendum,
sed etiam muniendam"
Frontinus (Stratagemata, Lib. IV,7,16[α])

"Una salus victis nullam sperare salutem"
Virgil (Aeneid, Lib. II, v.354[β])

Although spanning almost two centuries, the Gulf War, both World wars and the Napoleonic wars have a striking commonality. Namely, each was fought by a multi-state coalition against one or more States which, in their bids for military and political hegemony, had overwhelmed neighboring countries. And in each case the opposing international coalition, guided by a few powerful states, fought under the banner of restoring international order and legality. Most significantly for legal scholars, in every instance the victorious coalition demanded and eventually obtained – with varying degrees of success –

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[α] "Scipio Africanus used to say that a road not only ought to be afforded the enemy for flight, but that it ought even to be paved!" Transl. C.E. Bennett in M.B. McElwain, Frontinus, *The Stratagems and the Aqueducts of Rome*, Cambridge, Mass., Harvard University Press, 1978.

[β] "One safety the vanquished have, to hope for none!". Transl. H. Rushton Fairclough, *Virgil: Ecologues, Georgics, Aeneid I–VI*, Cambridge, Mass., Harvard University Press, 1978.

reparations for the damages inflicted and recognition of the aggressor's legal responsibility.

Indeed, when the UN Security Council decided in the aftermath of the 1990-91 Kuwait crisis to establish a mechanism to deal with the issue of reparations for war damages (hereafter referred to as the "Geneva process"),[1] it did not build on a clean slate. A long tradition of international claims practice offered sound foundations for this process.[2] Yet the context was deeply different and unprecedented: the Cold War had just terminated, giving the UN a unique opportunity for innovation.[3] Unlike in 1815, 1918 or 1945 when non-state actors still played a marginal role in international society, in 1991 individuals (and even stateless persons), non-governmental organizations, corporations and intergovernmental organizations could, for the first time in history, become beneficiaries of the process along sovereign states.

This paper analyzes the extent to which the United Nations Compensation Commission (UNCC) is indebted to and conditioned by the legacy of the past and evaluates whether it has fully exploited the exceptional political circumstances of the post-Cold War to advance the international rule of law.

The scope of this paper is rather limited. First, although other historical precedents exist, this paper will mainly focus on the remarkably similar compensation procedure established by the Paris Peace Conference of 1919, (hereafter referred to as the "Paris process").[4] In particular, it will comment

1 I decided to call the process for the settlement of claims arising out of the Gulf War "The Geneva process" because the seat of the United Nations Compensation Commission, where all decisions concerning the claims are taken, is at Villa la Pelouse, in Geneva.

2 For an account of the historical precedents to the Geneva process, see D.J. Bederman, "Historic Analogous of the UN Compensation Commission", in R.B. Lillich, *The United Nations Compensation Commission*, Irvington, NY, Transnational Publishers, 1995, pp. 257–309; D.J. Bederman, The United Nations Compensation Commission and the Tradition of International Claims Settlement, 27 N.Y.U.J.Int'l L. & Pol. 1 (1994); W. Heintschel von Heinegg, Kriegsentschädigung, Reparation oder Schadenersatz, 90 *Zeitschrift für vergleichende Rechtwissenschaft (Z.v.R.)* 113 (1991); N.C. Ulmer, The Gulf War Claims Institution in 10 J.Intl Arb. 85 (1993).

3 For an account of the innovative aspects of the Geneva process see, in general, B.G. Affaki, The United Nations Compensation Commission: A New Era in Claims Settlements, 10 J.Int'l Arb. 21 (1993); C. Alzamora, Reflections on the United Nations Compensation Commission, 9 Arb. Int'l 349 (1993); J.R. Crook, The UNCC-A New Structure to Enforce State Responsibility, 87 Am.J.Int'l.L. 144 (1993); S.J. Gold, International Claims arising from Iraq's Invasion of Kuwait, 25 Int'l Law 713 (1991); C. Whelton, The UNCC and International Claims Law: A Fresh Approach, 25 Ottawa L.Rev. 607 (1993); D.D. Caron, *The UNCC and the Search for Practical Justice*, in Lillich, *op. cit.*, pp. 367–378; A. Gattini, La riparazione dei danni di guerra causati dall'Iraq, 76 R.D.I. 1000 (1993).

4 On the reparation of war damages arising out of WWI, see, in general: A. Sharp, *The Versailles Settlement: Peacemaking in Paris, 1919*, New York, St. Martin's Press, 1991; H. Holborn, *Kriegsschuld und Reparations auf der Pariser Friedenskonferenz von 1919*,

on only one of the five peace agreements signed to conclude WWI, namely the Treaty of Versailles concluded between the Allied and Associated Powers and the German Empire on June 28th, 1919.[5] Second, this paper does not intend

Leipzig/Berlin, B.G. Teubner, 1932; H. Ronde, *Von Versailles bis Lausanne, der Verlauf des reparationsverhandlungen nach dem ersten Weltkrieg*, Stuttgart, W. Kohlhammer, 1950; J. Fischer Williams, A Legal Footnote to the Story of German Reparations, 13 Brit. Y. Int'l L. 9 (1932).

Whereas the Paris and the Geneva processes are strikingly similar, the settlement of claims arising out of World War II has been a much less homogeneous process and more equivocal. First, political considerations played an important role, as defeated nations were treated differently by the Soviet and Western Allies. Second, in many cases determining the amount of compensation and payments dragged on through the following thirty years and did not have a unified nature. Moreover, within the same context, different groups were idemnified through different processes (e.g., the victims of the Holocaust were treated differently and were compensated through different mechanisms than American prisoners of war). Finally, while it is possible to speak of German and, to a certain extent, of Japanese defeat in WWII in terms of *debellatio*, Germany after WWI and Iraq in 1991 were not completely occupied, nor were their governments authoritatively overthrown by the victorious coalition. This has deeply influenced the way reparations and their enforcement were approached legally. For a comparison with WWI, see R. Castillon, *Les réparations allemandes: Deux expériences, 1919–1932, 1945–1952*, Paris, Presses Universitaires de France, 1953. On reparations after WWII see, in general: H. Rumpf, Die deutsche Frage und die Reparationen, 33 Z.a.ö.R.V. 344 (1973); K. Schwerin, German Compensations for Victims of Nazi Persecution, 67 Nw.U.L.Rev. 479 (1972); I. Siedl-Hohenveldern/H.P. Ipsen, *Entschädigungspflicht der Bundesrepublik für reparationensentzogens Auslandsvermögen*, Heidelberg, Verlagsgesellschaft "Recht un Wissenschaft", 1962; R. Kramer (ed.), *War Claims*, Durham, Duke University Press, 1951.

[5] Treaty of Peace between the British Empire, France, Italy, Japan and the United States (The Principal Allied and Associated Powers), and Belgium, Bolivia, Brazil, China, Cuba, Czechoslovachia, Ecuador, Greece, Guatemala, Haiti, the Hedjaz, Honduras, Liberia, Nicaragua, Panama, Peru, Poland, Portugal, Romania, the Serb-Croat-Slovene State, Siam, and Uruguay, and Germany, signed at Versailles, June 28th, 1919, 225 Consol TS 188 (hereinafter referred to as the "Treaty of Versailles").

The exclusion of the other four treaties concluded within the framework of the Paris Peace Conference (Treaty of Saint Germaine-en-Laye; Treaty of Trianon; Treaty of Neuilly-sur-Seine; The Treaty of Sèvres) is justified because the Treaty of Versailles was the first to be concluded by the Allied and Associated Powers and the Central Empires. The subsequent treaties thus contain almost identical provisions concerning reparations and mechanisms for settling war claims. The two main exceptions were the Treaty of Neuilly, where the issue of war reparations was settled by a lump-sum agreement of 2,250 million francs of gold (art. 121), and the Treaty of Sèvres, where the Allied Powers waived all claims against the Turkish government (art. 231).

See Treaty of Saint Germaine-en-Laye, September 10, 1919, (Austria), 22 Consol TS 9; the Treaty of Trianon, June 4, 1920, (Hungary) reproduced in A. Toynbee, *Major Peace Treaties of Modern History: 1648–1967*, New York, Mc Graw Hill, 1967, 4 Vols., Vol. III, at 1863; the Treaty of Neuilly-sur-Seine, 27 November, 1919, (Bulgaria), 226 Consol TS 333. The Treaty of Sèvres (Toynbee, *op. cit.*, Vol. III, at 2055), which put and end to the war between the Allied and Associated Powers and Turkey was concluded only on 10 August, 1920, because of the delay caused first by the war between Turkey and Greece (1920–22) and then by the Turkish

to contribute an exhaustive comparative analysis of the two compensation processes. Other possible analogies and dissimilarities have been omitted for sake of brevity, as well as many innovative features of the Geneva process. All these elements might quite aptly be the object of a specific treatise.

This paper will first analyze the major affinities between the Paris and the Geneva processes, including a presumption of liability as the basis for the subsequent determination of reparations; a similar structure and functioning; and the grievances of the defeated countries on the overall fairness and legitimacy of the compensation process. It will then analyze the major dissimilarities which include the underlying legal bases of the compensation processes; the beneficiaries of compensation; the extent and nature of the damages covered; and the mechanisms to ensure payments. A conclusive section summarizes the main lessons to be drawn from the two processes.

II) Similarities

a) The Formal Source of the Process

The first remarkable and legally meaningful similarity between the war claims settlement following World War I and the Gulf War is that in both cases the underlying legal basis was a presumption of liability.[6]

In Resolution 687 of April 3, 1991, the Security Council [re]affirmed that:[7]

> *"Iraq ... is liable, under international law, for any direct loss, damage – including environmental damage and the depletion of natural resources*

revolution led by Mustapha Kemal. Because of the Turkish Revolution, the Treaty of Sèvres lasted only until 1923, when it was superseded by a new treaty concluded in Lausanne (Toynbee, *op. cit.*, Vol. IV, at 2301). On Austrian reparations see, in particular, M. Bansleben, *Das österreichische reparationsproblem auf der Pariser Friedenskonferenz*, Wien, Böhlau Verlag, 1988.

[6] See J.R. Crook, The UNCC and its Critics: Is Iraq Entitled to Judicial Due Process?, in Lillich, *op. cit.*, pp. 77–102, at 80. In general, G.T. see Yates, *State Responsibility for Nonwealth Injuries to Aliens in the Post War Era*, in R. Lillich (ed.), *International Law of State Responsibility for Injuries to Aliens*, Charlottesville, University Press of Virginia, 1983, at 244 and 251.

[7] In early resolutions seeking to restore peace and security after the invasion of Kuwait had begun, the Security Council explicitly informed Iraq of the legal consequences of breaching various international norms, creating the basis for later reparations. See UNSC Res. 666 (1990), para. 2; UNSC Res. 667 (1990); UNSC Res. 674 (1990); UNSC Res. 679 (1990), para. 13; UNSC Res. 686 (1991), para 2(b). For a collection of the basic legal documents on the Gulf War, see: E. Lauterpacht (ed.), *The Kuwait Crisis: Basic Documents*, Cambridge, Grotius, 1991.

– or injury to foreign governments, nationals and corporations, as a result of Iraq's unlawful invasion and occupation of Kuwait".[8]

Similarly, according to Article 231 of the Treaty of Versailles,

> "*[T]he Allied and Associated Governments affirm and Germany accepts the responsibility of Germany and her allies for causing all the loss and damage ... as a consequence of the war imposed upon them by the aggression of Germany and her allies.*"[9]

These two "war guilt" clauses were subjected to fierce criticism both by Germany and Iraq and by a number of diplomats, historians and legal scholars. Critics regarded them as the proof that the whole compensation process was a victors peace imposed on vanquished nations.[10] Presumptions of liability are not unprecedented in international law. Other regimes for the settlement of war claims have likewise made awards on the basis of generalized findings of responsibility. However, leaving aside for the moment the issue of the legitimacy of the process,[11] Resolution 687 and Article 231 of the Treaty of Versailles are differently worded and are contained in dissimilar legal instruments. Whereas the Paris process was instituted and regulated by way of a treaty, the legal basis for the Geneva settlement process was a UN

[8] UNSC Res. 687 (1991), reproduced in 30 ILM 846 (1991), para. 16. See G. Cottereau, De la responsabilité de l'Iraq selon la Résolution 687 du Conseil de Sécurité, 37 AFDI 99 (1991).

[9] Treaty of Versailles, *supra* note 5, Art. 231. Article 177 of the Treaty of Saint Germaine and art. 161 of the Treaty of Trianon contain identical provisions. *Ibid.* However, the wording of the Treaties of Neuilly and Sèvres is slightly different because Turkey and Bulgaria joined the hostilities only after war begun (in November 1914 and in September 1915 respectively): "Turkey [Bulgaria] recognizes that by joining the war of aggression which Germany and Austria-Hungary waged against the Allied Powers she has caused to the latter losses and sacrifices of all kinds for which she ought to make complete reparation". See art. 231 of the Treaty of Sèvres and Art. 121 of the Treaty of Neuilly. See *ibid.*

[10] For criticism regarding the Paris Process see, in general, J.M. Keynes. *The Economic Consequences of Peace*, New York, Harcour, Brace & Howe, 1920; J.M. Keynes, *A Revision of the Treaty, being a sequel to the Economic Consequences of the Peace*, New York, Harcourt & co., 1922; M. Trachtenberg, *Reparations in World Politics: France and European Economic Diplomacy, 1916–1923*, New York, Columbia University Press, 1980.
For scholarly criticism regarding the Geneva process see Bederman, Historic Analogues, *op. cit,*, at 261; H.M. Fox, Reparations and State Responsibility: Claims Against Iraq Arising out of the Invasion and Occupation of Kuwait, in P. Rowe (ed.), *The Gulf War 1990–91 in International and English Law*, at 261; E.J. Garmise, The Iraqi Claims Process and the Ghost of Versailles, 67 N.Y.U.L.Rev. 840 (1992); B. Graefrath, Iraqi Reparations and the Security Council, 55 Z.a.ö.R.V. 1 (1995); R. Higgins, *Problems & Process: International Law and How We Use It*, Oxford, Clarendon Press, 1994, at 183–184.

[11] See *infra* para. II.c.1.

Security Council resolution. Moreover, while Article 237 refers to German "responsibility", Resolution 687 speaks of Iraqi "liability".

With regard to the different legal nature of the instruments containing these determinations of liability, it should be noted that in both cases the party liable grudgingly accepted its liability for the damages caused. In the case of the Treaty of Versailles, the assent was contained in the war-guilt clause itself ("... and Germany accepts"). In the case of Resolution 687, Iraq agreed to the process in a letter to the UN Security Council dated April 6th, 1991.[12] Such acceptance was later confirmed as "... irrevocable and qualified [and] legally binding on the Republic of Iraq".[13]

Yet, while in both cases the expressed acceptance of liability carried heavy political weight, from the legal point of view one cannot but remark on their redundancy. By signing and ratifying the Treaty of Versailles, Germany accepted all provisions contained in that treaty, liability included. In like manner (though on distinct legal grounds), Security Council resolutions do not need to be accepted by concerned states in order to produce legal effects. They are binding by virtue of the members' ratification of the UN Charter.[14] Iraq was, and still is, a member of the United Nations and therefore is *ipso facto* called by Article 25 of the UN Charter to comply with the resolutions of the Security Council.[15]

The difference in the terminology used by Article 231 of the Treaty of Versailles and by Resolution 687 can be explained, to a large extent, as the result of the relative decline of French in international relations and the present predominance of English as working-language, rather than by any underlying

12 See *Identical Letters dated 6 April 1991 from the Permanent Representative of Iraq to the United Nations addressed respectively to the Secretary-General and the President of the Security Council*, UN Doc. S/22456, at 7 (6 April, 1991); *Letter dated 11 April 1991 from the President of the Security Council addressed to the Permanent Representative of Iraq to the UN*, UN Doc. S/22485 (11 April, 1991).

13 *Ibid.*

14 The meaning of the term "decision" in Article 25 of the UN Charter and the scope of the Security Council power to issue binding decisions has been subject to intense debate, both among States and legal scholars. While this is not the place for giving a detailed account of such contention and its various articulations and doctrines, the great majority of scholars seem to agree that decisions of the Security council which, according to their wording, are clearly recognizable as recommendations and which, according to the Charter provisions they are based on, cannot be expected to be regarded as binding, are exempt from the binding force of decisions of the Security Council under Article 25. At the same time, decisions taken under Chapter VII which are not couched in terms of a recommendation, as well as decisions under Chapter VIII, are binding in the meaning of Article 25. For an account of the doctrinal debate as well as of UN and State practice, see: B. Simma (ed.), *The Charter of the United Nations: A Commentary*, Oxford, Oxford University Press, 1994, at 407–418.

15 "The Members of the United Nations agree and accept to carry out the decisions of the Security Council in accordance with the present Charter". See UN Charter, Art. 25.

normative difference. Indeed, while the French and the Italian legal system use only one term (*responsabilité/responsabilitá*), the common law systems, and the US legal system in particular, distinguish between "responsibility" and "liability", with a marked predominance of the latter over the former.[16] In International Law, however, the situation is quite different. "Responsibility" remains the usual term employed by international doctrine, the term "liability" having made its appearance in international law only relatively recently. In particular, "liability" has made its appearance in international jargon only toward the beginning of the 1960s, in connection with the development of the doctrine of liability for activities not prohibited by international law and for ultra-hazardous activities. Yet, since in common law systems the duty to repair material damage is commonly referred to as "liability" and since this duty is, under International Law, also a typical consequence of State responsibility, the term "liability" has been increasingly, though quite inappropriately, been used in this respect synonymously with "responsibility".

The use of the term "responsibility" in the Treaty of Versailles and of "liability" in Resolution 687 epitomizes this legal mishap. Indeed, looking at those legal instruments with hindsight, one cannot but observe that the drafters should have rather done the opposite. To be sure, "liability", unlike "responsibility", is frequently employed in international law to designate the duty to compensate damage caused without wrong-doing. However, while there seems to be no doubt that the aggression by Iraq of its neighbors is, under contemporary international law, an international wrongful act, it could not be said the same of World War I.[17] It follows that, from a strictly legal point of view, it would have been more correct to speak of "German liability" and "Iraqi responsibility", rather than the opposite.

In short, at the light of these considerations, if one considers that the Versailles Treaty was negotiated and drafted originally in French by diplomats who communicated among themselves in French, while the Security Council Resolution 687 has been drafted and conceived, by and large, in an English speaking environment, trivial lexical disharmony might explain the

16 In common law countries, and in the US in particular, both terms are employed but "liability" by and large predominates. In particular while "responsibility" is commonly employed to designate "... the state of being answerable for an obligation ..." or, more specifically, "... the obligation to answer for an act done, and to repair or otherwise make restitution for an injury it may have caused ...", "liability" is a much more broad and commonly used term which has been used to designate almost every character of hazard or responsibility, absolute, contingent, or likely. In particular it has been defined to mean "... all character of debts and obligations"; "amenability or responsibility"; "an obligation one is bound in law or justice to perform"; "an obligation which may or may not ripen into debt"; "condition of being responsible for a possible or actual loss, penalty, evil, expense or burden", etc. See E.C. Black, *Blacks Law Dictionary*, 6th ed., St. Paul, Minn. West Pub. Co., 1990.

17 See *infra* para. II.c.1.

use of different terms in these legal instruments more than any other legal consideration.

b) Structure and Procedures

Resolution 687 and Article 231 of the Treaty of Versailles identified the damage for which Iraq and Germany were responsible. However, neither document fixed the actual amount to be paid, nor the time and form in which the obligations were to be discharged. In both cases, pronouncements about whether the alleged events actually occurred, whether they fell within the scope of the liability determinations contained in Resolution 687 and Article 231, and about the actual assessment of monetary damages were left to *ad hoc* bodies, that were granted the power to establish their own rules of procedure and criteria for evaluating claims.[18]

In the case of the Paris process, the Treaty of Versailles provided for the creation of the "Reparation Commission".[19] The Reparation Commission was composed by delegates of the Allied and Associated Powers (the United States, Great Britain, France, Italy, Japan, Belgium and the Serb-Croat-Slovene State), each Power appointing one Delegate and one Assistant Delegate.[20] In order to guarantee the expedient processing of claims, only five of these States had the right to participate actively in the proceedings and to vote. The "Big Four" (the US, Great Britain, France and Italy) were "permanent members", while the other three States had the right to sit and to vote only when issues concerning their interests were discussed.[21] The technical aspects of reparations were discussed by sub-committees, whose members

[18] The procedure of the Reparation Commission and that of the UNCC is remarkably quite similar. See H.W.V. Temperley, *A History of the Peace Conference of Paris*, London, Oxford University Press, 1969, at 78 and notes 203–216.

[19] "The amount of the above damage for which compensation is to be made by Germany shall be determined by an Inter-Allied Commission, to be called the Reparation Commission and constituted in the form and with the powers set forth hereunder and in annexes II to VII inclusive hereto". See Treaty of Versailles, annex II, para. 2. The same Reparation Commission was called under art. 179 of the Treaty of Saint Germaine and art. 163 of the Treaty of Trianon, to asses and liquidate the damages caused respectively by Austria and Hungary. See *supra* note 5. In the case of Bulgaria, Art. 121 of the Treaty of Neuilly simply provided that the lump-sum payment agreed would have been remitted to the Allied through the Reparation Commission. See *ibid.*
For the documents of the Reparation Commission see: Allied Powers, *Reparation Commission Official Documents*, London, H.M.S.O., 1921–1925; P.M. Burnett, *Reparation at the Paris Peace Conference*, New York, Columbia University Press, 1940, 2 Vols.

[20] See Treaty of Versailles, *supra* note 5, Annex II to the Reparations Clauses, para. 2.

[21] *Ibid.*, para. 2.

were not necessarily those of the Commission,[22] but the decision-making power remained vested in the Reparation Commission.

In a similar way, Resolution 687 provided for the establishment of a commission to administer the fund to pay compensation for claims,[23] giving the UN Secretary-General the mandate to work out the details of its functioning.[24] Following the blue-print contained in the UN Secretary-Generals' Report,[25] the Security Council established by Resolution 692 a United Nations Compensation Commission (UNCC) and a United Nations Compensation Fund ("The Fund").[26] The UNCC is composed by the Governing Council, the decision-making organ'[27] by the Panels of Commissioners, which scrutinizes the merits of complaints'[28] and a Secretariat,[29] which processes the claims submitted, services the Governing Council and the Panels of Commissioners, and supervises the technical administration of the Compensation Fund. Like the Reparation Commission, the Governing Council reflects the contemporary distribution of power in international affairs: its composition is the same as that of the Security Council at any given time.[30]

c) Nature of Objections

Despite accepting their responsibility,[31] both Germany and Iraq advanced doubts concerning the fairness and legal validity of the settlement processes.[32] Their grievances focused on the legitimacy of the process establishment and on its intrinsic inequality. All this grumbling deserves to be examined on legal grounds.

[22] *Ibid.*, para. 7.

[23] "[The Security Council] decides to create a fund to pay compensation for claims that fall within paragraph 16 and to establish a commission that will administer the fund". See UNSC Res. 687, *supra* note 8, para. 18.

[24] *Ibid.*, para. 19.

[25] See *Report of the Secretary-General Pursuant to Paragraph 19 of Security Council Resolution 687 (1991)*, UN Doc. S/22559 (2 May, 1991).

[26] See UNSC Res. 692 (1991), reprinted in 30 ILM 864 (1991).

[27] See Report of the Secretary General, *supra* note 25, para g.1.

[28] *Ibid.*, para g.2.

[29] *Ibid.*, para g.3.

[30] *Ibid.*, para g.1

[31] See *supra* note 12.

[32] In the case of Germany see: Observations of the German Delegation on the Conditions of Peace. Reproduced in M. Trachtenberg, *op. cit.*, at 87–88. In the case of Iraq see *Statement by the Delegation of Iraq,* UNCC Governing Council, 12 session, 21–24 March 1994. See also UN Doc. S/22456 (1991), *supra* note 12.

1) Legitimacy of the Process

Both Iraq and Germany have questioned the legitimacy of the settlement process, but on different grounds. Iraq contested the legitimacy of the Security Council's authoritative determination of Iraq's liability and of the establishment of the UNCC. Germany, on the other hand, claimed that coercion vitiated its consent to be bound by the Treaty of Versailles; therefore, the compensation process established pursuant to its provisions was illegitimate.[33] In both cases the objections lay on shaky legal grounds.

Concerning the issue of the legitimacy of the authoritative determination of Iraq's liability, the pronouncements of the Security Council are certainly legitimate where they are determinations the Security Council is expressly authorized to make. Admittedly these include, under Article 39 of the UN Charter, findings of a threat to peace, a breach of peace or an act of aggression. Moreover, as the International Court of Justice stated in the *Certain Expenses* Case,[34] where a resolution is adopted "... purportedly for the maintenance of international peace and security...", there is a legal presumption in favor of the Security Council. However as a partial concession to Iraqi arguments, it could be legitimately argued that Security Council determinations of an individual state's liability, if not inspired altogether by considerations of "due process", inconsistent with the political nature of that organ, should at least be subject to some procedural safeguards.[35]

In addition to these objections, Iraq has questioned the authority of the Security Council to establish the UNCC.[36] Again, this objection should be answered with reference to the UN Charter. Article 29 of the Charter authorizes the Security Council to "... establish such subsidiary organs it deems necessary for the performance of its functions".[37] In other words, the Charter creates a legal presumption in favor of the Security Council. Provided therefore that the Security Council has acted under Chapter VII in establishing the UNCC, such an action should be regarded as lawful. Yet, could the creation

33 See *supra* note 31 and 32.

34 See: Certain Expenses of the United Nations, 1962 ICJ 151, at 168. See also: Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), 1971 ICJ 16, at 22.

35 F.L. Kirgis, Claims Settlement and the UN Legal Structure, in Lillich, *op. cit.*, pp. 103–118, at 106.

36 A similar argument, concerning the legitimacy of the establishment of the International Criminal Tribunal for Former Yugoslavia, had already been advanced by the defendant in the interim appeal on the Tadic trial. See ICTFY, *Dusko Tadic a/k/a/ "Dule"*, (Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction), 2 October 1995, Case No. IT-94-1-AR72.

37 "The Security Council may establish such subsidiary organs it deems necessary for the performance of its functions". See UN Charter Art. 29.

of the UNCC be regarded as an act covered by the provisions of Chapter VII? The answer should be positive in principle, it could be argued that providing justice through the establishment of a system for affirming legal liability resulting from an illegal invasion, and for collecting, verifying and paying claims is instrumental in the exercise of the Security Council's powers.[38]

At the time of the Treaty of Versailles, the concept that a treaty may be void if its conclusion has been procured by the threat or the use of force had not yet become a clearly established legal principle. At that time, traditional doctrine held that a treaty was not rendered null and void, or voidable at the instance of one of the parties, on the grounds of coercion at the time of signature, ratification, or both.[39] Therefore, though morally questionable, treaties procured by the threat or use of force were, at the time of the conclusion of the Treaty of Versailles, generally considered valid. This doctrine was clearly consistent with a world where force was considered a legitimate instrument of international policy.

However, with the gradual development of the principle prohibiting the use or even the mere threat of force in international relations, (nowadays embodied in the UN Charter),[40] the foundations of the traditional doctrine were shaken.[41] The principle was eventually codified in article 52 of the 1969 Vienna Convention on the Law of the Treaties, which provides that a treaty is void if its conclusion "... has been procured by the threat of the use of force in violations of the principles of international law embodied in the Charter of the United Nations".[42]

38 Crook, *op. cit.*, at 91.

39 Grotius, quoted in K. Makoto, Agreements between Nations, in O. Yasuaki (ed.), *A Normative Approach To War*, Oxford, Clarendon Press, 1993, at 317; B. Ayala, *Three Books on the Law of War and the Duties Connected with War and on Military Discipline*, trans. by John Pawley Bate (1582), Washington D.C., Carnegie edn., 1912, Vol. II, 1912, Chapter VII, at 73; P. Fauchille, *Trait de Droit International Public*, Paris, Rousseau, 1926, Vol. 1, Part 3, at 289; J. De Louter, *Le droit international public positif*, Oxford, Imprimerie de l'Universitè, 1920, Vol. 1, p. 487; Ch. De Visscher, *Théories et realités en droit international public*, Paris, Pedone, 3rd ed., 1960, pp. 313–314.

40 "All Members shall refrain in their international relations from the threat or use of force against territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations". See UN Charter Art. 2.4. With a similar aim, paragraph 3 of the same article reads: "All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered". See UN Charter Art. 2.3.

41 The first manifestation of the *opinio juris* of the norms which forbids the use of force in international relations emerged only nine years after the Paris Peace Conference. See Treaty of Paris (Briand-Kellog Pact), concluded in Paris on 27 August, 1928, reproduced in Toynbee, *op. cit.*, Vol. IV, at 2393.

42 Vienna Convention on the Law of the Treaties, opened for signature on 23 May, 1969, 1155 UNTS 331.

Obviously, Iraq could not raise the same objection of its predecessor, because Security Council resolutions are non-negotiable legal instruments (at least on the part of the State targeted), with effects therefore much similar to those of an "unconditional surrenders".[43]

2) Unequal Process

Both Germany and Iraq contested the unilateral establishment of the post-war compensation processes. Germany had no delegates at the Peace Conference to plead its cause and, therefore, had no voice in establishing the system by which war claims against it would be evaluated. Similarly, Iraq could not attend the relevant meetings of the UN Security Council.[44]

Having been excluded from the decision-making process, both States proposed alternative means for the evaluation of war damages. Germany proposed the establishment of a Mixed Court of Arbitration, under a neutral chairman,[45] while Iraq has proposed the use of the International Court of Justice.[46] Both these proposals aimed at establishing strictly adjudicative procedures in which the defeated would have appeared as *par inter pares* rather than as vanquished nations forced to accept an imposed settlement.

These alternative schemes were ignored, partly because of political reasons but even more because of the need for quick and efficient handling of a potentially large number of claims. Indeed, while arbitral and adjudicative methods have been proven satisfactory in war damages settlements where

[43] Quite remarkably, in part in order to avoid these same objections advanced by Germany against the Versailles settlement, and in part to avoid the conclusion of agreements with the Axis governments, who were held responsible for the initiation and lawless conduct of a war of aggression, in the aftermath of WWII the Allied powers developed the concept of "unconditional surrender". While an ordinary armistice or a capitulation, even if dictated by the victor, is still in the nature of an agreement entered upon by both sides and laying down the respective rights and obligations rising thereunder, this is not the case of an instrument of unconditional surrender. In the latter, there is no legal limit set to the victor's freedom of action, save customary norms of humanitarian law. See L. Oppenheim, *International Law: A Treatise,* (ed. by H. Lauterpacht), London, Longmans, 7 ed., 1948–1952, at 552.

[44] Admittedly, Iraq was not a member of the Security Council during 1990-91. Moreover, because of political reasons its members did not exercise the faculty contained in Article 31 of the Charter of inviting "specially affected" non-members to participate, without vote, in the discussions. Article 31 of the UN Charter reads: "Any member of the United Nations which is not a member of the Security Council may participate, without vote, in the discussions of any question brought before the Security Council whenever the latter considers that the interests of that member are specially affected". See UN Charter Art. 31.

[45] Trachtenberg, *op. cit.,* at 89.

[46] *Letter dated 27 May, 1991, from the Permanent Representative of Iraq to the President of the Security Council*, UN Doc. S/22643 (27 May, 1991), at 2.

the number of complaints was rather limited,[47] settlements by adjudicative means, in which each and every claim is subject to a process of adversarial briefing and judicial assessment are hardly suitable when the number of complaints to be processed is large.[48] When the UN Secretary General, Mr. Perez de Cuellar, was confronted with the request of the Security Council to design the settlement mechanism, he undoubtedly took into consideration the experience of the Iran-USA Claims Tribunal; more than fifteen years since its establishment, the latter is still up and running.

Beyond these considerations of political opportunity and expediency, the German and Iraqi demand for a say, if not a full standing, was not newfangled. Indeed, the fact that claims against Germany and Iraq are processed by individuals whom neither Iraq nor Germany had a role in choosing and whose decisions would be either non-reviewable (as in the case of the Paris process), or reviewable, but only by an organ which is the *alter ego* of the Security Council (as in the case of the Geneva process), is at variance with States' practice on international claims tribunals.[49] Historically, most such tribunals were composed either of individuals from all states concerned, whether "losers" or "winners",[50] or by third, sometimes neutral, states.[51] Moreover, many of the international claims tribunals have, at least nominally, given states and nationals of all parties to the conflict the right to bring cases before them.[52] Yet,

47 In general, see Bederman, *op. cit.* The Tribunal established under Article 7 of the Jay Treaty of 1794 issued 565 awards over five years of operation. See J.B. Moore, *History and Digest of International Arbitration to which the US has been a Party,* Washington DC, Government Printing Office, 1898, 6 vols., Vol. 2, at 1133–1184 and in Moore at 2211–2226, Vol. 3. The US-Mexico Claims Commission, created in 1868, considered over 2,000 claims between 1871 and 1876. *Ibid.*, Vol. 4, at 1287–1359.

48 In general, see Bederman, *op. cit.* The claims settlement mechanism concerning Upper Silesia, established by the Geneva Convention of 15 May, 1922 to settle the claims between Poland and Germany, decided between 1922 and 1937 over 10,000 claims. See G.S. Kaeckenbeeck, *The International Experiment of Upper Silesia: A Study in the Working of the Upper Silesian Settlement*, London, Oxford University Press, 1942. The Iran-USA Claims Tribunal, established pursuant to the Claims Settlement Declaration of January 19, 1981, has received 3,816 claims and still has not yet finished deciding upon them. See Annual Report, Iran-Us Cl. Trib. Rep. at 24-25 (1988). The UNCC is, by far, the largest compensation operation ever undertaken, since it has received about 2,6 million claims. See <http://193.135.136.30/uncc/large.htm> (Site visited on 13 April, 1997).

49 See Bederman, *op. cit.,* at 14.

50 *Ibid.*, at 3–14.

51 *Ibid.*, at 11–15.

52 See Bederman, "The United Nations Compensation Commission ...", *op. cit.*, at 3. Yet, while structurally inequitable settlements appear to be the exception and not the rule, most international claims tribunals were *de facto* not reciprocal. Usually the overwhelming majority of awards has been rendered in favor of nationals of one state party. The major exception being the Claims Tribunal established by the Convention of 4 July, 1868 between the United States

despite these precedents, both the Reparation Commission and the UNCC excluded such possibility. Admittedly, unlike in the case of these precedents, the Paris and the Geneva process legal base is a breach (or at least the presumption of the existence of a breach) of international law committed by Germany and Iraq. Damages suffered by aggressed States and civilians are to be compensated by virtue of the existence of this violation of the international legal order. Germany and Iraq, as well as their nationals, could not claim compensation for the damages suffered during the conflict because these claims would ordinarily lack a legal base. Indeed, if they have suffered material damages, this has been the result of the exercise of the right of self-defense by the victorious international coalition and, therefore, they would not be entitled to any compensation. Only in the case their war-time enemies had committed themselves a breach of international law (e.g. by violating norms of international humanitarian law), Germany and Iraq could lawfully claim compensation. However, any such violation, because of the different underlying legal basis (e.g. the violation of different norms), could be addressed and redressed only outside the main compensation processes by another *ad hoc* mechanism.

Not without a certain wit, both Iraq and Germany demanded their involvement in the damage assessment process on the grounds that natural justice and principles of fairness require that the "accused" have an opportunity to defend themselves.[53] While this argument might be appealing at first glance, it misconceives the legal nature of the compensation process. By equating compensation with legal claims, it confounds judicial with administrative functions.[54] Starting from the false assumption that what was at issue was a "legal dispute", Germany and Iraq logically conclude that disputes required fair, equal and even-handed processes of adjudication. However, the Compensation Commission, and (even less) the Reparation Commission are not judicial bodies. They are rather institutional hermaphrodites, combining both judicial and administrative features.

Admittedly the UNCC performs some functions which might recall those carried out by the judiciary.[55] For instance, determining whether any given

and Mexico, U.S.-Mex., 15 Stat. 751, reprinted in Moore, *op. cit.*, Vol. 2, at 1133–1184 and in *ibid.*, Vol. 3, at 2211–2226.

53 See *Statement by the Delegation of Iraq, supra* note 32. See *Report of the Secretary-General, supra* note 25, at 7.

54 J.P. Carver, Dispute Resolution or Administrative Tribunal: A Question of Due Process, in Lillich, *op. cit.*, pp. 69–76, at 73.

55 "The Commission is not a court or an arbitral tribunal before which the parties appear; it is a political organ that performs essentially fact-finding function of examining claims, verifying their validity, evaluating losses, assessing payments and resolving disputed claims". See *Report of the Secretary-General, supra* note 25, para. 20.

loss, damage or injury was "direct" and resulted from Iraq's invasion and occupation of Kuwait has involved causation questions no different in kind from questions domestic and international courts regularly decide. Determining damage amounts is another example. Moreover, the commissioners themselves bear the formal characteristics of adjudicators, acting in a personal capacity and carrying no conflict of interests.[56] Yet, despite these superficial similarities with the characteristics and functions carried out by international judicial bodies (which were, in any case, altogether lacking in the case of the Reparation Commission), the UNCC[57] and the Reparation Commission are, *a fortiori*, still not judicial in nature. Indeed, both commissions lack some fundamental judicial marks.

Firstly, neither posses the power to examine the merits of Iraqi or German actions. In other words, they cannot determine whether by waging war against their neighbors these two States violated international law and which consequences arise thereof. Iraqi and German determination of "liability", indeed, was already established by Resolution 687 and in Article 231 of the Treaty of Versailles. Secondly, in determining the criteria and analyzing the validity of damage claims filed the Reparation Commission and, to a lesser extent, the UNCC have shown much more flexibility in reaching decisions (e.g. in the determination of the "relevant rules of international law") than have classical judicial organs. Thirdly, both commissions lack the essential quality of any judicial body: complete independence from politically-based organs. The Governing Council, which reincarnates the Security Council,[58] appoints commissioners, nominated by the Secretary General, and possesses the authority to review the amounts recommended by panels of commissioners in individual cases. The Governing Council may increase, reduce or return these recommendations for further consideration by the Commissioners.[59] In the case of the Reparation Commission, the delegates to the commission were States' representatives *tout-court* and, therefore, under the direct authority of their respective governments.[60]

Finally, both the Paris and the Geneva processes do not accord the responsible parties full standing before these organs but rather confine their role to submitting views. Article 233 of the Versailles Treaty gave Germany

56 See UNCC Dec. No. 10, *Provisional Rules for Claims Process,* S/AC.26/1992/10 (1992), art. 21.

57 See *Report of the Secretary-General, supra* note 25, at 8–9. See also UNEP, *Report of the Working Group of Experts on Liability and Compensation for Environmental Damage arising from Military Activities*, 17 May 1996, para. 10.

58 *Supra* note 30.

59 See *Report of the Secretary-General, supra* note 25, para. 26.

60 See Treaty of Versailles, *supra* note 5, Annex II to the Reparations Clauses, para. 2 and 3.

"... a just opportunity to be heard..." by the Reparation Commission,[61] without, however, allowing it any role whatsoever in its decisions.[62] In a much similar though better articulated way, the UNCC Rules of Procedure have given Iraq an opportunity to make its views known. Under Article 16 of the UNCC Rules of Procedure,[63] the Executive Secretary of the UNCC makes periodic reports to the Governing Council concerning claims received, which must be circulated promptly to the Government of Iraq and all Governments and international organizations that have submitted claims.[64] Any opinion or additional information concerning the claims submitted must be transmitted to the Executive Secretary within 30 days for transmission to the competent Panel of Commissioners. While there is no indication that Germany took the opportunity to present evidence to the Commission in the regular course of claims evaluation,[65] Iraq has used extensively the opportunity to express its views on legal and factual issues.[66]

III) Dissimilarities

Despite these similarities, a number of elements distinguish the Geneva process from precedent processes for the settlement of war claims, and make it a novel, if not unprecedented, exercise.

1) Underlying Legal Base

One of the major novelties of the Geneva process is its underlying legal base. Admittedly, compensation to states for damages they have suffered in war is not new.[67] In classical times, it was the lot of vanquished nations to pay tribute to their victors, and this could take the form of transfer of territories or colonies, surrender of fortresses, frontier adjustments, changes in spheres of influence and payment, in gold or in kind, of a so-called "indemnity".[68]

61 *Ibid.*, art. 233.

62 *Ibid.*, Annex II to the Reparations Clauses, para. 10.

63 See UNCC Dec. n. 10, *supra* note 56, art. 16.

64 See also *Report of the Secretary-General, supra* note 25, para 26.

65 Garmise, *op. cit.,* at 856.

66 Crook, *op. cit.,* at 96–97.

67 See *supra* note 2.

68 The normative difference between "indemnities" and "reparations" is well illustrated by Article IX of the Treaty of Brest-Litovsk, concluded on 3 March, 1918, between the Central Powers and Russia (223 Consol T S 81). It reads: "Les parties contractantes renoncent réciproquement toutes indemnités pour leurs frais de guerre (c'est-à-dire pour les dépenses faites par l'État pour continuer la guerre), de même qu'á toutes réparations pour dommages de guerre (c'est-á-dire pour tous les dommages qui ont résulté, pour elles ou leurs ressortissants,

Postwar arrangements, therefore, were typically intended to annihilate the enemys capacity of recovery in the short-term and to serve as punishment and atonement. Needless to say, this had little or nothing to do with compensation for damages suffered by States and even less by individuals who were considered mere objects of sovereignty with no legal personality in the international legal order. Compensation for damages suffered by State property and civilians was beyond the scope of these arrangements or, in any event, only accessory.[69]

To illustrate, when in 387 B.C. the Gauls besieged and conquered Rome, they tried to exact from the Romans payment of a crushing indemnity in gold. The episode, reported by the Roman historian Livy, sheds light on the legal nature of war indemnities in ancient times.

> *"[The Romans] declared that they must either surrender or ransom themselves, on whatever conditions they could make; for the Gauls were hinting very plainly that no great price would be required to induce them to raise the siege. Thereupon the Senate met and instructed the tribunes of the soldiers to arrange the terms. Then, at a conference between Quintus Sulpicius the tribune and the Gallic chieftain Brennus, the affair was settled, and a thousand pounds of gold was agreed on as the price of a people that was destined presently to rule the nations. The transaction was a foul disgrace in itself, but an insult was added thereto: the weights brought by the Gauls were dishonest, and on the tribune's objecting, the insolent Gaul added his sword to the weight, and saying intolerable to Roman ears was heard, – Woe to the vanquished! (Vae victis)".*[70]

dans les zones de guerre, des mesures militaires, y compris toutes les réquisitions faites en pays ennemi)". On indemnities see Ch. Rousseau, *Le droit des conflits armés*, Paris, Pedone, 1983, at 204. See also W. Heintschel Von Heinegg, Kriegsentschadigung, Reparation oder Schadenersatz? Die moglichen Forderingen an der Irak nach Beendigung des Golf-Kriegs, 90 Z.v.R., 113 (1991).

[69] "The best known example of ... indemnities are those imposed by Germany herself upon the other German States in the wars of the sixties and upon France in 1871, and the recognized connection between indemnities and war costs was well illustrated by the negotiations preceding the Treaty of Frankfurt. When, during these negotiations, M. Thièrs and M. Favre urged that Germany should not regard its victory as a mere occasion for financial speculation, but should be content with recovery of her actual expenditure, Bismarck was ready at once to do lip service to their argument. He proceeded to explain how his demand for $ 200,000,000 did not exceed Germany's war costs by specifying in detail the various claims on which it was based; so much for actual expenditure on the operations of war itself; so much for the renewal of war material; so much for pensions, for the indemnification of German subjects expelled from France, for the maintenance of French prisoners in Germany, etc. That sum demanded was in fact almost double these costs ...". See Temperley, *op. cit.*, at pp. 41–42.

[70] T. Livius, *Ab urbe condita*, (Book V, xlviii.8–xlix.5), translat. by B.O. Foster et al. (1961), Cambridge, Mass., Harvard University Press, 14 Vols., Vol. 3, at 165.

In a much more recent and better documented time, following the 1870–71 Franco-Prussian War, France, in addition to ceding Alsace-Lorraine, was made to pay a crushing lump-sum indemnity of five billion gold francs, which was stocked as spoil of victory in an expressly built tower in the center of Berlin (*Siegessäule*).[71] It is significant that Germany felt no compulsion to invoke any legal principle for the indemnity it imposed on France, other than the natural rights stemming from its victory.

In brief, the common feature of precedent war settlements is that they had little or no relation to the actual injuries suffered by States and individuals. Prior to the establishment of the UNCC, States' decisions about whether to seek compensation for war damages, as well as the amount sought, rested more on political considerations, and ultimately on the capacity of the defeated countries to pay, than on law-based assessments of damages. As a consequence, post war claims were often settled through the mechanism of lump-sum agreements. The Paris process was no exception. At Versailles the Reparation Commission determined a total lump-sum in gold marks,[72] to be liquidated to the Allied and Associated governments,[73] without specifing the manner in which this total amount had to be distributed among the different categories of damage for which compensation was due.[74]

The Geneva process breaks with this century-long and somewhat truculent custom. Moreover, in contrast to previous practice, where war claims processes ultimately rubber-stamped high-level political decisions, the Compensation Commission now scrutinizes closely the claims submitted and attempts to asses damages precisely. The UNCC procedures for processing individual claims are intended to provide substantial, objective verification that individual claimants indeed suffered quantifiable direct injuries falling within the Commission's jurisdiction.[75] Unlike the Versailles settlement, the

71 See Albrect-Carrié, *A Diplomatic History of Europe since the Congress of Vienna*, NY, Harper & Row, 1958, at 164–167. The Siegessäule was inaugurated at the Königsplatz (near the later Reichstag and later moved at the Großer Stern) on 2 September, 1873, in memory of Prussian's victories over Denmark (1864), Austria-Hungary (1866) and France (1871).

72 By the beginning of 1921 the Reparation Commission had completed the task of assessment, setting the German bill to 150 billion gold marks.

73 At the meeting held in Spa, in July 1920, the Allies had agreed upon their respective shares of compensation: France was entitled to receive 52 per cent of the total; Britain 22 per cent; Italy 10 per cent; Belgium 8 per cent; Greece, Rumania and Yugoslavia 6.4 per cent; Japan and Portugal 0.75 per cent. The size of the French share was proper recognition of the French loss, France having furnished the chief and decisive battleground. See Albrecht-Carrié, *op. cit.*, at 391.

74 Temperley, *op. cit.*, at 78.

75 See UNCC Dec. n. 10, *supra* note 56; UNCC. Dec. n. 13, *Further Measures to Avoid Multiple Recovery of Compensation by Claimants*, S/AC.26/1992/13 (1992).

UNCC commissioners do not simply rely on national reviews of claims prior to submission.

Such a radical transformation in approach can be explained in the light of a two-fold consideration. Firstly, as noted above,[76] compensation was now exacted by virtue of a breach of international law rather than as a victor's natural right.[77] Indeed, it was only after WWII that a rule prohibiting the use of force in international relations unequivocally emerged in the international legal order, and the Geneva process is the first instance of multilateral war claims compensation process since the 1939–1945 conflict. The Versailles reparations, therefore, were not so much a reparation due for the breach of law, but rather the effect of Germany's defeat. It follows that while in the case of the Geneva process the evidentiary link between the cause (the invasion) and the effect (the damage) was established as precisely as possible, in the case of the Paris process the Allied and Associated Powers paid much less attention to establishing a clear link between the violation, the damage and the sanction.[78]

Secondly, from a technical point of view, the UNCC has an enormous advantage over previous claims settlement mechanisms. It relies heavily, at least for the mass-claims under categories "A", "B" and "C", on the use of computers.[79] In order to increase efficiency, and to reduce the length of proceedings and the burden of paper-work, claims under category "A" have been submitted by national governments on specially designed UNCC software. This data has been electronically compared with the massive departure lists

[76] See *supra* para. II.A.

[77] The obligation to repair breaches of international law has been defined by the Permanent Court of International Justice in these terms: "The essential principle contained in the actual notion of an illegal act – a principle which seems to be established by international practice and in particular by the decisions of arbitral tribunals – is that reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed. Restitution in kind or, if this is not possible, payment of a sum corresponding to the value which a restitution in kind would bear; the award, if need be, of damages for loss sustained which would not be covered by restitution in kind or payment in place of it – such are the principles which should serve to determine the amount of compensation due for an act contrary to international law." See *Chorzow Factory* Case, (*Germany* v. *Poland*), 1928 PCIJ (Ser. A) No. 17, pp. 47–48.

[78] As a further evidence that the Paris process placed little emphasis on precise causality, it is noteworthy that it took two years (June 1919–May 1921) to work out the total sum due, whereas the UNCC, more than six year after its establishment, is still working. Even paying due regard to the number of claims submitted in both processes, the difference in length is still remarkable.

[79] In general see M.F. Raboin, The Provisional Rules for Claims Procedure of the UNCC: A Practical Approach to Mass Claims Processing, in Lillich, *op. cit.*, pp. 119–154; C.S. Gibson, Mass Claims Processing: Techniques for Processing over 400,000 Claims for Individual Loss at the UNCC, *ibid.*, pp. 155–186.

provided by the Governments of the Gulf region.[80] Only in the case of discrepancies has supporting documentation been requested from governments in non-electronic forms. These procedures have allowed the Commission to select moot grievances from well-founded claims, reducing the reputation of unfairness which distinguished previous processes.

Finally, as further evidence that the Geneva process is more deeply grounded in law than its predecessors, one can point to the law to be applied in determining the validity of claims and the amounts to be liquidated. Whereas the UNCC Rules of Procedure require that commissioners apply all relevant Security Council resolutions, the UNCC Governing Council criteria for particular types of claims, pertinent Governing Council decisions, and "where necessary ... other relevant rules of international law",[81] the Treaty of Versailles gave the Reparation Commission much wider latitude. According to that Treaty, the Commission was not "... bound by any particular code or rules of law or by any particular rule of evidence or of procedure, but shall be guided by justice, equity, and good faith".[82] To put it in another way, the Paris process left the Central Empires to the mercy of the Reparation Commission,[83] and therefore subject to the oxymoronic "victor's justice".

2) *Submission* v. *Espousal*

Another notable difference between the Paris and the Geneva processes is that while after World War I the Allied Powers took up individuals' claims by espousing them,[84] in the case of the damages arising from the invasion of Kuwait, claims have been submitted by individuals, through States, claiming compensation for the violation of their own rights. In the case of the Versailles settlement, in contrast, the Reparation Commission was to discharge

80 See Whelton, *op. cit.*, at 623.

81 See UNCC Dec. n. 10, *supra* note 56, Art. 31.

82 Treaty of Versailles, *supra* note 5, Annex II to the Reparations Clauses, para. 11.

83 "The Commission shall in general have wide latitude as to its control and handling of the whole reparation problem as dealt with in this Part of the present Treaty...". Treaty of Versailles, *supra* note 5, Annex II to the Reparations Clauses, para. 12. The only limit to the power of the Reparations Commission was to cancel (sic!) any part of the debt of Germany as determined under the Treaty.

84 The Permanent Court of International Justice provided the classic definition of espousal in the *Panevezys-Saldutiskis Railway* case. In that seminal case the World Court stated that diplomatic protection is a situation in international law whereby "... in taking up the case of one of its nationals, by resorting to diplomatic action or international judicial proceedings on his behalf, a State is in reality asserting its own right, the right to ensure in the person of its nationals respect for the rules of international law". See *Panevezys-Saldutiskis Railway* case (*Estonia* v. *Latvia*), 1939 PCIJ (Ser. A/B), No. 76 , at 16.

the payments to claimant governments, who would then, at their complete discretion, divide the money among their nationals and corporations.

Consistent with the present state of development of international society, States are still the central subjects of the Geneva process. However, the role of non-state entities in general and of individuals in particular has been substantially enhanced. At least during the early years of its functioning, the UNCC has emphasized its responsibility to compensate injured individuals.[85] The role of States in the submission of individuals' claims is merely technical and does not have legal implications. It is limited essentially to collecting and forwarding qualified claims and distributing awards to successful claimants. The claims are not the States' and submitting States are bound to assure that any compensation they receive is properly distributed to individual claimants.[86] Moreover, as a further evidence of the changing role of individuals in international compensation processes, it should be mentioned that several international organizations, including the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), the United Nations Development Program (UNDP), and the United Nations High Commissioner for Refugees (UNHCR) have also filed some 3,000 claims on behalf of Palestinians and other stateless persons who are not in the position to have their claims submitted by a State.[87]

In brief, for the first time a multilateral mechanism under the aegis of an universal organization has been created to provide redress on a vast scale to

[85] Compensation of claims under categories "A" (claims for departure), "B" (personal injury) and "C" (damages up to 100,000$) has been given priority by the UNCC over State's and corporations claims. See UNCC Dec. No. 1, *Criteria for Expedited Processing of Urgent Claims*, UN Doc. S/AC.26/1991/1 (1991).

[86] Decision 18 offers important insights into the changing role of States *vis-à-vis* their citizens and international organizations. Under diplomatic protection, a state espoused the claim of its national. It was the State that had the standing and received the award and in such cases it had no international duty to inform anyone of what ultimately did with the funds received. While in the case of the Geneva process it is still the State which submits consolidated claims, it does so only as agent of its citizens.

Decision 18 requires that all governments receiving awards first, prior to or immediately following receipt of payments, inform in writing the UNCC on the arrangements made for distribution of the funds to claimants; secondly, within six month of receipt, distribute the funds to the claimants; thirdly, not later than three months after the dead-line for distribution, inform the UNCC on the amounts distributed and the reasons for non-payment; and fourthly, after distribution of payments, provide a summary account of all distribution made. If a government fails to distribute the funds received, or fails to submit adequate reports, or does not in the view of the Governing Council provide satisfactory reasons for non-payment, the Governing Council may suspend the distribution of funds. See UNCC Dec. n. 18, *Distribution of Payments and Transparency,* UN Doc. S/AC.26/Dec. 18 (1994).

[87] See <http://193.135.136.30/uncc/claims.htm> (Site visited on April 13th, 1997).

the individual-level consequences of illegal state action.[88] Again, the requirement for States to submit claims "on behalf of their nationals"[89] is a clear break from the traditional rule of "espousal" of international claims, under which the act of espousal renders an individual's claim a state's claim. In the UNCC the claims never become the claims of the specific government, *per se.*

3) Damages Covered

In both the Paris and the Geneva processes, the winning coalition, recognizing the enormity of potential claims and the finite resources available to pay them, put a limit on the scope of responsibility.[90] However, the categories of damages to be compensated by the Central Empires and, as a consequence, the amounts to be liquidated, were much more extensive than those to be paid by Iraq. Admittedly, it is likely that the experience of the collapse of German economy under the reparations burden persuaded the Security Council to adopt a certain measure of restraint.

Damages covered by the Versailles settlement were numerous and included personal injuries to civilians; damages to dependents of civilians killed; damage to civilian victims of cruelty, violence, maltreatment or forced labor; damage to prisoners or war by maltreatment; damage done to property as a direct consequence of the war; and fines and exaction imposed by Germany or her allies on the civilian population.[91] All these were direct consequences of the war and, to a large extent, correspond to similar categories of damage indemnified by the UNCC. However, in the Paris settlement a number of indirect damages were also included.[92] Among these, pensions and compen-

88 There have been sporadic and limited mechanisms offering avenues for some individuals to seek redress for injuries in the past, like the Iran-US Claims Tribunal. See Crook, *op. cit.,* at 87, note 40.

89 See Report of the Secretary General, *supra* note 25, para. 21.

90 "The Allied and Associated Governments recognize that the resources of Germany are not adequate, after taking into account permanent diminution of such resources which will result from other provisions of this Treaty, to make complete reparations for all such loss and damage...". See Treaty of Versailles, *supra* note 5, Art. 232. See also Art. 178 of the Treaty of Saint Germaine, Art. 162 of the Treaty of Trianon; Art. 121 of the Treaty of Neuilly; Art. 231 of the Treaty of Sèvres. *Ibid.*
"... Iraq's contributions to the fund ...[should] not exceed a figure to be suggested to the Council by the Secretary-General, taking into account the requirements of the people of Iraq, Iraq's payment capacity as assessed in conjunction with the international financial institutions taking into consideration external debt service, and the need of Iraqi economy...". See UNSC Res. 687, para 19. Iraq, however, has questioned many of the Secretary-General's premises. See Letter, *supra* note 12.

91 See Treaty of Versailles, *supra* note 5, at Annex II to the Reparations Clauses, para. 11.

92 *Ibid.*, at Annex II to the Reparations Clauses, para. 11.

sation to soldiers and their dependents represented the major item of the bill presented to Germany,[93] and their inclusion in the categories of damages to be indemnified recalled more the nineteenth century pretensions to recover the expenses of war (the infamous "indemnities") than lawful compensation due for breach of law.[94]

In the case of the Geneva process, the Security Council has, from the very outset, limited the scope of reparations only to "... *direct* loss ...".[95] Moreover, the Governing Council has excluded claims for expenses related to the support of armed forces and the conduct of the war, as well as claims for such expenses as medical care or pensions to injured soldiers.[96] Equally excluded are those claims for indirect losses and those resulting solely from the UN's trade embargo and other economic sanctions following the invasion.[97]

Despite these limitations, the amount of damages Iraq will have to pay risks to be extremely large.[98] In particular, the compensation for damages suffered by corporations and that for direct environmental damage and depletion of natural resources (which probably represent the main innovative aspect of the Geneva process), might reach $180 billion, dwarfing the amount of compensation liquidated to individuals for direct damage or loss. Even considering that this figure refers to the asserted value of the claims filed with the UNCC (which is the amount sought by the claimants and stated in their

[93] According to Keynes, two-thirds of the reparations claimed following Versailles were for soldier's pensions and for payments to families of injured or killed soldiers. See Garmise, *op. cit.,* at 860, note 141.

[94] See *supra* note 68.

[95] See UN Res. 687, *supra* note 8, para. 16.

[96] UNCC Dec. n. 19, *Military Costs*, UN Doc. S/AC.26/Dec. 19 (1994). The only and largely legally justifiable exception is for individual claims for mistreatment of prisoners of war in violation of international humanitarian law. See UNCC Dec. No. 11, *Eligibility for Compensation of Members of the Allied Coalition Armed Forces*, UN Doc. S/AC.26/1992/11 (1992).

[97] UNCC Dec No. 1, *supra* note 85; UNCC Dec. n. 7, *Criteria for Additional Categories of Claims*, UN Doc. S/AC.26/1991/7/Rev. 1 (1992).

[98] The total amount of compensation awarded by the UNCC as of 18 December, 1996, adds up to $5.25 billion. See Press Release IK/212<http//:www.un.org> (Site visited on 7 April, 1997). This figure takes into account the amounts already approved for individual claims for departure from Kuwait ("A"); claims for serious personal injuries or death ("B"); and almost half of the individual claims up to $100,000 ("C") filed. However, the remaining three categories of claims [individual claims for damages over $100,000 ("D"); claims of corporations and other entities ("E"); and claims of Governments and International Organizations ("F')] amount to a total asserted value of $200 billion. See <http://193.135.136.30/uncc/claims.htm> (Site visited on 13 April, 1997).

claim forms) and, therefore, once reviewed by the Compensation Commission, might be scaled down, what remains is still likely to be exorbitant.[99]

4) Ensuring Payments

The capacity to enforce the Reparation Commission's decisions was the ultimate and tragic test of the effectiveness of the Paris settlement. According to the Treaty of Versailles, in case of default by Germany in the performance of any obligation, the Commission had to "... give notice of such default to each of the interested Powers ..." and might make such recommendations as to the action to be taken.[100] In other words, the Reparation Commission had no means of enforcing any decision except by invoking the authority of Governments. In this way the actions of the Commission were ultimately made subject to the sanction of public opinion in the different Allied countries, and pressure could only be brought to bear on Germany by international action.[101] The Allied Powers had the right to take any measure they chose in case of voluntary default and Germany could not regard these measures as acts of war.[102]

The fact that the Allies had no practical means to oblige Germany pay its dues except by using force, coupled with the fact that they were completely reliant on German willingness to make payments, helps explain the dramatic events in the years following the Paris Peace Conference. Difficulties in exacting payments soon appeared. During the second half of 1921, after Germany had met her first payment of 1 billion marks, the value of the German mark sank.[103] The Allies granted a moratorium in December 1921, but the German position actually deteriorated the following year as the currency plummeted in value.[104] Caught between hysterical French public opinion and the warnings of economists and diplomats, the French government, despite British opposition, pressured the Reparation Commission in December 1922 to declare Germany's default.

In order to ensure the collection of reparations at its source, French and Belgian troops, on 11 January, 1923, began to occupy the Ruhr, Germany's industrial heartland. Ostensibly, France was applying the letter of the Treaty

99 The 1995 Iraqi GDP (purchasing power parity) was estimated to $41.1 billion. See <http://www.odci.gov/cia/publications/nsolo/factbook> (Site visited on 10 August, 1997).

100 See Treaty of Versailles, *supra* note 5, at Annex II to the Reparations Clauses, para. 17.

101 Temperley, *op. cit.*, at 89.

102 See Treaty of Versailles, *supra* note 5, Annex II to the Reparations Clauses, para. 18.

103 In November 1922 the mark was exchanged to 7,000 to the US dollar. See Albrecht-Carrié, *op. cit.*, at 394, note 14.

104 At the end of January 1923 the mark had sunk to 50,000 to the US dollar. *Ibid.*, at 394, note 14.

of Versailles enforcing sanctions for the German default.[105] The sanctions were essentially economic, the military force being used for the sole purpose of protection of the MICUM (*Mission interalliée de contrôle des usines et de mines*), whose function was to exact payments in kind by extracting minerals (mainly coal) from German mines.[106] The occupation created a political upheaval in Germany, and the German government resorted to a policy of passive resistance, encouraging workers to strike and its officials to refuse cooperation with the Allied authorities. This brought French reprisals, the isolation of the Ruhr from the rest of Germany and widespread expulsions, while French and Belgian technicians were brought in to operate railways and mines. The policy of passive resistance caused Germanys total economic collapse, and descent into social chaos.[107] The small amount of reparations eventually collected barely covered the cost of occupation.[108]

The presence of oil suggests that the Geneva process is less likely to fail – even if it does not secure it entirely. Whatever financial hardship Iraq may have suffered after the war, its oil reserves give it the potential to generate a substantial flow of income to pay for reparations. As was the case with Germany, Iraq relies on its capacity to generate an export surplus to pay its dues without resorting to the printing press. However, Germanys major trade partners were those countries against whom it had waged war, whose economies had consequently been disrupted, and to whom it had to pay compensations. If Germany were to generate an export surplus, the Allies would need to bear trade deficits; this was something hardly acceptable both by public opinion and central banks. Conversely, Iraq already before the war was a large oil-exporting state, and industrialized countries have a substantial interest in letting Iraqi oil flow for the depressing effects the increase of offer has on oil price in the world market.

To a certain extent, these economic considerations explain why in the 1920s the Allied and Associated Powers decided to mitigate Article 231's general assertion of "responsibility" with a recognition of the inadequacy of Germany's resources to pay the resulting debt.[109] In contrast, Resolution 687 does not contain a similar statement. There is little or no evidence that the Security Council had any idea of the magnitude of the damages Iraq would

105 *Supra* note 102.

106 See Albrecht-Carrié, *op. cit.*, at 396.

107 The mark was exchanged to 4,600,000 to the dollar in August 1923 and 4,200,000,000 in December.

108 See Albrecht Carrié, *op. cit.*, at 396.

109 "The Allied and Associated Governments recognize that the resources of Germany are not adequate, after taking into account permanent diminution of such resources which will result from other provisions of the present Treaty, to make complete reparations for all such loss and damage". See Treaty of Versailles, *supra* note 5, Article 232.

have to pay. However, at the time the resolution was adopted this was not a critical issue. Indeed, by fixing a percentage of oil exports that would have been used to pay the compensations, the Security Council avoided making the same mistake that doomed the Reparation Commission's efforts: killing the goose that lays the golden eggs. No matter how large the compensation to be paid by Iraq will be, it will always amount to a fixed share of its imports (which is proportionate to Iraq's spending for armaments before the invasion of Kuwait).[110] Therefore, the pressure on the Iraqi war-weakened economy will remain even, rather than sudden and disproportionate. Admittedly, the downside of such a procedure is the lack of a fixed termination date. While Germany had to pay reparations for a fixed thirty-years period (more or less one generation life span),[111] the length of time it will take Iraq to pay its dues may vary considerably, risking the shift of the burden of compensations on future Iraqi generations.

Funding reparations by a constant percentage deduction from the value of Iraqi oil exports appears at the outset to provide a secure source of funding. Still, the system established by Resolution 687 is far from fool-proof, since the whole compensation process rests ultimately on the capacity and willingness of Iraq to export its oil. Indeed, paragraph 22 of Resolution 687 assumed that prompt Iraqi compliance with the terms of all relevant Security Council resolutions, particularly those on disarmament, would lead to the lifting of sanctions. At that point oil exports would resume, thus providing money for the Compensation Fund. However, for a long time this proved to be wishful thinking. Continuous disagreement between Baghdad and the Security Council on disarmament monitoring and Iraqi compliance stalled oil exports. Consequently, not only was the UNCC lacking funds for its operations, let alone for the liquidation of claims, but other UN activities under Resolution 687 and resources for basic needs of the Iraqi population were curtailed.

The first Security Council effort to solve the deadlock was to establish an interim mechanism, created by resolutions 706 and 712,[112] under which Iraq would be allowed to export up to $1.6 billion in oil for a period up to six months, under specified conditions designed to ensure that the funds were not diverted from the intended purposes.[113] Seventy percent of the proceeds were used for humanitarian purposes by the United Nations, the remaining thirty

110 See Garmise, *op. cit.*, at 866, note 181.

111 See Treaty of Versailles, *supra* note 5, Article 233.

112 UNSC Res. 706 (1991), reproduced in 30 ILM 1716 (1991); UNSC Res. 712, 30 ILM 1730 (1991).

113 The conditions are contained in paragraph 1 of UN SC Res. 706, at 21-23; paragraph 57(d) and 58 of the "September 4, 1991 Report of the Secretary-General on Implementing Resolution 706", (UN Doc. S/23006); and in procedures adopted on 15 October, 1991 by the Security Council's Sanctions Committee for implementation of the scheme. See *Deci-*

to be channeled into the Fund.[114] However, like Germany in 1923, Iraq was not willing to export under procedures it considered unjust.

In order to by-pass Iraqi resistance, the Security Council passed on 2 October, 1992, Resolution 778. This assured the use of Iraqi assets and Iraqi-owned oil located outside Iraq to fund humanitarian relief and UN activities under Resolution 687, including the Compensation Fund.[115] Resolution 778 eventually generated a mere $250 million, which was used to pay the operating costs of the UNCC and successful category "B" (death and serious personal injury) claimants.[116] Like Germany, however, Iraq could not have resisted long without the revenues from its exports. To relieve economic pressure on the Iraqi population and to get cash flowing into the Compensation Fund the Security Council in May 1995 passed Resolution 986, better known as "the oil-for-food mechanism".[117]

Once again, however, disagreement between the UN and Iraq over the implementation of disarmament obligations and Iraqi military operations in Kurdistan, meant that the oil-for-food mechanism could not be implemented until very recently. In January 1997, more than six years after the economic embargo was imposed on Iraq following its invasion of Kuwait, the Security Council Committee (established pursuant to Resolution 661 to monitor sanctions against Iraq),[118] approved the first two trade contracts.[119] As of

sion taken by the Security Council Committee Established by Resolution 661 Concerning the Situation between Iraq and Kuwait, (UN doc. S/23149).

114 UNSC Res. 706, *supra* note 112, para. 4.

115 The resolution required frozen Iraqi funds to be transferred to an escrow account for use for these purposes, but limited this requirement by specifying that no State was required to contribute over half of the funds obtained under the resolution or over $200 million, and that States could exclude funds subject to third party rights at the time the resolution was adopted. The resolution also required all States in which Iraq oil was located to take all feasible steps to purchase or sell it and transfer the proceeds to the escrow account. In addition, the resolution permitted voluntary contributions. The 30 per cent deduction for the Compensation Fund did not apply to such voluntary contributions, but did apply for all other categories. Further, the resolution provided that once Iraq started exporting oil either under Resolutions 706 and 712 or after the lifting of sanctions, under paragraph 22 of Resolution 687, all funds transferred to the escrow account under resolution 778 will be returned with interests.

116 To date, the UNCC has liquidated $13.45 million to nearly 4,000 successful category "B" claimants. See Press Release IK/212 <http//:www.un.org> (Site visited on 7 April, 1997). Payments of $2,500 each to the almost one million successful category "A" claimants started at the end of March 1997.

117 UNSC Res. 986 (1995), reproduced in 35 ILM 1144 (1996); see also *Iraq-United Nations: Memorandum of understanding on the Sale of Iraqi Oil, Implementing Security Council Resolution 986 (1995)*, (UN Doc. S/1996/356), reproduced in 35 ILM 1095 (1996).

118 UNSC Res. 661 (1990), reproduced in 29 ILM 1325 (1990).

119 See Press Briefing by Chairman of Iraq Sanctions Committee, 24 January 1997 <http//: www.un.org> (Site visited on 7 April, 1997).

April 1997, some forty-three oil export contracts had been approved, with one contract pending.[120] The total amount of oil exported amounted to 113.9 million barrels, generating $976 million.[121] Of that amount, $644 million had been allotted to humanitarian supplies,[122] $293 million to the UNCC and $39 to other monitoring programs under Resolution 687.[123] Given the present rate of Iraqi imports and oil price on international markets, the average income for the Compensation Fund is estimated at approximately $100 million per month. However, according to cautious estimates, at the pace of $100 million per month it will take to Iraq between thirty-five years and a century to pay entirely its war-debts.[124]

On the whole, the Geneva process has a far greater capacity than its unfortunate predecessor to generate a steady flow of payments. However, it remains to be seen if Iraq will ever pay its own dues, or if, at some point in the future, political and economic developments will short-circuit the whole process. Once again examining the history of the Paris process provides insight. Because of the patent incapacity of Germany to pay its debts, after two revisions of the scheme of reparations (in 1923 the "Dawes Plan" and in 1929 the "Young Plan") the remaining German reparation debt was scaled down to 110 million marks, to be paid in sixty annual payments terminating in 1988.[125] Like the earlier reparations schemes, the Young Plan was short lived and in 1932 reparation payments ceased altogether. Germany eventually paid 36 billion gold marks out of 150 established in 1921 by the Reparation Commission. However, in the same period Germany borrowed from foreign sources 33 billion marks that were, for the most part, never repaid, making the actual effect of reparations negligible.[126]

IV) Conclusions

A long time has passed since Brennus could cry: *Vae victis!*[127] The world has significantly moved from a state in which the mighty dictated law into a

120 See Daily Press Briefing of Office of Spokesman for Secretary-General, 7 April 1997 <http//:www.un.org> (Site visited on 7 April, 1997).

121 *Ibid.*

122 To date, approximately 175,000 tons of humanitarian goods have arrived to Iraq. *Ibid.*

123 See Daily Press Briefing, *supra* note 120.

124 Personal conversation with Mr. M. Kazazi (Chief, Governing Council & Commissioner Panels Service) on 2 February, 1997.

125 Albrecht-Carrié, *op. cit.*, at 443.

126 Mee, C.L, *The End of Order: Versailles 1919*, New York, Dutton, 1980, at 261.

127 See *supra* note 70.

society where relations between its members, though still largely influenced by power, are governed by commonly accepted norms.

The Geneva process, though it follows its antecedents in form, represents in its spirit a qualitative departure from previous states' practice. Breaking with a century-long international practice, it reflects international efforts to enhance the international rule of law. It is the culmination of a painstaking march, which commenced at the beginning of the twentieth century, away from indemnities for recovering the costs of war towards compensation due for breach of international law.

While still unilateral and unequal in character, the Geneva process has provided Iraq with substantial guarantees, if not of impartiality, at least of objectivity. Moreover, for the first time in history a reparation scheme has been administered by an international organization of universal membership. The decision-making body is composed not only of those members of the organization which participated in war operations (which might be considered by Iraq as unfriendly) but also of all other uncommitted states. Unlike the Paris settlement, the multilateral character of the UN compensation process, administered through an organ of the United Nations, provides a substantial check upon any tendency towards vindictiveness or injustice in assessing claims. Again, unlike the Reparations Commission, the UNCC is not the instrument of a winning coalition. It operates under scrutiny and direction of the fifteen members of the Security Council, and, to date, more than forty states have served on it, acting with remarkable unanimity.[128]

War reparations mechanisms, as a general rule, represent a careful balancing of competing interests. On the one hand, reparations are necessary in order to compensate victims of aggressions and to deter future similar acts. On the other hand, full compensation of war damages may present serious problems: the aggressing state may not be in any condition to make immediate and full payment of all war claims, given its weakened economy and the damages inflicted by the victorious coalition. A massive, long-term reparation scheme may unjustly punish future generations for past actions of bellicose national leaders.

The UNCC has been established by the Security Council acting under Chapter VII of the UN Charter, with the aim, therefore, to re-establish international peace and security in the region. In principle, providing justice through the establishment of a system for affirming legal liability resulting from an illegal invasion, and for collecting, verifying and paying claims, might be considered to be instrumental in the exercise of the Security Council's powers. However, it still remains to be seen whether in the long run the process established by Resolution 687 will be able to restore peace and se-

[128] To date all decisions have been taken by consensus.

curity in the region and bring Iraq back into international legality. Generally, the settlement of war claims arising out of World War I has been blamed for the economic collapse of the defeated countries causing first, the landslide of fragile European democracies into fascist regimes and then, as a consequence, the outbreak of the second World War.[129] It would be ironic if, after the bitter lesson of two world conflicts, the international community risks, by having established a mechanism to provide redress to the victims of Iraq's unlawful actions, having secured the Iraqi population in the hands of a cruel dictatorship.

129 "[The reparations will reduce Germany] ... to servitude for a generation, degrade the lives of millions of human beings, and deprive a whole nation of happiness...". See Keynes, *supra* note 10, at 225. Keynes' criticism should be read in conjunction with the critique of it by Étienne Mantoux. See E. Mantoux, *The Carthaginian Peace, or the Economic Consequences of Mr. Keynes*, Oxford, Oxford University Press, 1946.

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Human Rights Year 1998: The Challenges for the International Human Rights System

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It took the international community more than 45 years to realise the concept of a United Nations High Commissioner for Human Rights.[1] Rapidly, however, the difficult challenge of this office became apparent when the first High Commissioner, the Ecuadorian diplomat José Ayala Lasso, after less than three years in this post,[2] resigned, before the end of his term, in order to return as foreign minister to his country – a function he had already briefly assumed some 20 years earlier.

* The article was completed on the 1st of october 1997.

1 Established by General Assembly Resolution 48/141 of 20 December, 1993.
The first proposal for an office of an international High Commissioner (Attorney General) had been made in 1947 during the work on the Universal Declaration on Human Rights by the French representative to the United Nations (UN) Commission on Human Rights, René Cassin. The idea was pursued, without success, in various UN bodies and again proposed by Costa Rica in 1965 in a draft resolution proposed to the General Assembly, but never adopted by it. A third – and finally successful – attempt was made during the preparatory process for the World Conference on Human Rights (Vienna, June, 1993):
Amnesty international called for the creation of a High Commissioner in its policy paper for the World Conference, (*World Conference on Human Rights – Facing up to the Failures: Proposals for Improving the Protection of Human Rights by the United Nations*, December 1992), a call taken up by one of the regional preparatory meetings for the World Conference, the meeting for Latin America and the Caribbean (San José de Costa Rica, January 1993), and an interregional meeting organised, in preparation for the World Conference, by the Council of Europe (Strasbourg, January 1993), as well as by a number of western governments, in particular the USA and the European Union.
For a brief overview on history and mandate of the High Commissioner, see a UN publication, *The High Commissioner for Human Rights: An Introduction. Making Human Rights a Reality.* (United Nations, New York and Geneva, 1996, doc. HR/PUB/HCHR/96/1).

2 J. Ayala-Lasso, having taken up his post on 5 April 1994, gave his farewell speech to the 53rd session of the Commission on Human Rights, meeting in Geneva, on 14 March 1997. Even at earlier occasions, there were recurrent rumours about the likelihood of his early resignation out of frustration over the limitations of his post (see below, notes 9 and 10).

Also for a larger public, this resignation highlighted a sentiment which was already prevalent among human rights experts for some time: The international system for the protection and promotion of human rights had arrived at one of the most critical junctures since its conception some 50 years ago:[3]

This system has grown – albeit rather haphazardly - ever since the adoption, on 10 December, 1948, of the Universal Declaration of Human Rights,[4] to a complex maze of treaty-based and political monitoring bodies, of United Nations (UN) programmes and activities, and of inter-governmental debate; with the World Conference on Human Rights (Vienna, June 1993), it has finally reached the "critical mass" necessary for becoming one of the major issues on the international agenda: The UN have thus reaffirmed their position as the central international organisation for ensuring the protection of human rights – a forum characterised, under the new geo-political parameters, by a growing *operationalisation* of human rights protection: Under this term, we understand essentially – as will be described later in this paper – the increasing application of human rights concerns in country-related field activities of the UN, or, in simpler words, the *move from conference rooms to the field*.

This paper will address the UN system and its role for the promotion and protection of human rights in the world: The first part will take a look at the – somewhat tortuous – way towards that World Conference, and at the current state of the realisation of its recommendations. On this basis, the paper shall address the question how, on the eve of the *Human Rights Year 1998*"[5] – i.e. the lead-up to December 10, 1998, the date marking the fiftieth anniversary of the adoption of the Universal Declaration of Human Rights –, a real "take-off" can be expected; in other words, the question if the move from international *debate* to international *action* can be made decisively and

[3] When speaking of the international system in this paper, we refer essentially to the various elements of the human rights programme within the United Nations framework, leaving aside regional human rights systems, such as in particular those based on the European Convention for Human Rights, the American Convention on Human Rights, or the African Charter of Human and Peoples' Rights.

[4] Adopted by the third session of the United Nations in Paris with no negative vote, but with the communist countries, South Africa, and Saudi Arabia abstaining: General Assembly resolution 217 A. For an overview, see, in particular, J.P. Humphrey, *The Universal Declaration of Human Rights: its History, Impact and Juridical Character*, in B.G. Ramcharan (ed.), *Human Rights: Thirty Years After the Universal Declaration*, Dordrecht, 1978. For a commentary on the individual articles: G. Alfredsson et.al. (eds.), *The Universal Declaration of Human Rights: A Commentary*, Oslo 1992.

[5] For the origin of this – unofficial – "shorthand denomination", cf. the report of the High Commissioner for Human Rights to the 51st session of the General Assembly, UN doc. A/51/36, chapter IX, as well as an unpublished Austrian non-paper on major issues for these occasions, which was circulated, to stimulate discussions, among interested international actors in 1996/97.

with lasting effect – an expectation which had led to the proposals for creating the post of High Commissioner in the first place.

1. The Human Rights System at a Crucial Juncture

This question of the chances for a decisive take-off seems especially relevant with regard to two circumstances:

First, the appointment, announced by the Secretary-General on 12 June, 1997,[6] of the current president of Ireland, Mary Robinson, as the new High Commissioner: The high profile of Ms. Robinson will undoubtedly bring new dynamism to this post – the crucial role of which should become clear in this paper – and will also further raise expectations for fundamental qualitative change, especially in connection with the proposals for reform of the organisation presented by Secretary-General Kofi Annan in July 1997.[7]

Secondly, preparations for the "*Human Rights Year 1998*" provide a unique occasion for focusing on the international human rights system with the aim of creating a lasting impact: This Year – to be launched on 10 December, 1997 – will be characterised not only by numerous commemorations of that birthday all over the world, but also – and even more importantly – by a whole process of evaluating the international human rights system as it has evolved over these 50 years. In the context of such evaluations, a specific – and crucial – process will concern the first review of the implementation of the Vienna Declaration and Programme of Action,[8] adopted, in June 1993 in Vienna, by the World Conference on Human Rights: This review will concentrate not only on the performance of governments in living up to the recommendations from the Conference, but also, and in particular, on the performance of the UN system in this regard.

At that juncture, the international community will have to address the following major challenges:

[6] An announcement which came somewhat earlier than expected by most observers, who assumed that it take place only once a – geographically balanced – "package" of new high-level nominations by the Secretary-General had been informally agreed upon with important member States, together with the contours of a fundamental reform of the organisation's structures and working methods – see below.

[7] *Renewing the United Nations: A Programme for Reform* (UN doc. A/51/950), presented to the international community on 14 July 1997.

[8] UN Doc. A/CONF.157/24 of 25 June 1993, reprinted, i.a., in a UN publication, *World Conference on Human Rights – The Vienna Declaration and Programme of Action 1993*, DPI/1394-39399, New York, August 1993. For a discussion of the negotiating process leading to that document, see below, esp. pt. 2.2.

- *conceptually*, the issue of the *universal acceptance* of human rights, prescribed as universal and indivisible in the Universal Declaration and in subsequent international instruments;
- *legally*, making *compliance* with these instruments an obligation taken seriously by States parties, and effectively ensured by the international human rights system, as well as by all other States parties;
- *practically*, i.e. ensuring an effective *assistance*, by the international system, in making these obligations a reality; and finally
- *politically*, the "*management*", in a constructive manner, of the international discourse on these issues.

As these rather obvious-looking issues are to be described as challenges, it seems evident that the evolution of the international human rights system was accompanied, not only during the Cold War, by deep differences over objectives and processes, but that the *international dimension* of protecting and promoting human rights remains, also under very different geo-political circumstances, a contested issue.

Questions, in these contexts, are being raised in abundance:

- Do governments really feel comfortable with the *universality* of human rights, as reaffirmed at the World Conference? Or is the shift from an East-West-conflict to a North-South-configuration likely to lead to negative repercussions on the very concept of universal, "equal and inalienable rights of all members of the human family", as the Universal Declaration of Human Rights affirms?[9]
- Do governments really accept the *responsibility* of the international community for ensuring the protection of human rights, as equally reaffirmed by the World Conference? That is, will governments who continue to systematically violate the fundamental rights of their citizens be effectively held accountable to the international community? In other words, does the protection of human rights in all countries find real and effective *international* control?
- Is *criticism* levelled by governments at the human rights situation in other countries perceived as an effective tool for redress, as more than mere lip-service to public opinion and to constant pressure from non-governmental organisations such as Amnesty International?
- Will governments' *readiness to improve* their own human rights infrastructure find sufficient international assistance – and resources – to speedily realise the necessary measures?

[9] In its Preamble, first para., adding that the recognition of these rights "is the foundation of freedom, justice, and peace in the world".

- Will the *United Nations system* – itself doubt-ridden and reform-prone – provide more than simply a forum for expressing the smallest common denominator of governments? Will United Nations decisions – i.e., the numerous resolutions adopted every year – become more effective than mere *paper tigers*? And will the system find – by itself – rapid answers to the human rights *problematique*?
- Will all the hectic activism of an ever growing number of governmental representatives, NGOs, and experts finally represent time, energy, and money well spent?

Such questions have arrived, given the growing international attention to human rights issues, more and more at the forefront of the international agenda. The answers will depend, to a considerable degree, on the impact the new High Commissioner for Human Rights will be able to make.

While the premature departure of Ambassador Ayala Lasso left a vacuum at the head of the unit of the UN secretariat responsible for the human rights programme, i.e. the High Commissioner/Centre for Human Rights,[10] the *concurrent departure* of the High Commissioner as well as the chief of the Centre for Human Rights led many to a sigh of relief after three years of bureaucratic stalemate;[11] thus, great expectations for a new beginning have been created.

[10] The Centre for Human Rights was originally a division of the UN secretariat falling under the supervision of the Under Secretary-General for Political Affairs until 1982. The post of its director was upgraded to Assistant Secretary General when the former Austrian diplomat Kurt Herndl, who had served both in the Secretary-General's office and as Director of the Security Council, was appointed, in February 1982, to replace the Dutch law professor Theo van Boven as its director, who was dismissed over his refusal to accommodate complaints by the government of Argentina over his handling of the cases of disappearances in their "dirty war" against left-wing terrorism – see for a particularly vivid and detailed account (while being unjustifiably harsh on Herndl): Ian Guest, *Behind the Disappearances, Argentina's Dirty War Against Human Rights and the United Nations*, Philadelphia 1990, esp. pp. 321–332.
The denomination "High Commissioner – slash – Centre for Human Rights" constituted the result of prolonged bureaucratic infighting over the question if the High Commissioner's Office included the Centre or if, as the Centre's head (and some governments) would have preferred, it was to be seen as a separate unit – see subsequent note.

[11] The Centre continued to be directed by an Assistant Secretary-General for Human Rights until the departure of the High Commissioner. As the latter was given, in his mandate (cf. note 1 supra), the "overall supervision" over the Centre, this situation resulted in endless confusion and infighting not only between the two, but also among the staff, who often had effectively to choose between loyalty to either the High Commissioner or the Assistant Secretary-General. That post was occupied since 1992 by the former Senegalese Foreign Minister Ibrahima Fall, himself a candidate for the post of High Commissioner. In February 1997, the new Secretary-General, Kofi Annan, appointed Fall to the Department for Political Affairs in New York. (Earlier attempts to clarify the situation by finding an new assignment for Fall had failed, mostly due to the reluctance of the then Secretary General, Boutros Boutros-Ghali, who was widely believed to having been not dissatisfied by the state of *grid-lock* in Geneva).
The new Secretary-General, Kofi Annan, finally abolished this two-headed construction by

The appointment of a new High Commissioner[12] was therefore seen as the first big sign of leadership by the new Secretary General.[13] Quiet diplomacy *vs.* confronting human rights violations publicly – this may be the, deceptively simple, perception of the choice the Secretary-General had to make.[14] Against such perceptions, any choice of candidate[15] for this post is inevitably observed particularly carefully, and with a considerable potential of scepticism, in particular by non-governmental organisations.[16]

The bold choice finally made by the Secretary-General provides a considerable opportunity for shaping, with new vitality, a clear orientation for the international human rights activities around the Human Rights Year 1998.

The choice is bold for a number of reasons:

- As a rule, heads of state do not normally constitute the *réservoir* for high-level posts in the UN system;
- President Robinson has been a particularly dynamic head of state, making considerable impact in the modernisation of her country;
- Ms Robinson's human rights credentials are well-established and not disputed by anyone.[17]

creating a unified Office of the High Commissioner, together with the post of a Deputy High Commissioner.

[12] The High Commissioner is appointed by the Secretary-General; this appointment, however, has to be approved, in the terms of GA Res. 93/141 (op.para. 2 (b)), by the General Assembly.

[13] See Reed Brody, Give the World a Clear Voice for Human Rights, in: International Herald Tribune, March 6, 1997.

[14] This perception was quickly taken up by the Secretary-General when he announced, in his message to the opening of the 53rd session of the Commission on Human Rights, on 10 March 1997, his firm intention to be himself a "*champion of human rights*". Furthermore, he paid the Commission a visit, making it only the second time in living memory that a Secretary-General had addressed the Commission in person.

[15] The procedure entails essentially informal consultations by the Secretary-General with a wide range of interlocutors, including, in particular, governments, as they will have to approve his choice. He would make sure in advance that his choice could be approved without difficulties.

[16] Ayala Lasso's announced departure was quickly used by a number of human rights organisations to identify priorities for the choice of his successor. See, in particular: *Next High Commissioner for Human Rights must confront human rights abusers*, amnesty international press release (IOR 40/05/97 of 21 February, 1997).

[17] Not even by the Ambassador of Costa Rica to the United Nations, the only one to make a statement on the occasion of the endorsement of the Secretary-General's choice by the General Assembly. He did not put these credentials into doubt, however, while criticising sharply the choice of Ms Robinson over the candidate of Costa Rica, the country's Ambassador to the USA, Ms Sonia Picado.

2. Recent Trends

2.1. The Lead-up to the Vienna World Conference on Human Rights

The end of the Cold War had quite dramatic consequences not only for the basic geo-political parameters, but quite specifically also for the international human rights system: The question "where do we stand after four decades of confrontation" was particularly relevant with regard to human rights issues, which had seen especially virulent and regular East-West clashes. Now, and all of a sudden, governments no longer had to fear that superpower confrontation would necessarily have repercussions also with regard to human rights issues; on the other hand, they could expect less superpower accommodation *vis-à-vis* their respective human rights shortcomings, either. Suddenly, therefore, a growing number of governments found themselves – especially in the developing world – not only primarily as objects or observers of the international human rights debate, but they became actors in their own right, having to define their place in a rapidly changing, and growing, global human rights arena. The so-called South had become a major player.

This *shift from East-West conflict to a North-South configuration* had considerable consequences for the international human rights diplomacy:

First of all, this change in the basic political parameters not only enlarged the scope of issues being dealt with by an increasing number of governments participating actively in the international human rights work – it also led to the idea of holding a (second[18]) World Conference on Human Rights,[19] designed as a major, and high-level, event to mark the beginning of a new era in human rights,[20] moving the international protection and promotion of human rights beyond the arena of experts.

[18] The first International Human Rights Conference was held in Teheran in 1968, largely as a consequence of the adoption of the two human rights Covenants by the GA in 1966; see: Final Act of the International Conference on Human Rights, Teheran, 22 April to 13 May, 1968, doc. A/CONF.32/41. See for a description; *The United Nations and Human Rights (The UN Blue Books Series, Vol. VII),* New York 1995, pp. 69 sqq. That Conference, however, having had only a limited presence essentially of experts, cannot be compared with the World Conference 1993 in any way, in particular with regard to political and public interest and impact; for that, see for a critical appraisal e.g. M. Moskowitz, *International Concern with Human Rights,* Leiden 1974, pp. 13–23.

[19] The proposal was made by the then Assistant Secretary-General for Human Rights, Jan Martenson, in a declaration before the General Assembly, in 1989, and met, originally, with only lukewarm enthusiasm by most governments.

[20] As the General Assembly expressed it in its Resolution (45/155 of 18 December 1990) deciding on the convening of a World Conference: *Convinced that the holding of a world conference on human rights could make a significant contribution to the effectiveness of the actions of the United Nations and its member States in the promotion and protection of human rights.*

In the view of such grand designs for moving beyond the fairly close-knit circle of international human rights lawyers, experts, and diplomats, it would be wrong, however, to under-estimate the importance of the international human rights "system"[21] as these same experts had developed it since the adoption of the Universal Declaration.[22] Indeed, it can be argued that few other issues had seen, since 1945, such a dynamic evolution, particularly in the UN framework, as the promotion and protection of human rights, especially given the fact that such protection and promotion had, before the shock of World War II, been indisputably the sole prerogative of sovereign states:[23] Now, international human rights treaties were negotiated, adopted, and entered into force,[24] their monitoring bodies came into being and developed increasingly innovative ways of intensifying their relations with States parties, and, most importantly, a range of political "mechanisms" was devised,[25] mostly by the UN Commission on Human Rights,[26] to monitor States' be-

[21] A "system" which was not established as a coherent, and comprehensive, system, but had developed in a rather unplanned manner, always as far as the current geo-politicial circumstances of the day allowed.

[22] Literature on the evolution of the human rights system is more than abundant and cannot possibly even summarised here: for a reader see H.J. Steiner, P. Alston, *International Human Rights in Context, Law, Politics, Morals,* Oxford 1996, see also: P. Alston (ed.), *The United Nations and Human Rights – A Critical Appraisal*, Oxford 1992, and F. Newman, D.Weisbrodt, *International Human Rights: Law, Policy, and Process,* Cincinnati 2nd ed.1996, as well as the bibliographic issues of the Human Rights Internet Reporter; for UN docs. and publications (period 1980–1990 only): UN (ed.), *Human Rights Bibliography*, New York 1993.

[23] For a comprehensive history of the development of the human rights idea, see e.g. F. Ermacora, *Menschenrechte in der sich wandelnden Welt, Vol. 1, Historische Entwicklung der Menschenrechte und Grundfreiheiten*, Vienna 1974, and, for a useful reader, H.J. Steiner, P. Alston, (note above).

[24] For a collection of these standards, see various UN publications, and, for a collection including regional documents, together with brief comments and bibliographic notes, Ermacora-Nowak-Tretter (eds.), *International Human Rights, Documents and Introductory Notes*, Vienna 1993.

[25] For a description of their development, see several UN publications, in particular, *UN Action in the Field of Human Rights*, New York and Geneva, 1994, and a brief overview in C. Strohal, *The United Nations Responses to Human Rights Violations*, in: K. and P. Mahoney (eds.), *Human Rights in the Twenty-First Century: A Global Challenge*, Dordrecht 1993, at pp. 347–360, as well as K. Herndl, *Recent Developments concerning United Nations Fact-Finding in the Field of Human Rights,* in M. Nowak, D. Steurer, H. Tretter (eds.), *Progress in the Spirit of Human Rights, Festschrift für Felix Ermacora,* Kehl a.R. 1988 pp. 1–35. On the links of political monitoring with that in more strictly legal terms, see R. Higgins, *Some Thoughts on the Implementation of Human Rights*, in: Bulletin of Human Rights, 1989 (1), and W. Karl, *Aktuelle Probleme des Menschenrechtsschutzes*, in: Berichte der Deutschen Gesellschaft für Völkerrecht 33 at pp 83 sqq.

[26] Established, in 1946, as one of the functional commissions of the Economic and Social Council ECOSOC (together with, e.g., the Commission on the Status of Women), the

haviour – the most visible of such "special procedures" being its Special Rapporteurs, delivering, since the end of the 1970–ies, a growing number of documented criticism of human rights violations by governments.

This system, in turn, provided equally growing opportunities for individuals, non-governmental organisations (NGOs), and governments, to address human rights shortcomings and to seek redress. The role of NGOs, in particular, cannot be estimated too highly, as they have often been at the origin of proposals for new instruments, and continue to make full use of these opportunities, often adding not only essential facts, but also considerable impact to the evaluation of such facts by other governments.[27] Especially in the central intergovernmental body in the UN dealing with human rights, the Commission on Human Rights, their role – exercising their status as observers to the maximum – became essential for progress.

With the increasing readiness for co-operation extended by a growing number of governments to these different legal and political international mechanisms and instances, the often claimed supremacy of state sovereignty[28] gradually made way to a – nearly undisputed – *recognition of the responsibility of the international community for the protection of human rights.*[29]

In addition, with the trend moving from an essentially legal perspective of most of international human rights work – in particular, standard-setting – towards the *monitoring and control of the implementation* of these standards[30] especially also by bodies of a political nature, including the Commission on Human Rights, the General Assembly and, finally, even the Security Council, international human rights law was increasingly treated as a common and *world-wide standard* against which the performance of all governments could, and would, be judged in all international arenas.

Commission on Human Rights has evolved, from originally a body of 18 experts, composed essentially of academics, to a large meeting of governmental representatives (for 53 member States and most of the remaining States as observers) and NGOs, assembling, once a year, for a six-week period around 2000 delegates, addressing a agenda of more than 20 substantive items, and adopting around 100 resolutions and decisions.

27 On the role of NGOs, see, e.g., R. Brett, *The Contribution of NGOs to the monitoring and protection of human rights in Europe: an analysis of the role and access of NGOs to the intergovernmental organisations*, in A. Bloed et. al. (eds.), *Monitoring Human Rights in Europe*, Dordrecht 1993 pp. 121–144.

28 This argument is based, in particular, on art. 2(7) of the UN Charter.

29 Also this responsibility has its general foundation in the Charter of the United Nations; a forceful expression of this principle has been put, after lengthy negotiations, also into the Vienna Declaration and Programme of Action (2. 4: ... "*the promotion and protection of human rights is a legitimate concern of the international community*").

30 For an overview, see e.g. B.G. Ramcharan, *The Concept and Present Status of the International Protection of Human Rights, 40 Years after the Universal Declaration*, Dordrecht 1989.

Also, the growing readiness of governments to look towards the international community for help and assistance in the field of human rights led to a *steady increase of technical assistance* for human rights available not only from bilateral donors, but also from the UN system, including, in particular, the Centre for Human Rights.[31]

2.2. Political Challenges for the World Conference

Still, in spite of all these achievements, a "quantum leap" was not only widely considered necessary, but – with the end of East-West confrontation – became also feasible: hence, a World Conference was seen as the best way to solidify these trends and to move forward.

It can be argued, however, that among all the big United Nations conferences of the 1990ies,[32] the World Conference on Human Rights had the least certain prospects for success:

First of all, the greater potential of exposure of developing countries led, among other things, to a new dynamic in international human rights negotiations: These relatively new actors in the international human rights arena feared, more than during the Cold War, a threat of being exposed, essentially by western governments and/or NGOs. This perception led, in turn, to a search for greater *group solidarity* which was found through increasingly intensive consultations within their respective regional group,[33] or among the

[31] It was Kurt Herndl who, as Assistant Secretary-General for Human Rights, insisted on the creation of a voluntary fund for advisory services in the field of human rights, complementing the – rather meagre – regular UN budget available for this purpose. See the yearly reports on Advisory Services and technical co-operation to the CHR, latest: doc. E/CN.4/1997/86. See also B.G. Ramcharan, *New Avenues for the Protection and Promotion of Human Rights: Advisory Services and Technical Assistance*, 10 Human Rights Internet Reporter 5 (May 1985), pp. 550–560, and in B.G. Ramcharan, op. cit. (note 30 above).

[32] Environment and Development (Rio de Janeiro 1992), Population and Development (Cairo, 1994), World Summit for Social Development (Copenhagen, 1995), 4th World Conference on Women (Beijing, 1995), 2nd World Conference on Human Settlements (Istanbul, 1996). All these Conferences had several characteristics in common, such as: high expectations, cumbersome preparatory processes, active involvement of the civil society, in particular non-governmental organisations, and – maybe most importantly – the need for a comprehensive follow-up, in particular throughout the UN system, in order to maintain lasting impact and value.

[33] The five regional groups in the UN system were originally a device for the distribution of seats for UN bodies with limited membership; they developed increasingly – and especially in the human rights field – to mechanisms for a continuous exchange of views and their possible harmonisation, including to being a conduit for negotiations over such positions with other groupings.

member states of the Conference of Islamic States, or within the movement of non-aligned countries.[34]

As much as it seems odd – and was therefore assailed by non-governmental actors – the decision[35] not to discuss individual country situations at a World Conference on Human Rights has, therefore, been crucial in making the Conference possible at all.

The new group dynamics not only provided the desired comfort to many of the new actors, it also allowed some of the countries already "suffering" under public international scrutiny, i.e. criticism,[36] to gain increasing influence over the development of substantive positions taken by these new actors. Thus, arguments that the international human rights system constituted an essentially western concept imposed on developing countries in a "neo-colonialistic" attempt at "hegemony" returned in force to the international debate[37] and brought, in particular, new threats, and approaches, to the principle of the *universality* of all human rights. It was argued that this principle had to be seen against the backdrop of regional, cultural, or religious "*particularities*".[38] Furthermore, the "*right to development*"[39] became a central issue not only of

[34] The search for common positions in these various settings, however, quite often led to situations where a small group of outspoken delegations were able to rally the whole group around an extreme position, given the reluctance of moderate delegations to be seen as obstacles for reaching common ground.

[35] This was not so much a formal decision but rather an informal understanding never seriously challenged; this understanding did not prevent attempts from some quarters to have the Conference postponed *sine die,* nor the determination of NGOs to address, at the World Conference, concrete human rights situations.

[36] Such as, e.g., Cuba or Iran. By 1997, the number of country specific rapporteurs had remained rather stable: together with Special Representatives of the Secretary-General – a minor differentiation – it stayed at 16, while the number of thematic mechanisms – on specific issues of human rights violations – had increased to 18.

[37] See, in particular, numerous oral contributions from delegates of developing countries to the Commission on Human Rights, in the Commission's Summary Records.

[38] This argument was used particularly by Asian countries, see: Bangkok Declaration of 2 April 1993, Report of the Regional Preparatory Meeting, Bangkok, April 1993 (A/CONF. 157/PC/59, para. 8). It was, however, immediately questioned, at the meeting itself, by a number of participating NGOs, who had prepared a *Bangkok NGO Declaration on Human Rights* of 27 March, 1993, reprinted in M. Nowak (ed.), *World Conference on Human Rights – the Contribution o f NGOs*, Vienna, 1994, pp. 124 sqq.; e.g., at the very outset: "*We affirm the basis of universality of human rights which afford protection to humanity,...*"
Nowak's book is particularly useful as it also contains the work of the NGO Forum preceding the World Conference.

[39] The Declaration on the Right to Development, adopted by the General Assembly – with six abstentions – after arduous negotiations in a working group of the Commission on Human Rights in Resolution 41/128 of 8 December 1986, and subsequent work and resolutions adopted by the Commission and the Assembly. For a brief summary of the developments with regard to the right to development, see, in particular, A. Rosas, The Right to Development, in

demonstrated interest of debate for developing countries, but also a question of increasing conflict with industrialised states. Finally, an "*adaptation of the human rights machinery*"[40] was considered necessary for taking more fully into account the concerns of developing countries.

2.3. Conference Results

Still, the World Conference on Human Rights, held in Vienna in June 1993, proved, after severe, and growing, difficulties in its two-year preparatory process,[41] and against all these odds, to be a considerable success:

- First of all, all 171 governments represented at the Conference were able to agree – after intense negotiations until the very last day of the Conference – on a substantive final document, the Vienna Declaration and Programme of Action.[42] In spite of the numerous compromises necessary in any such negotiation, this document addresses most major human

Eide, Krause, Rosas (eds.), *Economic, Social and Cultural Rights*, Dordrecht 1995, at pp. 247–255, as well as H. Henry, Vom Entwicklungsrecht zum Menschenrecht auf Entwicklung, in: 35 ZfRV1 (1994), pp. 3–29, and T. van Boven, *Human Rights and Development: The UN Experience*, in D.P. Forsythe (ed.), *Human Rights and Development: International Views*, Houndills 1989, pp. 121–135.

40 As formulated in para. 17 of the Vienna Declaration and Programme of Action, as a sort of "quid pro quo" for the recommendation to create a High Commissioner. What was meant, as many feared, was a slimming of those mechanisms not only in number, but also in effectiveness.

41 To prepare the Conference, a Preparatory Committee met, between 1991 and 1993, in four formal sessions, in Geneva. In addition, extensive informal inter-sessional consultations took place. Three Regional Meetings were also held, by the African, Latin-American and Caribbean, and Asian Group, respectively, in Tunis (November 1992), San José de Costa Rica (January 1993) and Bangkok (finally held, after having been postponed twice, in March/April 1993). The East European group and the West European and Others Group held no separate meetings; however, the Council of Europe organised an inter-regional Seminar (Strasbourg, January 1993) which proved an excellent catalyst in the final run-up to the Conference, cf. Council of Europe (ed.), *Human Rights at the Dawn of the 21st Century,* Strasburg 1993.
Debate in the Preparatory Committee became quite difficult, after early disagreements on the Agenda of the Conference and on modalities of NGO-participation continued to persist. At some stage, a postponement of the Conference *sine die* was informally aired by several delegations. Even at the conclusion of the formal preparatory process as well as of numerous informal consultations, more than 180 passages of the draft final document remained in square brackets, indicating lack of agreement. Even the structure of the conference could only be finally agreed upon by a three-day meeting of High-Level Officials held immediately before the Conference in Vienna.

42 At several stages of the negotiation process, including up to about the middle of the Conference itself, some delegations argued that the best result which could realistically be expected was a short summary declaration to be presented, leaving aside the numerous issues over which these negotiations had stalled so often, by the host government; the Austrian delegation resisted these suggestions.

rights issues in substance and, in particular, the need for further action by governments as well as by the international system as whole.[43] In particular, the interdependence of democracy, development, and the respect for human rights has been made a clear *"Leitmotiv"* of the Conference[44] and, subsequently, for the international system as a whole.

- In addition, the unprecedented number of non-governmental organisations (NGOs) present at the Conference,[45] and the equally unprecedented degree of their involvement in the Conference processes,[46] provided a new, and much broadened, avenue to bring human rights issues to the general public in many developing countries.
- Also, the numerous parallel activities organised by NGOs made the absence of individual country situations from the Conference itself[47] less important: many, if not most, of these activities addressed specific country situations and attracted general and considerable interest.
- This interest was particularly nurtured by the presence of thousands of media representatives, hitherto unprecedented at any international human rights forum.

[43] For a first description and brief evaluation of these results, see, e.g., Bundesministerium für auswärtige Angelegenheiten (ed.), *Österreichische Außenpolitik 1993: Schwerpunkt Menschenrechte*, Sondernummer, Österreichische Außenpolitische Dokumentation, Vienna 1993. Cf. Also International Commission of Jurists (eds.), Review 50 (1993), *Special Issue: The UN Conference on Human Rights.*

[44] Cf. one of the background papers commissioned for the Conference*: Human Rights, Democracy and Development: Lessons from the Field*, Note by the Secretary-General, UN doc. A/CONF.157/PC/61/Add. 13 of 4 June, 1993.

[45] 1529 NGOs were accredited to the Conference and/or the NGO Forum immediately preceding the Conference; for a list see: M. Nowak, op.cit., as above note 38.

[46] No other of the big UN conferences provided not only a venue for NGO activities within the conference building itself, but also occasions for NGOs to present their views not only to the Plenary of the Conference, but also to its informal Drafting Group. (However, NGOs showed themselves quite unhappy about the fact that they could not participate, as a negotiating partner at a level of equality, in the drafting process.) In addition, these NGOs proved particularly important in the proceedings of the Regional Preparatory Conferences, where their presence was sometimes greeted with somewhat less than enthusiasm. This participation in regional conferences was especially significant as the participation also of organisations without consultative status with ECOSOC was finally permitted; that criterion regulates, in particular, the right to participate in sessions of the UN Commission on Human Rights. In turn, this considerable enlargement of the range of "eligible" NGOs permitted the involvement of small organisations from developing countries also at the World Conference itself.

[47] There were only two exceptions to this – informal – rule: the Conference adopted, upon an emotional appeal from the President of Bosnia-Herzegowina, a special declaration on the situation in that country; that text led, in turn, to another one on the situation in Angola.

- Furthermore, the last-minute agreement on a proposal by the Conference to create the office of a High Commissioner[48] provided the most visible focus not only for the Conference itself, but also, and more generally, a yard-stick against which the longer-term success of the Conference could be measured.
- Finally, human rights had become, through the attention generated by the Conference, a major international issue shaping – together with development, democracy, and peace and international security[49] – an increasingly integrated, and action-oriented, approach to the evolution of the international system as a whole; thus, another crucial objective of the Conference, together with the other major UN Conferences held in the 1980-ies, is being realised.

Why, then, is the current juncture, four years *after* the Conference, so critical?

3. Current Features of the International Human Rights System

A brief look at the current state of affairs – as it results from follow-up decisions made upon the recommendations from the World Conference[50] – shows the simultaneous existence of considerable achievements, as well as of serious difficulties, in the international human rights system. Undoubtedly, the Conference has led, in its immediate aftermath, both to an acceleration

48 This proposal remained contested until the last moment; given the opposition by many developing countries to it, therefore, the Conference could only agree on a weak recommendation in this regard (that the General Assembly, *when examining the report of the Conference..., begin, as a matter of priority, consideration of the question of the establishment of a High Commissioner for Human Rights...*; VDPA, Part II, para. 18). Thus, a visible Conference result could be presented to the world, while expectations remained low on the likelihood of the Assembly to agree on such a proposal; many thought that, once the spotlights of the World Conference were turned off, the question might again be stalled for a long time. Therefore, the agreement reached already the same year by the General Assembly on a wide mandate of the High Commissioner – cf. note 1 *supra* – came to many as a positive surprise.

49 In the UN context, these issues were shaped in particular through documents presented by Secretary-General Boutros-Ghali: *Agenda for Development,* and *An Agenda for Peace* (1992 plus supplement 199), and, submitted at the very last day of his mandate, a letter to the General Assembly, doc. A/51/761 of 20 December 1996, which could be seen as a sort of – informal – agenda for democracy, or democratisation – he entitles the conclusions *Towards an Agenda for Democratization.* However, the echo of this quite ambitious document among governments, so far, has been rather slim. It also remains to be seen how far these proposals are taken up by the UN secretariat.

50 The General Assembly and the Commission on Human Rights (through ECOSOC) take every year a number of decisions based upon the Vienna Declaration and Programme of Action.

of progress, in particular with regard to concrete practical measures in the human rights field undertaken under the auspices of the international system, the UN in particular, as well as to a persistent continuation of difficulties and shortcomings, and a certain re-trenching in the more strictly diplomatic sphere.

3.1 Achievements

3.1.1 One of the most striking achievements on the positive side of this *bilan intérimaire* is the much larger *presence of human rights considerations in real situations* "on the ground" or "in the field" (as the UN jargon calls it),[51] i.e. the *operationalisation* mentioned at the outset of this paper: More and more actors address concrete human rights deficits in their activities within a growing number of countries. This development is increasingly reflected in a human rights-specific country presence in two ways:

First of all, the UN High Commissioner for Human Rights, in spite of all difficulties, has been developing such human rights-specific field presence through field missions and offices in a growing number of countries.[52] In fact, they now have nearly more staff "on the ground" than at Geneva headquarters. This development - which was triggered by the genocidal massacres in Rwanda in 1994 at the time when the first High Commissioner took office[53] – would have seemed quite unrealistic only a few years ago; thus, it clearly has contributed to a paradigmatic change in the way the international community is dealing with human rights concerns. At the same time, this field presence, however, is also contributing to the difficulties of the international human

[51] Literature on the field operations aspect of international protection of human rights has grown considerably in recent years, in particular with regard to the evaluation of major operations and practical suggestions for further work, especially by non-governmental organisations, which became quite influential fur subsequent work in this field, cf., Human Rights Watch, *The Lost Agenda: Human Rights and UN Field Operations*, New York 1993, and Amnesty International, *Peace-Keeping and Human Rights*, London 1994. With regard to individual operations cf., in particular, two reports, on the basis of evaluations undertaken: *Haiti: Learning the Hard Way – the UN/OAS human rights monitoring operation in Haiti 1993-1994*, Lawyers Committee for Human Rights, New York, 1995, and the result of a major "lessons learned"-exercise undertaken by the Aspen Institute (and continued since), A.H. Henkin (ed.), *Honoring Human Rights and Keeping the Peace – Lessons from El Salvador, Cambodia, and Haiti*, Washington 1995.

[52] Currently, the High Commissioner has a permanent presence in 10 countries; see the report of the High Commissioner to the 50th session of the Commission on Human Rights, doc. E/CN.4/1997/98.

[53] J. Ayala Lasso, after having returned from a rapid mission to Rwanda proposed, to a special emergency session of the Commission of Human Rights, the deployment of a mission of human rights monitors to all parts of the country; see his report to that session of the Commission, doc. E/CN.4/1994/S-3/3, and subsequent reports from the Special Rapporteur.

rights system to assert itself in operational terms: as the Centre for Human Rights in Geneva was not prepared for assuming these major additional – and new – responsibilities of managing field operations on their own, support for the High Commissioner from other parts of the UN system more routinely involved in field missions had set in only with a certain reluctance.

Secondly, other parts of the UN system – which until then usually tried to keep a certain distance from the human rights world which was often perceived as dangerous, because highly political – become bolder with regard to their own human rights-related work. That second, somewhat less obvious, achievement constitutes, in other words, the new readiness of many international organisations – including, in particular, also the International Monetary Fund and the World Bank – to reflect human rights considerations – especially under the concepts of *democratisation* and *good governance*[54] – more and more systematically in their activities in a steadily growing number of countries.[55]

3.1.2 Another major and long-term achievement lies in the growing encouragement for many *national* human rights organisations to adopt a bolder stance vis-à-vis their respective governments. The growth of non-governmental organisations both in numbers and in impact, and in particular, of independent national human rights institutions – a growth which is seen as a direct consequence of the World Conference – is adding a new dynamism to national human rights efforts, strengthening the importance of a striving civil society in this context.[56]

3.1.3 With regard to the substance of the international human rights debate, finally, the Conference ensured a new, and more comprehensive, focus on

54 The UN Secretary-General Kofi Annan, defines good governance in his first – and remarkable – *Report on the Work of the Organisation* (UN doc. A/52/1) of September 1997 in the following terms:
"*... good governance comprises the rule of law, effective state institutions, transparency and accountability in the management of public affairs, respect for human rights, and the meaningful particpation of all citizens in the political processes...*".
Cf. also UNDP (eds.), *Governance for sustainable human development – A UNDP policy document,* New York 1997.

55 For a – rather brief – discussion see D.F. Forsythe, The United Nations, Human Rights and Development, in: Human Rights Quarterly 19/1997, pp. 334–349; I do not share the negative views expressed on the World Bank's role, see, e.g., the contribution by the World Bank to the World Conference, ..., and I.F.I. Shihata, *The World Bank in a Changing World,* Vol. II, 1995, esp. Ch.19 on the World Bank and Human Rights.

56 For an overview, see the yearly discussions and resolutions at the Commission on Human Rights on the role of national institutions; a growing number of representative from national institutions take part in this work.

all major human rights issues: Beyond the reaffirmation of principles which had sometimes been questioned, in the run-up to the Conference, the Vienna Declaration and Programme of Action makes a range of forward-looking proposals, especially with regard to finding more effective means of the protection of minorities, of women, the fight against racism and intolerance, the prevention of torture, or human rights education.

Most importantly for the UN, an unprecedented and detailed focus was directed on the structural capacities of the international human rights system and on ways to strengthen them, in particular through the creation of a High Commissioner.

3.2 Remaining shortcomings

In spite of these – and other – achievements a number of shortcomings remain, or have become even more apparent. It is tempting to take as a yardstick in this context a catalogue established nearly ten years ago by an experienced international human rights scholar and practitioner, B.G. Ramcharan.[57] He identifies the following "problems encountered by the United Nations in the protection of human rights":[58]

- governmental commitment
- institutional structure and diplomatic framework
- ideological competition
- perspectives and priorities
- fact-finding
- the primitiveness of remedial responses, methods and procedures
- responsibilities in the information process
- resources.

As will be seen, these criteria – to which should be added the most obvious, i.e. the scarcity of effective *sanctions* for human rights violations, as well as violators[59] – cover most of the structural problems the UN are facing in the human rights field, now as then.

[57] B.G. Ramcharan, *op.cit.* (*The Concept and Present Status...*, cf. note 30 above). Dr Ramcharan served for many years as Special Assistant to the Director and Assistant Secretary-General for Human Rights in Geneva, before moving to the office of the Secretary-General, and Columbia University, in New York. He is widely believed to be an excellent contender for the post of Deputy High Commissioner for Human Rights.

[58] *Op. cit.*, pp. 267–268.

[59] The fight against impunity of individuals responsible for human rights violations, however, has become, in recent years, an issue receiving increasing attention not only by NGOs, but also by governments.

3.2.1 In the legal field, while ratifications of the major human rights instruments have shown accelerated progress,[60] their concrete implementation by States parties often remains lacking. The continuing weaknesses of the reporting and monitoring procedures under these treaties[61] add to the lack of real impact these obligations under international law have in many States parties. In addition, the specific character of these obligations is not fully taken into account by other states parties when addressing their concerns about the situation of human rights in a specific state: International treaty obligations in the field of human rights do not, in the first instance, determine specific obligations among the States parties as such, but rather do so only as a backdrop to determining a certain *domestic* behaviour of the contracting parties, i.e. the protection of the rights of human beings within their jurisdiction. In their regular diplomatic intercourse, however, governments often seem reluctant to address the quality of the human rights reality in the domestic sphere under the perspective of an obligation under international law and therefore also *vis-à-vis* other contracting parties with the same vigour as they would address, for example, trade relations.

In addition to this lack of living up to one's own commitments, a number of recent ratifications have come with sweeping *reservations*,[62] which can raise doubts, from the outset, about the sincerity of the ratifying country to

[60] The current state of ratifications can be seen in various periodic publications by the UN. Since the World Conference, a considerable number of new ratifications or accessions has been noted; the youngest instrument, the Convention on the Rights of the Child, has found practically universal membership (with the notable exception, so far, of the USA), while the Convention against Torture continues to lag considerably behind.

[61] See below, esp. pt. 3.2.2.2

[62] A recurrent objection formulated by several governments over the last years, for exemple, conditions the respect for the commitments undertaken by a reference "unless national legislation provides otherwise", or, in addition, by a reference to Islamic law, the Shari'a, without any further explanation or reference to specific stipulations of the treaty in question, let alone the concrete repercussions expected with regard to the implementation of their obligations.
Here is not the place to discuss the specific, interesting, and rather complex, problematique in this regard, for which the international law of treaties does not provide adequate rules or guidelines; for a comprehensive review of the issues involved see an excellent thesis of 1994; L. Lijnzaad, *Reservations to UN Human Rights Treaties, Ratify and Ruin?*, Dordrecht (s.a.); for the general background, L. Sucharipa-Behrmann, The Legal Effects of Reservations to Multilateral Treaties, ARIEL Vol. 1, pp. 67 sqq. (1996).
More recently, the issue of reservations has also been taken up by the International Law Commission: on the basis of the work of its Special Rapporteur, A. Pellet, the Commission has adopted preliminary conclusions on reservations to normative multilateral treaties including human rights treaties, specifying, in particular, that "*the monitoring bodies established* (by such human rights treaties) *are competent to comment upon and express recommendations with regard, inter alia, to the admissibility of reservations by states*" (cited after draft report of the ILC on the work of its 49th session, doc. A/CN.4/l.544/Add.2 of 15 July 1997).

commit themselves to these treaties and which, therefore, are considered as inadmissible, because running counter the object and purpose of the treaty in question. Such reservations, in spite of a slowly growing number of objections to them,[63] will make, in turn, the international monitoring of such implementation more and more difficult unless a concerted effort to follow up the legal objection to them also in practical terms is made not only by other states parties but also by the monitoring bodies themselves.[64]

A further, continuing,[65] weakness constitutes the lack of attention, relatively speaking, which *economic and social rights* receive not only in national human rights protection efforts, but also in the international human rights debate and action – from diplomats, experts, and non-governmental organisations alike, in spite of numerous attempts to the contrary.[66]

This last weakness, in turn, further facilitates arguments of "double-standard" and "selectivity" levelled by a growing number of developing countries against western governments,[67] arguments which often hamper a constructive international human rights debate, especially when addressing the situation in individual countries.

63 Given the specific character of international human rights treaties, the usual purpose of objections under international law does not quite satisfy, either: With multilateral human rights treaties, objecting states are not so much, in the first instance, questioning the application of a treaty's obligation between them and the reserving state, they are objecting to the announced intention to apply the treaty domestically under specific conditions only. An interesting attempt to come around this dilemma is made in the formulation of objections by Austria, where subsequent practice by the reserving state is used as a yardstick for finally answering the question of the admissibility of the reservation.

64 Monitoring bodies could control the implementation of the treaty under the consideration whether the reservation has made practical implementation meaningless, without necessarily addressing the issue whether the reservation, as such, has to be considered as inadmissible, given the reluctance of a number of states to accept a competence of expert bodies in this matter; see also note 62 above on the work of the ILC in this regard.

65 For an early warning of continued disregard for economic, social, and cultural rights: P. Alston, *Out of the Abyss: The Challenges Confronting the New UN Committee on Economic, Social and Cultural Rights*, in 9 Human Rights Quarterly (1987), pp. 332 sqq., and numerous subsequent literature.

66 One of the proposals made in this regard concerns the elaboration of an optional Protocol to the Covenant on Economic, Social, and Cultural Rights allowing for an individual complaints procedure, cf., for an early *plaidoyer*, in particular P. Alston, *No Right to Complain About Being Poor: The Need for an Optional Protocol to the Economic Rights Covenant*, in: A. Eide and J. Helgesen (eds.), *The Future of Human Rights Protection in a Changing World*, Oslo 1991, and a growing body of subsequent literature.

67 These catchwords constitute by now a central part of the requisitory of critical statements by third world delegates to international human rights meetings; rarely, if ever, is their concrete content followed up even by these same delegations: Not only is their voting pattern on country related resolutions differentiated, according to political considerations, also is their readiness lacking to address economic, social or cultural rights in substance, and in detail.

Finally, the long-standing reluctance of many governments to deal with the proposal for a Permanent International Criminal Court – let alone a Permanent Human Rights Court, as it was proposed before the World Conference[68] – which has made place only recently to a readiness to elaborate on the statute of such a Court[69] continues to be seen as a reluctance to allow for international jurisdiction on human rights violations.

3.2.2 A Number of Structural Shortcomings Remain

3.2.2.1 First of all, the continuing *lack of adequate financial resources*: While the share of chapter 22, i.e. Human Rights, of the overall regular budget of the UN has nearly doubled, since the World Conference, it still remains abysmally low, at somewhat less than 2 per cent of the overall volume.[70] The fact that the human rights work within the system is moving decisively from the conference room to the field has not – yet? – found its way through the complex budgetary processes of the UN. These processes are under duress not only generally, given the overall pressure for budgetary savings, but also human rights specifically, given continuing disagreements among delegations on priority-setting in the organisation's human rights work.[71]

With the growing needs in financial and, consequently, human resources for the increasing operationalisation of international action in the field of human rights, this continued lack of resources is leading, in turn, to an increasing need for *voluntary contributions*. While the (still insufficient) growth in contributions as well as the (still somewhat slow) geographical spread of donor countries are generally welcomed as positive developments, two characteristics of this situation contribute somewhat further to the North-South difficulties:

[68] See, Bundesministerium für auswärtige Angelegenheiten (ed.), Österreichische Außenpolitik 1993: Schwerpunkt Menschenrechte, Sondernummer, Österreichische Außenpolitische Dokumentationen, Vienna 1993, pp. 35, 45.

[69] Report of the ILC on the work of its 46th session, doc. A/CN.4/SER.A/1994/Add. 1 (Part 2) pp. 26–74.

[70] For the budget directly allocated to human rights work, see section 22 (human rights) of the UN budget – the latest proposal, for the biennium 1998–1999, can be found in General Assembly doc. A/52/6 (Sect.22) of 13 May 1997 which will have to be adopted by the Assembly in the autumn. The total appropriation foreseen for the next two years amounts to some 46 mio. US-$, to which roughly a similar amount in extra-budgetary, i.e. voluntary, resources is foreseen. Some of the field-work, however, can also be supported by other budgetary lines.

[71] These disagreements are manifest not only with regard to the (biannual) programme budget, but especially also to the UN's medium-term plan, both of which have to be adopted by the General Assembly by consensus. Few other substantive matters, if any, are as difficult to come to an agreement among governmental delegates as are human rights.

The growth in voluntary contributions has increased, in turn, suspicions raised by a number of developing countries *vis-à-vis* a human rights system *"à la carte"*, financed by a relatively small number of industrialised countries who could, in this perception, continue to shape the international human rights agenda according to their desires. Operationally, these contributions necessitate, in addition, a greater readiness not only of the beneficiary to accept voluntarily financed human rights projects, but also of the administering Secretariat, i.e. the Office of the High Commissioner for Human Rights, to perform adequately on the hot international market place for voluntary contributions, together with such masters in fund-raising (and also in fund-spending) as, e.g., the High Commissioner for Refugees.[72] Such performance, however, and the corresponding transparency and effectiveness of spending the funds cannot be expected overnight from a grossly under-funded – and therefore under-staffed - secretariat, thus prolonging its difficulties.

The lack of adequate resources is worsening two further structural shortcomings for which the secretariat is not immediately or exclusively responsible, but which are among some of their general duties:

3.2.2.2 *The Continued Weaknesses of the Monitoring and Reporting Mechanisms*

This issue can only be briefly touched upon in this paper, it has, however, been well documented and written about[73] for a long time. First of all, it refers to the work of the treaty-monitoring bodies, i.e. the Committees set up by the main international treaties in the field of human rights; secondly, it addresses shortcomings in the work of the "special procedures", i.e. the political monitoring mechanisms set up by the Commission on Human Rights – its Special Rapporteurs, Representatives, Experts, and Working Groups. As all these mechanisms are staffed by part-time human rights experts, adequate human and financial resources for their work and, in particular, their secretariat

[72] More than 90 per cent of the UNHCR's budget of around 1.3 bn. US-$ come from voluntary contributions.

[73] One of the major authors on these issues, especially with regard to the treaty-based mechanisms, is Philip Alston, see, in particular, his latest *report to the Commission on Human Rights on enhancing the long-term effectiveness of the UN's human rights treaty system*, UN doc. E/CN.4/1997/74 of 7 March 1997. This report is an update of a previous, interim, report, submitted to the World Conference on Human Rights, doc. A/CONF.157/PC/62/Add.11/Rev.1 of 22 April 1993. Neither the report nor, in particular, its recommendations, have been examined so far by the Commission. The question of a fundamental reform of the treaty system has been raised at various occasions, in particular before the World Conference in connection with proposals to establish an international human rights court; recently, it has been addressed by two international seminars organised, respectively, in Cambridge and in Toronto, aiming at arriving at proposals for reform of the treaty-system.

support, would be essential. Both, however, are insufficient: As a result, the examination of State reports by treaty-bodies, for example, is often lagging behind by several years, diminishing, in turn, the readiness of governments to present their reports on time. Furthermore, even in the – growing – number of cases where governments are prepared to take the conclusions and recommendations of treaty bodies (or of special procedures) seriously, follow-up support by the UN system remains too little too late, or unsystematic. A well-targeted follow-up, however, constitutes a real test for lasting impact by these international human rights mechanisms on governmental performance at home.

3.2.2.3 *The Insufficient Mainstreaming and Co-ordination within the UN System*

This issue, too, presents a long-standing concern mainly due to the weaknesses of the Centre for Human Rights to make themselves heard, and followed, by other parts of the Secretariat. In addition to continuing resource problems (and the often invoked – imaginary or real? – added disadvantage of the geographic dislocation from UN Headquarters to Geneva), this is, of course, also due to the general bureaucratic reluctance to co-operate with other programmes, especially when they deal with such a controversial issue as the protection of human rights...

However, the serious reform efforts currently undertaken by the UN's new Secretary-General, Kofi Annan, will at least – and at last – allow for the necessary structural changes to ensure such co-ordination and mainstreaming and, hopefully, also for adequate resource allocation. In addition to the degree of political willingness of governments to endorse the reform, it will then depend, to a considerable degree, also on the quality of the work of the new High Commissioner and her staff how they will contribute to these efforts.[74]

3.2.3 More generally speaking, these shortcomings often reflect, on the part of many governments, a considerable degree of *fear of change, and of reform*, on all sides of the human rights equation; this can be seen especially in continuing arguments using "reform" as a vehicle for "adapting and streamlining the human rights machinery"[75] (to its detriment, as many believe): At the basis of these fears lies mostly the desire to restrict the effectiveness of the

[74] On the consequences of these current reform efforts for human rights see, in detail, the contribution of E.Theuermann and E. Sucharipa, ARIEL.

[75] A part of the mandate of the informal working group of the General Assembly drafting, in the autumn of 1993, the mandate for the High Commissioner (see note 1, above), based on the Vienna Declaration, this issue continues to (pre-)occupy, at regular meetings, an informal working group – see below.

fact-finding, monitoring, and reporting capacities of the international human rights system, in order to minimise the danger of being "exposed".

Thus, after the so-called "spirit of Vienna" allowed, in the end, for a relatively constructive approach to differences over human rights issues and, therefore, for a substantive, comprehensive, and forward-looking conference result, we have seen, to a certain degree and in parallel to a relative emancipation of the Secretariat, a sort of "re-trenching" in the inter-governmental arena.[76]

This phenomenon can be seen quite clearly in the difficulties encountered by the "*Third Committee Working Group*", an informal body of the General Assembly established in 1993 after the World Conference, first to elaborate the mandate for the High Commissioner for Human Rights and, subsequently, to fulfil the related second part of the World Conference mandate:

"...continued adaptation of the United Nations human rights machinery to the current and future needs in the promotion and protection of human rights... in particular, the United Nations human rights organs should improve their coordination, efficiency and effectiveness."[77]

Work in this group has been quite unproductive, however, concentrating on presentations of basic position papers by, essentially, non-aligned delegations on the one hand and the European Union on the other, so that even its chairman is being discouraged to present any personal attempts at finding viable and constructive solutions.

Also in the Commission on Human Rights, enthusiasm about the World Conference – as expressed, e.g., in wide-spread support for draft resolutions on the follow-up to the Conference presented yearly by Austria[78] – has not been translated into basic reform of the Commission's outdated and overloaded agenda or of its somewhat chaotic working methods. As in the past, efforts at tackling these problems have run into the same stalemate of fears – fears that one's own priority could be the victim of any reform.

[76] It would be unfair, however, to blame only governments: already in autumn 1993, the sweeping changes to the UN human rights programme proposed, as a logical consequence of the World Conference, by the then Assistant Secretary-General for Human Rights (and unofficial candidate for the post of High Commissioner), I. Fall, were not even accepted within the UN Secretariat (probably in anticipation of difficulties *vis-à-vis* governments as well as because of their considerable financial consequences) and, therefore, did not make it even to the status of an official UN document, thus providing governments with an easy excuse to stick to old ways when deciding about the UN's human rights programme.

[77] VDPA, part II, para. 17.

[78] Austrian draft resolutions presented since 1993 to every session of the Commission as well as of the General Assembly aim at facilitating the rapid realisation of the recommendations of the Conference, in particular by the various parts of the UN system, most importantly, the High Commissioner; the resolutions always find very high numbers of co-sponsors and are adopted without a vote.

Altogether, while progress since the World Conference was considerable and accelerating, difficulties remain, especially in the inter-governmental sphere. In the same way as the Conference had provided for a unique opportunity to intensify, and concentrate, efforts and bring the human rights debate, and action, onto a higher level, not only in oratorical terms, but also with regard to real action, so does the change in the person occupying the post of High Commissioner provide another, major, occasion to develop the United Nations further into a rights-based organisation.[79]

4. Consequences for Governmental Action and Human Rights Diplomacy

Before turning to the possible agenda for the new High Commissioner, we will take a very brief look at some of the consequences these developments have for international human rights policy as well as for national human rights activities.

4.1 At the International Level

As the preceding overview shows, the international human rights agenda has become broader, both in substance as well as with regard to the processes involved. In addition, the underlying objectives have acquired new strength and effectiveness. It is, primarily, with regard to the choice of measures necessary for the realisation of these objectives that most differences among governments occur.

Therefore, the formulation of governmental policies in the field of human rights and their execution pose new challenges: The shift in international human rights activities from standard-setting towards the control of national implementation and the provision of adequate assistance is leading to a development in which the international human rights system, in addition to its monitoring and implementation control of the numerous international human rights standards, is rapidly developing action-oriented and preventive aspects

[79] It is being argued that especially UNICEF is quickly transforming into a rights-based organisation, as it bases its work largely on the Convention on the Rights of the Child, given the quasi-universal membership of this convention; similarly, discussions are ongoing for the UN's development programme, UNDP, to base their work more systematically on the Covenant on Economic, Social, and Cultural Rights – it would seem more correct and comprehensive, however, to add the other Covenant, on Civil and Political Rights, as well. – Given the existing legal bases for all parts of the UN system, the work throughout the system could, and should, equally take into account, *in a systematic and documented manner*, all other major international human rights instruments.

of its contributions to national human rights situations. International organisations and agencies have to be accepted increasingly as human rights actors in their own account.

In order to be fully accepted, and supported, by governments in this development, international organisations have to ensure, in turn, both the *mainstreaming* of human rights across the whole spectrum of their activities, and adequate *co-ordination* among them. Both these prerequisites are currently pursued, with new vigour, within the framework of the UN's reform efforts, and in particular in the framework of activities for a co-ordinated follow-up to the major UN conferences of recent years.[80] For both these needs, the High Commissioner's role in fulfilling the relevant parts of her mandate is central.

4.2 For Governments' Responses

In addition to international organisations, governments, too, are confronted with the question how to react, and adapt, to this evolution of the international human rights system:

4.2.1 For *international* governmental attitudes and policies, that evolution necessitates a broader focus not only at governments' respective roles in the debate and decision-making in international organisations, but also at human rights in their bilateral relations. The clear need for ensuring an adequate readiness for dialogue and co-operation in their international attitude will have to be balanced with the continued need for exposing, whenever and wherever necessary, situations of systematic human rights violations, utilising the results of international monitoring to the fullest possible extent for exposure as well as for cure. Clearly, establishing the necessary – and desirable – complementarity of monitoring and of technical co-operation is crucial in this context.

[80] Considerable expectations, in this context, are put into the work of the Executive Committees on Peace and Security, Economic and Social Affairs, Development Operations and Humanitarian Affairs established by the new Secretary-General; in the human rights field, considering human rights as a cross-sectoral issue, participation of the Office of the High Commissioner on Human Rights in all four Executive Committees was ensured,; earlier, similar attempts to include human rights, and the High Commissioner, in the work of the Task Forces on the follow-up to the major UN conferences established under the authority of the Administrative Committee on Coordination (which comprises heads of UN agencies and programmes and is chaired by the Secretary-General) had nearly failed – the office of the High Commissioner was only accepted into these Task Forces with a considerable delay.
An additional avenue to ensure an enhanced mainstreaming and co-ordination on human rights issues within the UN system is currently prepared by the proposal to devote the co-ordination segment of the 1998 session of ECOSOC to the review of the World Conference on Human Rights.

International negotiators in human rights issues have to perceive progress in human rights protection not as a zero-sum game in international diplomacy, but as an essential contribution to international, and national, stability, development, and progress. These experts will have to improve their communication skills *vis-à-vis* the non-specialist world and, in particular, national governmental structures, ensuring the necessary feed-back from the evolving international system to the national human rights sphere.

4.2.2 At the *national* level, governments not only have to translate their international human rights commitments into national reality, in legislative as well as in practical terms, they have to ensure overall a much closer relationship between the activities of the international human rights system and their national sphere.

4.2.3 Altogether, therefore, to-day's criteria for the place of human rights in governments' policies have to include the following:

- enhancing their *credibility*, both with regard to ensuring a comprehensive national and international perspective as well as in relation to the own national human rights performance, in legislation, policies, and practice;
- for that purpose, assuring the *integration* of human rights concerns into the overall foreign, and domestic, policies, in particular, finding the right place for the concern of human rights protection in other countries in their own trade, armament, and development co-operation policies, i.e. assuring altogether an "internal" (national) mainstreaming of human rights;
- *comprehensiveness*: governments must not only address substantively the whole spectrum of human rights issues, but also involve one's own civil society, and ensure an adequate coherence between the positions taken in multilateral fora and in bilateral relations;
- maintain a *sustained activity*: generally, no government can afford any more to remain passive on human rights issues, as irritating as these issues may seem to some of them; governments are increasingly challenged to consider the whole spectrum of human rights issues, including those of no immediate political consequences at the national level.

In simpler words, governments' human rights policies have to be taken with a broader scope and pursued more vigorously, not only for the aim of improving the human rights situation world-wide, but also within their own countries, for their very own interest.

These considerations apply increasingly also to the *European Union* which has become, since the preparatory process for the World Conference, a ma-

jor player in the international human rights debate but whose human rights policies are perceived, more often than not, as fragmented, insufficiently coherent, and not comprehensive enough.[81]

5. Towards a Forward-looking International Human Rights Agenda

The rapid evolution of the international human rights system and the need to consolidate achievements and address shortcomings as those identified in this paper will receive special focus at the occasion of the human rights year 1998. All actors constituting this system will have to contribute to a comprehensive effort to advance it further. The following main elements for an enhanced human rights agenda seem important in this regard:

5.1 An Agenda for Governments

Governments, as prime addressees for the responsibility to ensure an effective protection and promotion of human rights, at home and abroad, will obviously play a crucial role in advancing the international human rights system. In order to ensure a successful Human Rights Year 1998, governmental human rights commitments need to be reinforced, by governmental action, as well as through the activities of civil society and international organisations. On the basis of the consequences for governmental policies identified in the preceding section, the following general criteria for success seem important in the present context:

- a clear commitment to improve their own human rights record;
- an equally clear commitment to co-operate with each other in an open and transparent way for enhancing the international human rights framework;
- a commitment to co-operate equally with all elements of the international human rights system, including those of a monitoring nature;

[81] The many facets of the EU's human rights policies cannot be treated here; some central features shall be subject of a forthcoming article. For a general description see, in particular, a 1992 brochure, Commission of the European Communities (ed.), *The European Union and Human Rights, October 1992*, Brussels 1993, as well as the yearly reports of the European Commission (latest: doc. COM (96) 672 final) and of the European Parliament.
For an earlier critical appraisal, see A. Clapham (ed.), *Human Rights and the European Community: A Critical Overview*, Vol. 1 of *European Union – The Human Rights Challenge*, European University Institute, 1991.
On the occasion of the human rights year 1998, therefore, the European Commission is preparing, together with the European University Institute, a project aiming at contributing the basis for ensuring a more coherent human rights policy for the Union.

- a commitment to strengthen civil society and to co-operate with their representatives, both at home and abroad;
- a commitment to vigorously prevent, and pursue, human rights violations wherever they occur.

5.2 An Agenda for Civil Society

In order to realise these commitments, the role of civil society[82] is crucial: Experts, academics, national institutions, and the non-governmental community have to rally in order to use the occasion of the Human Rights year 1998 to enhance the realisation of these aims. NGOs, especially through active involvement in the consultation process to be undertaken by the High Commissioner, can identify concrete issues for a critical appraisal of governments, in particular of their domestic performance. Academic institutions should aim at providing substantive input for ways to strengthen the international human rights programme.

There again, the High Commissioner is a prime addressee for their proposals.

A slogan from the business world is often cited, increasingly also in a human rights context: *"Think globally – act locally"*. As with many good slogans, its inversion is equally valid: Think locally, act globally. The close relationship between global and local aspects is especially warranted in the effective protection of human rights, and becomes apparent in the relationship between the international system and civil society at the local level. There can be no doubt that these links need to be strengthened considerably.

In this context, the international business community, too, should be encouraged to take a closer interest in human rights issues – also for their own long-term benefit.[83]

5.3 The Role of the High Commissioner

Altogether, the role of the High Commissioner for Human Rights in ensuring, and advancing, these objectives cannot be overestimated:

[82] The "growing influence" of the "emergence of non-State actors" is also acknowledged in the Secretary-General's Programme for Reform (see above, note 7, here at pp. 66 and sqq.) devoting a whole chapter on measures to enhance the co-operation of the organisation with civil society.

[83] This is not the place to enter in detail into the crucial issue of the role of big business with regard to human rights; it should be pointed out that big manufacturing companies, especially in the US, have started to react to public pressure on human rights standards in countries with production facilities of such companies – cf., e.g., the human rights production standards developed by *Reebok*.

First of all, the High Commissioner's mandate, as expressed by the General Assembly, is very broad. In essence, it conveys a central role for the protection and promotion of human rights both within the UN system as well as with regard to the international community as a whole – governments, intergovernmental and non-governmental organisations, and civil society world-wide.

Secondly, the very creation of this post, and, even more so, the nomination of a head of state to it, exemplify the importance given to an effective execution of this mandate.

As illustration of the expectations of the community of non-governmental organisations, amnesty international's "*Agenda for a New United Nations High Commissioner for Human Rights*"[84] merits a closer look. Their suggestions, on the basis of the organisation's "experience in working with the first High Commissioner",[85] seem quite self-evident:

- speaking out when governments fail to co-operate with the UN or continue to systematically violate human rights
- protecting and promoting individual human rights through contact with governments
- preventive work through accountable field operations
- working with the rest of the UN system
- integrating women's rights
- working for universality and a stronger legal framework
- reaching out to non-governmental organisations.[86]

In his last report to the Commission on Human Rights,[87] the first High Commissioner, José Ayala Lasso, underlined – two months before Amnesty's suggestions – the following criteria for a strong human rights programme: the programme should be

- "*strong*, to prevent human rights violations;
- *reliable*, to protect and defend victims;
- *interactive*, to be shaped by all the actors concerned;
- *flexible*, to react to evolving needs;
- *compelling*, to build a world-wide Partnership for Human Rights."[88]

These criteria describe just as well the necessary characteristics of the person of the High Commissioner.

[84] AI IOR 40/08/97, April 1997.

[85] *Ibid.*, p. 9.

[86] it Ibid., pp. 9–12.

[87] *Report of the United Nations High Commissioner for Human Rights – Building a partnership for human rights*, UN doc. E/CN.4/1997/98 of 24 February 1997.

[88] *Ibid.*, p. 3.

Fundamentally, the creation of the post of High Commissioner confirms the transition, for the UN secretariat, from a role of *servicing* the various mandates given, or the needs expressed, by governments, to that of an international *actor* in their own right. As the new High Commissioner will have to conduct her action within the parameters of the – politically difficult – international human rights debate, however, she is bound to run into criticism from many sides.[89] She will need not only good wishes, but also unequivocal support. This support will be crucial, in particular, with regard to a central element for her success, i.e., her relationship with governments with a flawed human rights record.

5.4 Substantive Elements

In order to be constructive and forward-looking, a new agenda for human rights has to be *inclusive* and *comprehensive*. For creating the new partnership for human rights the High Commissioner has been propagating,[90] the current trends of operationalisation have to be consolidated and strengthened; this should, in turn, contribute to making governments aware that, in being partners, they are also beneficiaries of the international human rights system – provided they assume not only their responsibilities, but also a readiness for co-operation with international organisations and other governments alike, as well as with the national and international civil society.

The international mechanisms and machineries must not be made the scapegoat of a reluctance to address substantive shortcomings; likewise, criticism must be more than the simple identification of shortcomings – it should also identify possible remedies. For this end, the current reluctance to constructively address the mandate to "adapt the (human rights) machinery"[91] has to be overcome; governments should not only critically evaluate the effectiveness of the UN programmes and secretariat, but also of their "own" intergovernmental machinery, in particular the Commission on Human Rights, and find the courage to strengthen its work, in particular through streamlining not only its agenda, but also its working methods. The identification of overlaps in the work of the various mechanisms created by the Commission, too, should not automatically create fears that their very existence has to be

[89] One of the first governments to react negatively to a comment of the High Commissioner was that of Algeria, suggesting that she may have transgressed her powers when addressing the violence of the conflict between the government of Algeria and terrorist fundamentalism, and that she thus had violated Article 2 (7) of the UN Charter (cf. a Reuter's news item on 30 September 1997).

[90] The last report of the High Commissioner to the Commission on Human Rights, doc. E/CN.4/1997/98, carries the title *For a New Partnership for Human Rights*.

[91] Cf. *supra*, note 40, and, in the main text, ch. 3.2.3.

put into question. Finally, governments should also agree on considerably strengthening the treaty-based system; to this end, it is particularly important for them to nominate only highly qualified and independent experts for the monitoring committees.

All these mechanisms, however, can only identify shortcomings and suggest measures for improving given difficulties. In order for them to be really effective, governments have to agree to follow-up systematically on their recommendations, and to allow input from international organisations for such a follow-up.

5.5 The Next Steps Forward

In addressing such considerations, the international community should be able to take up the challenges identified at the outset of this paper. Since the beginning of this year, these challenges are increasingly being addressed, by governments, the UN system, and NGOs alike.

As an example, reference can be made to an international seminar organised by the Austrian Foreign Ministry in the summer of 1997;[92] this event was gathering some 50 high-level international human rights experts from all parts of the world to address the following general theme which is representing fairly well these considerations: "*The universal protection of human rights: Translating international commitments into national action*".[93] The situation at the national level and the contributions by the international system, in monitoring as well as in assistance, were at the centre of intensive discussions. At the end of the seminar, and after the chairs of the various sessions had presented their conclusions, the chair came to concluding observations[94] in which, once more, the need for an *integrated approach* to the promotion and protection of human rights – "as integral part of overall strategies in the field of development, as well as in peace and security" – was underlined. In this context, the following objectives were identified as being among the possible priorities for the Human Rights Year:

- "a reconfirmation of the universality of human rights

92 The 40th International Diplomatic Seminar, held at Hellbrunn Castle in Salzburg from 20 July to 1st August, 1997.

93 The Seminar addressed, at its working sessions, the following subjects:
- universal implementation of human rights: the international perspective
- challenges for national implementation
- human rights in development: Role of advisory services and technical assistance
- human rights field operations.

94 Published together with the Seminar's papers and the conclusions of the chairs of the different working sessions, by the Austrian Ministry for Foreign Affairs in a special edition of the "Österreichische Außenpolitische Dokumentation".

- a reaffirmation of the indivisibility of human rights and a concretisation of economic, social and cultural rights
- a reaffirmation of the Declaration and Programme of Action laid out by the World Conference
- significant progress towards the goal of universal ratification of human rights instruments as well as more vigorous action of national implementation
- a more systematic follow-up to the implementation of international human rights instruments, both at the national and the international levels
- a significant strengthening of the role of civil society in all countries in helping to ensure the promotion and protection of all human rights
- significant advances in the contribution of the international system to the effective realisation of human rights at the national level everywhere, in particular through technical assistance
- bringing together human rights related work at all levels, especially in development, in particular through clear, co-ordinated, and result-oriented field activities
- the integration of human rights concerns into all relevant activities of the United Nations and other international organisations
- an effective prevention of human rights violations through appropriate means
- full co-operation with the High Commissioner for Human Rights in order to achieve these objectives."[95]

Elements such as these should be appreciated also as an encouragement for others to provide further input – governments, international organisations, and non-governmental institutions as well as, first of all, the High Commissioner herself – and constitute a basis for the Human Rights Year 1998. However, the reports of governments, international organisations, and NGOs, to the High Commissioner and her analysis to be presented to the General Assembly in autumn of 1998[96] will not by themselves ensure effective protection of human rights; this will depend on the commitments realised, using the Human Rights Year as a prime opportunity for creating new momentum, especially at the national level.

To bring together not only the range of questions in conceptual, legal, practical, and political terms, as this paper has attempted to sketch them, but also the – sometimes conflicting – answers suggested by the growing number of actors in the international human rights debate, in order to shape a more vigorous, and effective, international human rights system, will be the real

95 See *Concluding Observations*, *op.cit* (prev. note).

96 In accordance with Part II, para. 100 of the VDPA.

challenge for the new High Commissioner in the forthcoming Human Rights Year.

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The 19th Special Session of the United Nations General Assembly "Rio+5"

IRENE FREUDENSCHUSS-REICHL*

General Introduction

Agenda 21 mandates in its chapter on institutional arrangements that an overall review and appraisal of the implementation of the commitments arrived at at the UN Conference on Environment and Development (UNCED) in Rio de Janeiro in June 1992 should be carried out five years after the Rio conference. Given the general conference fatigue of the international community it was decided that this overall review and appraisal should occur in the course of a special session of the General Assembly at the Headquarters of the UN in New York in June 1997. The fifth session of the Commission on Sustainable Development (CSD), scheduled for April of 1997, was extended for one week and designated as the preparatory committee for this special session of the General Assembly. The session of the CSD in turn was prepared by two weeks of "inter-sessional meetings" at the end of January, first week of February. An impressive NGO campaign was organized by the Earth Council in the months leading up to the Special Session and culminating in a "Rio + 5" NGO conference in Rio de Janeiro in March 1997.

The outcome of the Special Session of the General Assembly is a "Program for the Further Implementation of Agenda 21" which includes the next five-year work program for the CSD for the years 1998 through 2002 when the next overall review and appraisal of the Rio commitments is to be held.

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The Results of the Special Session of the General Assembly

When the Special Session ended in the early morning hours of Saturday, 28 June under the gavel of the President of the General Assembly, Razali Ismail (Malaysia) there was little enthusiasm among the delegates. It was clear to all that the great political breakthrough in the up-hill battle for sustainable development had not happened.

At the same time I believe it would be quite unfair to qualify the Special Session as a failure. Important progress was made – albeit on a more technical level:

- Many chapters of the final document are dense and contain very specific recommendations which could give important guidance to the groping for sustainable development.
- Fresh water and energy are identified as natural resources in dire need of global, comprehensive management. With the recommendations on these two topics the international community irrevocably leaves behind the domain of environmental protection in the narrow sense of the word and embarks on accepting the challenge of elaborating regimes for the sustainable management of natural resources.
- Transport and tourism are highlighted as two economic sectors where national and international endeavors have to be intensified in order to introduce a greater degree of sustainability into these two sectors.
- Poverty and unsustainable consumption patterns are recognized as the driving forces for continuing environmental degradation. Consequently all meetings of the Commission on Sustainable Development will be held in the future against the backdrop of these two overriding issues.
- The future work program of the Commission on Sustainable Development gives greater weight to economic sectors than to the environment media approach of Agenda 21; this should enhance the Commission's capacity to engage important line-ministries – such as economic affairs, trade, finances, industry etc. – and thus contribute to greater integration of sustainability into the economy at large.
- The Commission on Sustainable Development will strengthen its regional involvement and focus more directly on implementation.

North–South Divide Obliterates Political Declaration

Initially the Chairman of the 5th CSD, Mustafa Tolba (Egypt) had announced that, together with the WEOG-Vice-Chair Ms. Monika Linn-Locher (Switzerland) he was consulting on the possible content of a short and weighty political declaration to be adopted by the Heads of State and Government at the

Special Session of the GA. In the course of the meeting of the Commission on Sustainable Development, however, elaborating a draft for such a Declaration that would satisfy all major partners in the negotiations turned out to be more challenging than anticipated.

While the European Union was pressing to nail down in the Political Declaration definite priorities for the future work of the Commission on Sustainable Development and concrete objectives to be achieved by various environmental conventions, the G 77 wanted none of the above. On the other hand the developing countries wanted to high-light the developmental aspects of sustainability and expected the developed countries to come forward with clear commitments on official development assistance and technology transfer. Unfortunately the OECD countries had come more or less empty-handed to New York and no progress could be made on the resource issues.

To save the Declaration the Dutch Minister for Development Cooperation, Jan Pronk, proposed very late in the negotiations to initiate an intergovernmental process to discuss the financing of sustainable development. The proposal could not win general acceptance, however, and it was decided rather not to have a Declaration, than to have a weak, meaningless one.

Climate Change and Forests: Political Priorities of the European Union

The European Union had high political stakes in two areas: the climate change issue and forests. On both of these issues the Union could not reach its objectives.

Traditionally the most important motor of the *climate change* negotiations, the European Union had to go through an excruciatingly difficult internal process to arrive at a common position for the negotiations under the so-called Berlin Mandate on a greenhouse-gas reduction protocol for industrialized countries. Using the time pressure of the forthcoming Commission on Sustainable Development the Dutch Presidency was able to broker an agreement on a EU proposal for the Berlin Mandate process to reduce greenhouse-gases by 15 per cent over 1990 levels by 2010 at the March Council. This negotiating position was complemented by an agreement for a differentiated, internal burden sharing among EU member countries. The Environment Council on 19 June added a demand for a 7,5 per cent greenhouse-gas reduction by the year 2005 with the internal burden sharing to be worked out in the light of the actual outcome of the third Conference of the Parties of the Climate Change Convention in Kyoto in December 1997.

It was only too natural that the European Union wanted to cash in on the hard-won common position in the context of the Special Session of the General Assembly. Unfortunately the main OECD partners for the climate change

negotiations – USA, Australia, Japan et al. – did not want to be put under time pressure, nor did the Central and Eastern European countries which are also mandated to agree to binding reduction schemes. Their position was that the climate change negotiations had their own track, that they were in the process of time-consuming national consultations which could not be jeopardized by premature announcements and that the bargain would take place in Kyoto. The European Union could not make them budge one inch and the text finally agreed on Atmosphere is very weak. In my view it even risks to undermine the Berlin Mandate (see Annex 1).

On the issue of *forests* the European Union had been advocating the elaboration of a convention on the conservation and sustainable use of all types of forests for a considerable time. In the Intergovernmental Panel on Forests, created under the Commission on Sustainable Development to advance global consensus on forest issues, no agreement could be reached on the question of the convention. On the one hand the United States adamantly opposed the idea of a convention, on the grounds that different countries needed different tools to achieve the common goal of preserving forests. On the other hand important developing countries resisted the idea of a convention unless it was clear that the convention would contain substantive provisions on finance, technology and trade – a position many OECD countries had problems with.

The Commission on Sustainable Development forwarded the hot potato of unresolved forest issues to the General Assembly which in turn decided to delay any decision until 1999. Until that date – when the Commission on Sustainable Development would again be faced with the decision on a possible convention – a Forum on Forest Issues would continue to work on issues not resolved by the Intergovernmental Panel on Forests, in particular questions relating to trade, investment, technology and financial resources.

Fresh Water and Sustainable Energy: Successful EU Initiatives

At the meeting of the Commission on Sustainable Development the European Union announced three major initiatives: on fresh water, on energy and on eco-efficiency. While the latter initiative did not go very far – simply because the concept of eco-efficiency as it is promoted with slogans of "Factor Four: halving resource use, doubling wealth" by northern institutions such as the Wuppertal Institute is not very well-known among southern delegates as of yet – the first two initiatives constituted a major input into the Final Document.

Already in 1998 the Commission on Sustainable Development will devote itself to the issue of *fresh water*, a highly critical issue given the fact that one fifth of the world's population has no access to safe drinking water and that

more than half the world's people have no adequate sanitation. Demand for water is growing – also for agricultural irrigation, industry, energy production – and it is clear already today that water scarcity may soon be one of the most severe limiting factors for socio-economic development in many regions. The Special Session of the General Assembly urges a whole series of measures:

- to elaborate national policies and programmes for integrated water-management;
- to strengthen regional and international cooperation;
- to enhance participation of the local level in water management;
- to use economic instruments;
- to build capacity;
- to promote branches of less water-intensive agriculture;
- to develop international water courses in a sustainable way.

Given the paramount importance of fresh water an intergovernmental dialogue should be started under the aegis of the Commission on Sustainable Development at its regular session in 1998. The dialogue is intended to lead to the development of a global and comprehensive water strategy.

The second major initiative of the European Union was to propose a common *strategy for a sustainable energy future*. The Union stressed that energy needs to be at the core of the sustainable development debate, since it plays a key role in achieving the economic, social and environmental objective of sustainable development. This is especially true for developing countries where over 2 billion people have little or no access to energy services.

From the viewpoint of the European Union a common strategy for a sustainable energy future should deal with, inter alia:

- access to basic sustainable energy services for all with emphasis on rural electrification
- the critical linkages of the energy issue to poverty and development
- a shift towards sustainable production and consumption patterns
- impacts of changing energy production, distribution and use on energy exporting countries
- demand-side management and sustainable management of resources
- energy efficiency and energy conservation
- increased and sustainable use of renewable sources of energy (solar, wind, biomass, hydro)
- the environment-energy nexus, in particular the implications for the global climate
- the role of economic instruments such as internalization of costs in prices
- the potential of the global market for sustainable energy, including promotion of best available technologies
- the potential for regional and international cooperation.

Despite fierce initial opposition of OPEC countries and great skepticism from other OECD countries the European Union inititative – which incidentally was initiated and prepared by Austria – was very successful. The Special Session of the General Assembly decided to dedicate the 9th session of the CSD in 2001 to energy issues. Preparations for this dedicated session should start during the 7th CSD in 1999 when an "open-ended intergovernmental group of experts on energy and sustainable development" would be convened. This group would hold meetings in conjunction with the intersessionals for the years 2000 and 2001.

The Special Session furthermore recommends the strengthening of development cooperation for sustainable energy, including technology transfer, the promotion of renewable energy and of clean technologies for fossil fuels, the gradual internalisation of external costs, the elimination of unsustainable subsidies and a better coordination of energy-related activities within the UN system.

With these recommendations the international community has squarely recognized – for the very first time – the importance of energy issues for the achievement of sustainable development and has created a framework for moving towards greater sustainability world-wide on energy.

In order to underline the readiness of the European Union to act on its own proposals the European Commission, Development Cooperation Directorate, has taken the lead in intensifying efforts in the area of development cooperation policies, programmes and projects on sustainable energy.

Means of Implementation

The Special Session of the General Assembly unterlines that financial resources and mechanisms play a key role in the implementation of Agenda 21. At the same time the long-agreed 0.7 per cent of GNP target for ODA was reconfirmed in a rather weak way: "Developed countries should therefore fulfil the commitments undertaken to reach the accepted United Nations target of 0.8 per cent of GNP as soon as possible. In this context the present downward trend in the ratio of ODA to GNP causes concern. Intensified efforts should be made to reverse this trend, taking into account the need for improving the quality and effectiveness of ODA." (para 77 of the "Programme for the Further Implementation of Agenda 21").

On technology transfer the discussions revolved around the role of the public sector, without any real new developments.

Institutional Questions

On institutional questions wide agreement had already been secured during the meeting of the CSD in April. The recommendations focus on improving the coherence of various international organisations and processes in the field of sustainable development (better coordination among convention secretariats, strengthening the ACC Inter-Agency Committee on Sustainable Development with its system of task-managers, enhanced promotion of regional implementation of Agenda 21 by the CSD in cooperation with relevant regional and sub-regional organisations). The traditional division of labor between UNEP and the CSD is reconfirmed. The importance of the reform process for UNEP – initiated at the Governing Council in February and April of 1997 – is underlined. UNDP, UNCTAD and the WTO Committee on Trade and Environment are reminded of their special responsibilities for sustainable development.

Work Program for the Commission on Sustainable Development

An important result of the Special Session was agreement on the five year work program of the CSD for 1998 through 2002 (see Annex 2).

Eradication of Poverty and changing patterns of consumption will be the overriding issues against the backdrop of which all deliberations are to take place. Each year the CSD will take up one sectoral theme (such as fresh water, oceans, etc.), one cross-sectoral theme (such as technology transfer, finances, etc.) and one economic sector and major group theme (such as industry, tourism, agriculture, etc.). This should give greater incentive to the line-ministries to participate actively in the work of the CSD and hence facilitate the integration of sustainability into all economic sectors and the society at large.

Annex 1

Programme for the Further Implementation of Agenda 21 chapter on Atmosphere

48. Ensuring that the global climate and atmosphere is not further damaged with irreversible consequences for future generations requires political will and concerted efforts by the international community in accordance with the principles enshrined in the United Nations Framework Convention on Climate Change. Under the Convention, some first steps have been taken to deal with the global problem of climate change. Despite the adoption of the Convention, the emission and concentration of greenhouse gases (GHGs) continue to rise, even as scientific evidence assembled by the Intergovernmental Panel on Climate Change (IPCC) and other relevant bodies continues to diminish the uncertainties and points ever more strongly to the severe risk of global climate change. So far, insufficient progress has been made by many developed countries in meeting their aim to return GHG emissions to 1990 levels by the year 2000. It is recognized as one critical element of the Berlin Mandate that the commitments under article 4, paragraph 2 (a) and (b) of the Convention are inadequate and that therefore there is a need to strengthen these commitments. It is most important that the Conference of Parties to the Convention, at its third session, to be held at Kyoto, Japan later in 1997, adopt a protocol or other legal instrument that fully encompasses the Berlin Mandate. The Geneva Ministerial Declaration which was noted without formal adoption, but which received majority support among ministers and other heads of delegation attending the second session of the Conference of the Parties, also called for, inter alia, the acceleration of negotiations on the text of a legally binding protocol or other legal instrument.

49. At the nineteenth special session of the General Assembly, the international community confirmed its recognition of the problem of climate change as one of the biggest challenges facing the world in the next century. The leaders of many countries underlined the importance of this in their addresses to the Assembly, and outlined the actions they have in hand both in their own countries and internationally to respond.

50. The ultimate goal which all countries share is to achieve stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. This requires efficient and cost-effective policies and measures that will be sufficient to result in a significant reduction in emissions. At this session, countries reviewed the state of preparations for the third session of the Conference of Parties of the Framework Convention of Climate Change in Kyoto. All are agreed that it is vital that there should be a satisfactory result.

51. The position of many countries for these negotiations are still evolving, and it was agreed that it would not be appropriate to seek to predetermine the results, although useful interactions on evolving positions took place.
52. There is already widespread but not universal agreement that it will be necessary to consider legally binding, meaningful, realistic and equitable targets for annex I countries that will result in significant reductions in greenhouse gas emissions within specified time frames, such as 2005, 2010 and 2020. In addition to establishing targets, there is also widespread agreement that it will be necessary to consider ways and means for achieving them and to take into account the economic, adverse environmental and other effects of such response measures on all countries, particularly developing countries.

Annex 2

MULTY-YEAR PROGRAMME OF WORK FOR THE COMMISION ON SUSTAINABLE DEVELOPMENT 1988-2002

1998 session:
Overriding issues: poverty/consumption and production patterns

Sectoral theme: STRATEGIC APPROACHES TO FRESH WATER-MANAGEMENT

Review of outstanding chapters of the Programme of Action for the Sustainable Development of Small Island Developing States

Main issues for an integrated discussion under the above theme:
Agenda 21, Chapters 2–8, 10–15, 18–21, 23–34, 36, 37, 40.

Cross-sectoral theme: TRANSFER OF TECHNOLOGY/CAPACITY-BUILDING/ EDUCATION/SCIENCE/AWARENESS-RAISING

Main issues for an integrated discussion under the above theme:
Agenda 21, chapters 2–4, 6, 16, 23–37, 40.

Economic sector/major group: INDUSTRY

Main issues for an integrated discussion under the above theme: Agenda 21, chapters 4, 6, 9, 16, 17, 19–21, 23–35, 40.

1999 session:
Overriding issues: poverty/consumption and production patterns
Comprehensive review of the Programme of Action for the Sustainable Development of Small Island Developing States

Sectoral theme: OCEANS AND SEAS

Main issues for an integrated discussion under the above theme: Agenda 21, chapters 5-7, 9, 15, 17, 19–32, 34–36, 39–40.

Cross-sectoral theme: CONSUMPTION AND PRODUCTION PATTERNS

Main issues for an integrated discussion under the above theme: Agenda 21, chapters 2–10, 14, 18-32, 34–36, 40.

Economic sector/Major group: TOURISM

Main issues for an integrated discussion under the above theme: Agenda 21, chapters 2-7, 13, 15, 17, 23–33, 36.

2000 session:
Overriding issues: poverty/consumption and production patterns

Sectoral theme: INTEGRATED PLANNING AND MANAGEMENT OF LAND RESOURCES

Main issues for an integrated discussion under the above theme: Agenda 21, chapters 2–8, 10–37, 40.

Cross-sectoral theme: FINANCIAL RESOURCES/TRADE AND INVESTMENT/ECONOMIC GROWTH

Main issues for an integrated discussion under the above theme:
Agenda 21, chapters 2–4, 23–33, 36–38, 40.

Economic sector/major group: AGRICULTURE
Day of Indigenous People

Main issues for an integrated discussion under the above theme:
Agenda 21, chapters 2–7, 10–16, 18–21, 23–34, 37, 40.

2001 session:
Overriding issues: poverty/consumption and production patterns

Sectoral theme: ATMOSPHERE; ENERGY

Main issues for an integrated discussion under the above theme:
Agenda 21, chapters 4, 6–9, 11–14, 17, 23–37, 39–40.

Cross-sectoral theme: INFORMATION FOR DECISION-MAKING AND PARTICIPATION; INTERNATIONAL COOPERATION FOR AN ENABLING ENVIRONMENT

Main issues for an integrated discussion under the above theme:
Agenda 21, chapters 2, 4, 6, 8, 23–36, 38–40.

Economic sector/major group: ENERGY; TRANSPORT

Main issues for an integrated discussion under the above theme:
Agenda 21, chapters 2–5, 8, 9, 20, 23–37, 40.

2002 session:
Comprehensive review

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Book Reviews

Rudolf Th. Jurrjens and Jan Sizoo, Efficacy and Efficiency in Multilateral Policy Formation, The Experience of Three Arms Control Negotiations: Geneva, Stockholm, Vienna

We are faced with a "magnus opus"; a team of authors, well known for its analysis of the Madrid Conference of the CSCE, this time was even more ambitious: to write a broad "summa" of disarmament history (Geneva – chemical weapons, Stockholm – disarmament in Europe, Vienna – mutual and balanced force reductions) – two successful experiences, one failure – and to propose a series of lessons, how to manage multilateral negotiations on disarmament. In order to allow for a minimum of comparability the authors developed a highly sophisticated model of international negotiations by distinguishing between concepts such as "efficacy" and "efficiency" or between "authority", "legitimacy" and "opportunity". Their differentiation between "system" (structure of a negotiation) and "process" (follow-up of phases) appears to reflect well-known thinking of negotiation's theory.

Such a broad endeavour would amount to an almost impossible task; but the authors were largely successful. Having observed himself for many years negotiations on the Chemical Weapons Convention in Geneva this reviewer can testify to the fact that the history of these negotiations has been written by the authors in a most accurate and detailed way – the authors could benefit from access to official Dutch documents. Whoever is interested in any of these three negotiation processes will gain considerable insights from this book. As a practitioner this reviewer would also qualify lessons drawn by the authors for future negotiations as highly illustrative; negotiations theory and practice can learn from observations concerning these three processes, not only for future action in the field of disarmament.

This effort to merge substance (outcomes) and procedure (ways of getting to outcomes) has been complemented by a very broad documentation of both aspects (what? How to?); the 150 pages of annexes will be a valuable source for any analyst and practitioner concerned with the two tracks analyzed in this highly readable and well organized book. The only regret to be men-

tioned may be that the bibliography rarely goes beyond 1989/1990, although much has been written thereafter on negotiations and disarmament in general. Anyway, this volume is an important pillar of knowledge; in spite of its size and scope it should be read by as many persons as possible concerned with international relations.

WINFRIED LANG

Arie Bloed (ed), The Conference on Security and Cooperation in Europe, Basic Documents, 1993–1995, Martinus Nijhoff Publishers 1997, ISBN 9041103724, 901 pp.

This volume contains the documents of the Organisation of Security and Cooperation in Europe in the years 1993 to 1995. It is the second book published by the editor comprising the documents of the Conference of Security and Cooperation in Europe/Organisation of Security and Cooperation in Europe. It should be appreciated that the editor has undertaken the task to collect the numerous documents produced by the CSCE/OSCE and scrutinized them in regard to their general relevance. Thus, the activities of the CSCE/OSCE are made easily accessable to the interested reader.

The compilation of documents in this book comprises the annual reports of the Secretary-General as well as the documents covering the various meetings held by the CSCE/OSCE in the years 1993 to 1995. In the timeframe covered by this book the CSCE became the OSCE. The relevant Budapest Decisions are reproduced in this book. Moreover, the numerous activities of the CSCE/OSCE e.g. in the field of early warning, conflict prevention and crisis management are documented. But also the meetings on the human dimension or the parliamentary assembly are reported.

In summary, the materials refined by the editor will be welcomed by those who are interested in contemporary European politics. Anybody who is dealing with the political and legal developments in Europe will find this publication a most valuable reference book.

GERHARD LOIBL

Bertrand de Rossanet, Peacemaking and Peacekeeping in Yugoslavia, Nijhoff Law Specials Volume 17, 1996, Kluwer Law International, The Hague/London/Boston, 127 p.

The author of this book, a senior international mediator, was involved in the various negotiations by the International Conference on the Former Yugoslavia (ICFY) from the very outset. Writing this book under a pen-name he provides the reader with inside knowledge and a critical evaluation.

In its eight chapters the book gives a detailed description of the endeavours undertaken by ICFY and its Co-chairmen between 1992 and 1994. The first Chapter describes in short the organizational set-up of ICFY and the principles by which the work of ICFY was guided. It further provides a short overview over the activities of ICFY since its establishment.

The second Chapter deals in detail with "Human Rights and Humanitarian Issues". The author states that atrocities against human rights – present and past – have been at the root of the conflict. Therefore it was a formidable task in the middle of an armed conflict to try and protect human rights and to bring the parties to respect humanitarian law. Efforts for this aim have been made by various players such as the UN Security Council, the Co-chairmen of ICFY, ICFY's Humanitarian Issues Working Group, UNHCR and ICRC. The author discusses the role of each of these actors emphasizing e.g. the problems arising out of the shortages of personnel for the fulfilment of UNPROFOR's mandate concerning the United Nations Protected Areas. He also stresses the dilemma of mediators who have to deal with people in power who at the same time are the perpetrators of atrocities. In this context the author provides the reader with the summary of a revealing conversation between Co-chairman Cyrus Vance and Dr. Karadzic concerning ethnic cleansing.

Chapter Three shows ICFY's role initiating the idea of "Preventive Deployment" in Macedonia and the follow-up by the Secretary General. The author points to the success of this mission, which served as an intermediary and confidence builder in an area of high ethnic tension, avoiding a spill-over of the conflict to neighboring countries.

Chapter Four and Five are dedicated to peace-making in Bosnia and Herzegowina as well as Croatia. The author gives a detailed description of the various rounds of negotiations and the several "Blueprints for Peace" (e.g. The London Conference, the Vance-Owen peace Plan, the Invincible Package, etc) showing the frustrating work of the mediators having reached an agreement only to see it being rejected afterwards by one side or the other. The author also addresses the question of the lifting of the arms embargo and its advantages or disadvantages for the parties to the conflict.

He further points to the importance of proper information and analysis for successful preventive action. He notes that the UN mediator was at a distinct disadvantage concerning information and analysis in comparison to the EU mediator who could draw from the British Foreign Ministry. This indicates how important the development of a methodological information gathering and analysis component of the UN Secretariat would be if the UN wants to prevent international crisis situations and thus play its assigned role as warden of international peace and security in the future.

Chapter Six describes the role of the ICFY Border-Monitoring Mission which was set up in a very short time through the initiative of the Co-chairman Thorwald Stoltenberg who called on his former colleagues, the Foreign Ministers of the Nordic countries to provide the necessary personnel for the mission. The author states that by monitoring the border traffic between the Federal Republic of Yugoslavia (FRY) and the Republica Srbska to give effect to the trade embargo imposed by the UN Security Council the ICFY Border-Monitoring Mission helped to diffuse a particularly dangerous situation.

Chapter Seven is entitled "Peace-keeping" and describes especially the dilemma arising out of peace-keeping coupled with the use of force as well as the problems of the command and control structure of UN Peace-keeping Operations. The author provides the reader with inside knowledge by describing conversations between UNPROFOR's Force Commander and the Special Representative of the Secretary General concerning the different points of view in respect to the control and command structure of UNPROFOR.

In Chapter Eight the author turns to the question of strategies of Peace-making and peacekeeping addressing – in the form of quotes from relevant publications – various issues such as the roots of the conflict, the geopolitical factors, the problem of solving the fundamental tension between the internationaly accepted principle of inviolability of borders and the principle of national self-determination, the need of the international community to respond early to ethnic tensions, possible guidelines for mediators, the need for innovative approaches to ethnic conflicts and a possible architecture for the future of the former Yugoslavia. He also publishes a draft for The Establishment of a Regional Conference on Human Rights and the Rights of Peoples and Minorities (in the Former Yugoslavia) which was floated at an early stage of the ICFY but held off. The author stresses the urgency of such a conference. Since the author concluded the book in 1995 he could not take into account the Round Table on Human Rights in Bosnia and Herzegowina that took place in Vienna in early 1996.

In his conclusions the author states that even though stopping the armed conflict is an imperative for peacemakers, it is necessary to devise long-term solutions. For this it may be required to wait till the time is ripe. The author thus concludes that some of the blue-prints might have been more realistic if set in a different time frame.

He also criticizes that only traditional means of peace-making were used and that for example the Churches and social organizations were not involved in the mediating efforts. He also criticizes the publicity the mediators sometimes got which did not add to the confidence and trust of the parties in the impartiality of the peacemakers.

At the end, and also after Dayton, the question whether peacemaking can be successful if the parties to a conflict do not have the wish to conclude peace remains. The book under review, although covering only the period until 1994, offers substantive material to prove the relevance of the this question.

LILLY SUCHARIPA-BEHRMANN

Gudmundur Alfredson, Katarina Tomasevski (eds.), A Thematic Guide to Documents on the Human Rights of Women. Global and Regional Standards Adopted by International Organizations, International Non-Governmental Organizations and Professional Associations, the Raoul Wallenberg Institute Human Rights Guides Vol.1, 1995, Martinus Nijhoff Publishers, The Hague/ Boston/London, 434 p.

With this volume the Raoul Wallenberg Institute starts a series of Thematic Guidebooks to Human Rights. The first volume is dedicated to the Human Rights of Women. Contrary to the usual compilations providing the full text of the entire document, the approach of this book is to give the reader an easy access to substantive standards embodied in such documents. By this approach it enables the user to find a number of related provisions in a multitude of instruments.

The Guide reproduces texts adopted by international organizations, international non-governmental organizations and professional organizations. Taking into account the great amount of such instruments the Guide naturally had to be selective. Nevertheless, it is a very useful tool for research into a certain topic. If the user for example wants to know where he/she can find provisions concerning the Protection of Motherhood, he/she will find the text of Art. 25(2) of the Universal Declaration of Human Rights (1948), Art. 10(2) of the Declaration on the Elimination of Discrimination against Women (1967), Art. 10(2) of the International Covenant on Economic, Social and Cultural Rights (1966), Art. 11(b) of the UN Declaration on Social Progress and Development (1969) and Art. 11(2) of the Convention on the Elimination of all Forms of Discrimination against Women (1979). The user thus will have a comprehensive information concerning the standards of Protection of Motherhood developed in different instruments.

After reproducing a number of policy documents and the main global Human Rights Instruments the Guide contains a thematic compilation concerning the following topics: elimination of gender discrimination; political participation; development; environment; right to food; labour rights; social rights; right to marry; right to found a family; protection of motherhood; right to health; rights of the girl child; right to education; freedom of information and mass media; slavery, trafficking and prostitution; traditional practices;

violence against women; women with disabilities; administration of justice; humanitarian law; refugee women.

It is to be hoped that this Guide will be up-dated soon so that it also will include the provisions contained in the Declaration and Programme of Action of the Fourth World Conference on Women 1995. The innovative approach taken by the Institute in publishing Guides to Human Rights grouping the provisions according to the subject-matter is an excellent idea with great benefits for the user.

LILLY SUCHARIPA-BEHRMANN

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Austrian Review of International and European Law

Volume 2, No. 3, 1997

M.A. FITZMAURICE / Modifications to the Principles of Consent in Relations to Certain Treaty Obligations 275–317

O. JANKOWITSCH and W. TONHAUSER / The Convention on Nuclear Safety 319-340

R. MÜLLERSON / On the Nature and Scope of Customary International Law 341–360

C.P.R. ROMANO / Woe to the Vanquished? A Comparison of the Reparations Process after World War I (1914–18) and the Gulf War (1990–91) 361–390

Current Developments:

CH. STROHAL / Human Rights Year 1998: The Challenges for the International Human Rights Systems 391–423

I. FREUDENSCHUSS-REICHL / The 19th Special Session of the United Nations General Assembly "Rio+5" 425–435

Book Reviews:

Rudolf Th. Jurrjens/Jan Sizoo, Efficacy and Efficiency in Multilateral Policy Formation, The Experience of Three Arms Control Negotiations: Geneva, Stockholm, Vienna (W. Lang) 437

Arie Bloed (ed.), The Conference on Security and Cooperation in Europe, Basic Documents, 1993–1995, (G. Loibl) 438

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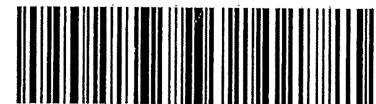

1385-1306(1997)2:3;1-C