John Pace·

The Evolution of the International Architecture for the Protection of Human Rights since Vienna

Introduction

In the twenty years since the adoption of the Vienna Declaration and Programme of Action (VDPA), a number of important changes have taken place in the area of enhancing the protection of victims of human rights violations. The creation of international institutions and the adoption of standards at the international regional and national levels since Vienna, provide positive evidence.

The inclusion of human rights crimes, or crimes against humanity, in the jurisdiction of the International Criminal Court (ICC) in 1998, the establishment of a High Commissioner for Human Rights in 1993 and the authority granted to that Office by the General Assembly (GA) in Resolution 48/141 as "the United Nations official with principal responsibility for United Nations human rights activities" and the establishment of the Human Rights Council in 2006 as an organ of the GA,[1] are but three examples of a generalised trend towards enhancing protection of victims of human rights violations at the international level.

At the regional level, the human rights jurisdictions in Africa, Europe and the Americas have continued to progress albeit at different tempos and in Asia, in the Association of Southeast Asian Nations (ASEAN), a regional human rights mechanism is emerging.

At the national level, the acknowledgment of the role of national human rights institutions, formally admitted for the first time in an international forum in the Vienna process, has led to the establishment in several countries of yet another mechanism of protection.

Vienna is an important milestone in this evolution because it provided space for sober reflection on the past and on priorities for the years that

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· The author is Senior Visiting Fellow at Faculty of Law, Australian Centre for Human Rights, The University of New South Wales, Sydney, and Adjunct at the Sydney Centre for International Law, the University of Sydney.

This paper has been prepared on the basis of the experience made in the last 13 years as an active participant in various capacities in field operations or missions in several countries, where it was possible to assess the practical implications in the field, of the reforms introduced following Vienna.

The purpose of this paper is to underline the ever-widening gap between rhetoric in the meeting room and reality on the ground, which Vienna attempted to address.

The author wishes to thank Ravi Nair of the South Asia Human Rights Documentation Centre, New Delhi, for his inspirations.

1 See UN General Assembly resolution 60/251 of 15 March 2006.

followed it; to best understand and appreciate Vienna, one has to be aware of the wide range of activities that characterised the three years' preparation in all regions of the world, as well as the range of stakeholders involved, in the substantive and the institutional sectors.

The lead-up to Vienna made it possible to take stock of the developments that had characterised the evolution of human rights since the adoption of the UDHR, and to identify the major areas where priority was needed.

The follow-up to Vienna made it possible to focus on the strengthening of the protection of victims of violations of human rights. A number of key developments may be cited that reflect a new sensitivity to the need to strengthen protection of human rights. The protection from torture, for instance, has become absolute. A number of cases, foremost the Pinochet case in Europe and in Chile, as well as the trials of military leaders for human rights crimes in Argentina and elsewhere, provide important examples of this trend.

The Vienna Declaration and Programme of Action is a very rich document, honed over three years of consultation and negotiation world wide. The spirit of Vienna is epitomised in part I paragraph 5 which states:

> "5. All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms."[2]

Crafted at one of the three key regional preparatory meetings, this formulation provides the basis of UN human rights policy and activity in the years to follow Vienna.[3]

Redefining Human Rights

The VDPA had a marked impact on diversifying the focus of human rights. Part I paragraph 5 established that all human rights are universal, indivisible, interdependent and interrelated. This challenged the notion that human rights are generational and afforded advocates a tool to bridge the gulf between civil and political and economic, social and cultural rights.

The VDPA allowed international, regional and national judiciaries to rely on the indivisibility of human rights to affirm positive and negative

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2 See Vienna Declaration and Programme of Action adopted by the World Conference on 25 June 1993, part I, para. 5.

3 See Report of the Regional Meeting for Asia of The World Conference On Human Rights, Bangkok, 29 March to 2 April 1993, UN Doc. A/CONF.157/ASRM/8 - A/CONF.157/PC/59 of 7 April 1993.

State obligations. This afforded claimants a sword and shield, maximising the implications of the good faith principle to afford social, cultural and economic rights with justiciability. The effects of this assertion can be seen in emerging public interest litigation, particularly in South Africa and India.

The right to life, classically defined as a civil right, has been re-defined to include socio-economic rights. It now acts as an umbrella for vulnerable populations to legally assert their claims to essential commodities, including adequate housing, food and water and, in South Africa, anti-viral medication to combat HIV/AIDS. The VDPA provided impetus for a redefinition of human rights, emphasising rights based initiatives and demonstrating the potential for transformative, social change through human rights and international law. This has established the rights based approach to development, emphasising that development is a central component of State-citizen relationships and must be sustained, not sporadic.

A Human Rights Culture

An important – but unsung – achievement of Vienna is the impetus given to an increased sensitivity to human rights in the political and inter-governmental sphere, and more generally to a culture of human rights. This is further evidenced by the remarkable increase in access to human rights education. Before Vienna, except for a handful of academic institutions human rights education was virtually unknown or unavailable.

The human rights programme itself had only shortly before – in 1988 – launched its first attempts at a structured and programmed approach to human rights education.[4] Today, the pursuit of human rights studies at all levels, especially at the tertiary level, is possible in most countries. It has also been adopted in numerous specialised institutions such as the administration of justice sector.[5] Several other organisations and institutions produce a rich collection of human rights education materials.

This contributes to a new level of awareness and consolidation of a human rights culture and therefore exercises an influence on future leadership. Although this takes time and there is still plenty to do, there is little doubt that the threshold of human rights awareness has evolved and

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[4] See GA resolution 43/128 of 8 December 1988 which, among other measures relating to human rights education and information, decided, "to launch on 10 December 1988, the fortieth anniversary of the Universal Declaration of Human Rights, within existing resources, a World Public Information Campaign on Human Rights, under which the activities of the Organization in this field should be developed and strengthened in a global and practically oriented fashion, engaging the complementary activities of concerned bodies of the United Nations system, Member States and non-governmental organizations".

[5] See educational materials listed by OHCHR at http://www.ohchr.org/EN/PublicationsResources/Pages/TrainingEducation.aspx [6 September 2013].

will continue to evolve exponentially, thereby enhancing protection against violations of human rights.

To best exploit the advances recorded in Vienna, it is important that we ask ourselves how well these have worked. After all, violations of human rights continue to occur everywhere, and the nature and profile of these violations may have altered, in many cases with increasing severity.

In order to live up to the challenge contained in the Vienna Declaration and Programme of Action, eloquently embodied in paragraph 5 of the Declaration, it was necessary to strengthen the UN human rights architecture.

The Architecture

It is therefore relevant to take stock of the post-Vienna architecture for the protection against violations of human rights to determine its current effectiveness and to identify those areas where attention is required in order to consolidate the achievements of Vienna.

The core of this architecture consists of the High Commissioner and the Human Rights Council. It is here that policy and progress is determined. The human rights treaties, and the special procedures of the Council are also a part of this architecture, at a more specific, implementation level. The principal actors that ensure the operation of this architecture are governments and civil society. The latter covers the wider non-governmental sector including, historically, human rights groups and, more recently, the business or corporate sector, among others. Since Vienna, national human rights institutions may be considered as an emerging additional sector, bridging government and civil society.

This paper focuses on the core elements of this architecture – the High Commissioner and the Human Rights Council. It shares some reflections on the other components, in that they are intrinsic to the overall architecture.

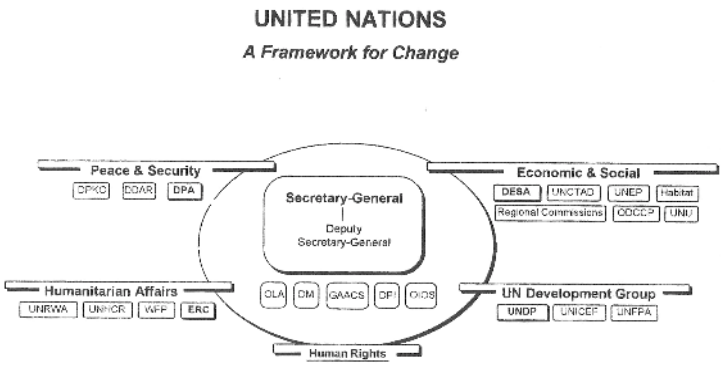
The High Commissioner

The High Commissioner has a pivotal role in the architecture of protection of human rights, on two fronts. First is the role as a component of the UN system, and second as the interlocutor with governments and civil society in matters relating to human rights.

Since its establishment subsequent to Vienna, the Office of the High Commissioner for Human Rights (OHCHR) has grown considerably in operational terms. The number of activities has grown exponentially. It has a much larger budget than ever before, more staff, offices and presences in several countries, including wherever there are Security Council assistance or peace-keeping missions. OHCHR representatives participate in UN country programmes.

The foundation of the modern architecture, following Vienna, was the 1997 reform “Framework for Change”. In launching this reform, Secretary-General Kofi Annan, consistent with the VDPA, consolidated the support for the Office of the High Commissioner by re-organising the human rights

secretariat and launching the process of the strategic location of human rights in the activities of all principal UN activities and programmes.[6] The "framework" sets out the central role of human rights.[7]



[6] See UN Doc. A/51/950, para. 28, "In January 1997, the Secretary-General took the first steps by reorganizing the Secretariat's work programme around the five areas that comprise the core missions of the United Nations: peace and security; economic and social affairs; development cooperation; humanitarian affairs; and human rights. This process involved all United Nations departments, programmes and funds. Subsequently, Executive Committees were established in the first four areas, while human rights was designated as cutting across, and therefore participating in, each of the other four. All United Nations entities were assigned to one or more core group.

[7] Ibid., paras. 78-79, "Human Rights are integral to the promotion of peace and security, economic prosperity and social equity. For its entire life as a world organization, the United Nations has been actively promoting and protecting human rights, devising instruments to monitor compliance with international agreements, while at the same time remaining cognizant of national and cultural diversities. Accordingly, the issue of human rights has been designated as cutting across each of the four substantive fields of the Secretariat's work programme (peace and security; economic and social affairs; development cooperation; and humanitarian affairs).

A major task for the United Nations, therefore, is to enhance its human rights programme and fully integrate it into the broad range of the Organization's activities. Several significant changes have already been implemented. In addition, the Secretary-General is consolidating the Office of the High Commissioner for Human Rights and the Centre for Human Rights, into a single Office of the High Commissioner. The new High Commissioner for Human Rights will, therefore, have a solid institutional basis from which to lead the Organization's mission in the domain of human rights".

Subsequent to that report, a number of important modifications were made to the UN architecture, and some important achievements were accomplished in sensitising the rest of the UN system to the human rights values underpinning their activities. It was to be expected that the High Commissioner, consistent with the mandate setting up the position, would provide guidance - also by example - in regard to human rights priorities consistent with the mandate of the individual components of the UN system. It was also to be expected that the Vienna "formula" would serve as a guide to the High Commissioner in this endeavour.

> "[…] While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms".

The momentum generated by the 1997 reform was characterised by the complex task of integrating human rights throughout the United Nations system. In 2002, the Secretary-General reported on progress in this area and announced "An Agenda for Further Change" in which emphasis was placed on the strengthening of the process of integrating human rights into the UN system.[8] The report sets out four "Actions", to be taken in regard to human rights. Action 2 addresses the integration of human rights into the UN system, originally set out in 1997. The other three Actions address respectively, streamlining reporting procedures of treaty bodies (Action 3), enhancing effectiveness of special procedures (Action 4), and strengthening management in OHCHR (Action 5).

The implementation of Action 2[9] triggered enhanced focus inside the UN system, and remains work in progress. The translation of a human rights culture into the operational dimension of the UN system has required much time and resources. Initially approached as an Inter-Agency process steered by OHCHR (2003-2008), responsibility for mainstreaming is currently managed in a "Human Rights Mainstreaming Mechanism" of the UN Development Group (UNDG), co-chaired by the High Commissioner. The question needs to be asked: has the process of mainstreaming brought the realisation of part I paragraph 5 VDPA any closer?

In spite of the impressive activity and resources put at its disposal since 2002, empirical observation by the author on the field in several operations in the past 13 years demonstrate that the culture of mainstreaming still has to be realised in real operational experience. Whereas significant progress has been made in certain areas, notably in introducing the concept and application of the Human Rights Based

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[8] "Strengthening of the United Nations: an agenda for further change", UN Doc. A/57/387 of 9 September 2002.

[9] See http://www.ohchr.org/EN/NewYork/Pages/MainstreamingHR.aspx and http://www.undg.org/index.cfm?P=1393 [6 September 2013].

Approach to Development (HRBA), the human rights culture has yet to permeate the UN system. There remains an important role for the High Commissioner to play in this regard, particularly in regard to the operationalisation of the human rights programme itself.

In field activities, OHCHR acts as another UN programme, alongside the others. Whereas there is no doubt that there are projects and activities which the Office should implement directly, its role of "principal responsibility for UN human rights activities" envisages a central, catalytic role in UN operations consistent with the reforms of 1997 and 2002 - similar, but not limited to the role of human rights advisers presently assigned to some UN missions.[10] To what extent does the VDPA and in particular part I paragraph 5 influence their selection and functions?

The role and responsibility of the High Commissioner for Human Rights as "the United Nations official with principal responsibility for United Nations human rights activities" has not yet been consolidated. For instance, the Office has little or no say in the implementation of several rule of law support projects carried out by various bodies in a number of countries. The mutuality of scope and relevance between human rights and the rule of law is essential to progress in both sectors. OHCHR has inserted itself alongside the rest of the agencies wherever human rights field operations exist, thereby putting into second place the position assigned to it by the General Assembly. As a consequence its role has been diluted, as has its authority in UN human rights activities. Other UN bodies, not always with ideal results, have cloned the conceptualisation and implementation of various human rights activities.

The establishment of the Rule of Law Coordination and Resource Group – no doubt a desirable development in principle, has not produced any visible pragmatic effect other than a proliferation of advocates and an eclipse of the essential operational link between the rule of law and human rights, for which, as mentioned, the High Commissioner has "principal responsibility".

This part of the architecture clearly needs serious attention if the High Commissioner is to carry out the core responsibility towards the UN system.

The Human Rights Council

There is no doubt that the establishment of a Human Rights Council was an important - and overdue – step.[11] Moving human rights to a central

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[10] Currently there are 18 such advisers; see http://www.ohchr.org/EN/Countries/Pages/HumanRightsAdvisorsIndex.aspx [6 September 2013].

[11] The ideal timing for moving on from the Commission on Human Rights – a functional Commission of the Economic and Social council – to a centralised human rights organ would have been the 1997 reform. A number of (internal) complications delayed this move. Not least was the delay in the operationalising the Office of the High Commissioner for Human Rights.

position as an organ of the GA and bringing human rights into the area of focus of the Security Council are important milestones.

The transition from the Commission on Human Rights, starting in 2006, was effected reasonably smoothly. The introduction of the Universal Periodic Review (UPR) in 2008 was acknowledged as a positive achievement, and indeed thus far there is room for "cautious optimism" that this procedure might contribute to strengthening the protection of human rights at the national level.

However, questions may be raised, in the light of the experience made thus far, as to whether the establishment of the Council has achieved the objectives for which it was set up. More so, bearing in mind paragraph I.5 of the VDPA.

Questions may be raised, for instance, in regard to its structure and composition. Does a Council made up of a small group of States not create an "elitist" environment? Are there really States who are human rights "haves" and others who are "have-nots"? Secretary General Kofi Annan had two options before him. The High Level Panel on Threats, Challenges, and Change had recommended a Human Rights Council[12] as a Charter body with all States Members sitting. In his report shortly thereafter, "In Larger Freedom"[13] the Secretary General proposed a 47-member Council. Two considerations are cited for the preference for a smaller Council: First, it was said that this would "allow more focused discussion and debate". Secondly, "[e]stablishing the Human Rights Council as a principal body of the United Nations […] would require an amendment to the Charter. Establishing the Council as a subsidiary body of the General Assembly would not require an amendment to the Charter […]".

As for the first point, the short history of the Council has not shown any real evidence of "focused discussion and debate". There has not been any serious change from the discussions and debates in the Commission on Human Rights. If anything, these discussions and debates have become more limited in scope, rather than more focused.[14]

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12 "In the longer term, Member States should consider upgrading the Commission to become a "Human Rights Council" that is no longer subsidiary to the Economic and Social Council but a Charter body standing alongside it and the Security Council, and reflecting in the process the weight given to human rights, alongside security and economic issues, in the Preamble of the Charter", UN Doc. A/59/565, para. 291.

13 UN Doc. A/59/2005.

14 In addition to the UPR, the Advisory Committee and the Complaints Procedure, the Council has also convened focus groups, namely an Expert Mechanism on the Rights of Indigenous People, a Forum on Minority Issues, a Social Forum and a Forum on Business and Human Rights; see http://www.ohchr.org/EN/HRBodies/HRC/Pages/OtherSubBodies.aspx [6 September 2013].

The second point is probably dictated by the implications of Article 108 of the Charter.[15] The question arises as to whether avoiding an amendment to the Charter has expedited the UN's strengthening of the protection of human rights. Above all, whether Member States were ready for the change in the status of the Council. It is worth recalling a significant precedent in this regard: the inclusion of human rights in the UN Charter was the subject of an amendment to the proposed draft eventually adopted at the San Francisco Conference.[16]

Perhaps the most cogent question is whether a restricted membership of the Human Rights Council is consistent with the major achievement in Vienna in affirming universality of human rights. True universality presupposes involvement of all States in the realisation of their responsibilities and in the processes related to the formulation, monitoring and implementation of human rights standards. This is further borne out by the adoption of the UPR, which includes all States and is consistent with the principle of universality, contrary to the Human Rights Council itself.

The five-year review mandated by GA Resolution 60/251 (paragraph 16) likewise lacked the universality called for by Vienna. The outcome endorsed by the General Assembly on 17 June 2011 was devoid of vision for much needed evolution in international human rights policy and practice.[17]

The report of the open-ended inter-governmental working group on the review of the work and functioning of the Human Rights Council[18] reflects the absence of any evidence of a meaningful process of consultation of "stakeholders" and a focus on procedural minutiae to the exclusion of any reflection on the very nature and scope of the Council, and in particular, any attempt at reflecting the emphasis on universality – in membership and substantive reflection, as set out in Vienna.

The role of the High Commissioner has been further affected since the establishment of the Human Rights Council and the vague delineation of responsibilities between the two institutions.[19] The Council – a policy

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15 Art. 108, "Amendments to the present Charter shall come into force for all Members of the United Nations when they have been adopted by a vote of two thirds of the members of the General Assembly and ratified in accordance with their respective constitutional processes by two thirds of the Members of the United Nations, including all the permanent members of the Security Council."

16 See United Nations Conference on International Organisation, Amendments proposed by the Governments of the United States, the United Kingdom, the Soviet Union, and China, UN Doc. 2, G/29 of 5 May 1945.

17 See GA resolution 65/281 of 17 June 2011, and especially, the Annex thereto.

18 See UN Doc. A/HRC/WG.8/2/1.

19 See GA resolution 60/251 of 15 March 2006, para. 5.
"Decides that the Council shall, *inter alia*:
[…]
(g) Assume the role and responsibilities of the Commission on Human

making body[20] - has assumed a near monopoly of activities, through micro-management, diluting the institutional complementarity that should characterise its activities and those of the High Commissioner.[21] The adoption of the "compilation" approach to reports, as reflected in the "recommendations" emanating from the UPR, also reflected in the report of the working group on the review,[22] signals an end to substantive reporting – one of the more important support functions of the secretariat – and an essential element in assisting the evolution in the work of inter-governmental bodies and avoiding stagnation.

Furthermore, this monopoly of the Council has also changed the role of civil society in dealing with human rights issues. Although civil society has adapted its modus operandi to maintain some of its historical – not to say vital – role in the Council's work, it has been effectively side lined from this role as partner providing the elements that governments are unable to provide and therefore to ensure a meaningful protection against violations of human rights.

In this regard, credit is due to the treaty bodies and the special procedures, where, contrary to the trend in the Council, interaction with civil society has become a part of their established procedures in considering State party reports.

Here also, there appears to be need for serious reflection on the need to take measures to avoid stunting the momentum launched as a result of Vienna. Such reflection would need to re-visit the VDPA in earnest, and in particular, paragraph I.5, so as to re-vamp the international approach to human rights on a truly universal course.

Additional Reflections – the Treaty System

The treaty system has evolved dramatically since Vienna, as have the procedures followed by the treaty monitoring bodies. Action 3 under the "Agenda for Further Change" of 2002 was intended to add impetus to this process. Much has been said about the need to reform this system and the efforts of former High Commissioners and the current High Commissioner in the comprehensive report published last year. Credit is due to these efforts. The expansion of the complaints procedures in recent years under the core conventions has been dramatic.

Rights relating to the work of the Office of the United Nations High Commissioner for Human Rights, as decided by the General Assembly in its resolution 48/141 of

20 December 1993;"

[20] See GA resolution 48/141, fifteenth preambular paragraph, "Reaffirming that the General Assembly, the Economic and Social Council and the Commission on Human Rights are the responsible organs for decision and policy-making for the promotion and protection of all human rights[…]".

[21] See, e.g., Human Rights Council resolution 5/1 of 18 June 2007, "Institution-building of the United Nations Human Rights Council".

[22] See, e.g., UN Doc. A/HRC/WG.8/2/1 Annex IV "Compilation of State Proposals".

However, the efforts at reform have approached all treaties as though they are identical – at least in the need for reform. There is no doubt that some needs are common to all treaty bodies. For any reform to be effective however, it needs to take in to account the specificity of each treaty, in regard to its scope (e.g. general as in regard to the Covenants versus specific, i.e. the other Conventions) and in regard to the sector of human rights or the group that it seeks to protect. Reform must respect this specificity. Reform should clearly distinguish between logistical and administrative aspects and the need to enhance the effectiveness of the protection envisaged by these treaties. The first should serve the second, and not vice versa. Additional resources are no panacea especially when so little exploitation of information technology has been proposed.

Additional Reflections – Special Procedures

Special Procedures have also evolved dramatically since Vienna. Action 4 under the "Agenda for Further Change" of 2002 highlighted the need to reform in this sector. From their initial ad hoc nature, focused on "problem" countries, they are now referred to as a "system", serving several purposes, and mainly that of buttressing protection of human rights and complementing the treaties. Their nature has changed too, with the evolution of the international approach to human rights in their inter-dependence and inter-relationship. The downside is that there is a risk of banalising their use in enhancing protection by adding topics that are more suitably treated in the Advisory Committee or in academia.

Additional Reflections – Civil Society

Another vital component of the architecture is the non-governmental sector in strengthening protection of human rights. Expert input, such as that from the Advisory Committee, and grass roots expertise, such as that provided by non-governmental organisations, are vital to formulating policy and actions at the inter-governmental level. Quasi-governmental institutions – such as national human rights institutions – are also an important sector in this architecture.

The question needs to be asked whether these sectors are playing any such role, and if so, how is this role affecting the protection against violations of human rights.

The replacement of the former Sub-Commission by an Advisory Committee has yet to demonstrate concrete results in terms of being of benefit to the work of the Council. History shows that, in spite of the criticism often levelled at it, the former Sub-Commission played an important role in the work of the Commission.

As mentioned earlier, civil society has been virtually excluded from contributing to the work of the Council, and certainly in the UPR. One of the notable achievements of Vienna was the important contribution of civil society to the Conference process throughout the three years of the lead up to Vienna and indeed at the Conference itself.

Conclusion

In this paper, I have attempted to point out the need to address the architecture at its core: the High Commissioner and the Council, because they carry the vital responsibility for carrying on with the achievements of Vienna in the protection of human rights. I make the point that the mainstreaming of human rights in the UN system has not yet materialised, and indeed, there is a risk that the process has been diverted from its original momentum and scope. Experience in the field has illustrated this tendency.

Has the United Nations altered its policy on human rights in recent years? Or is it purely a matter of time until the human rights culture permeates the international system? The series of reports of the Secretary-General which have guided the process of building on Vienna would indicate a tendency to relegate the responsibility of the "principal officer" delegated by the GA to the High Commissioner. An indicator of this trend may be furnished by the fact that one of the latest such reports, "Delivering justice: programme of action to strengthen the rule of law at the national and international levels", which is replete with references to human rights and their protection, does not make a single reference to the High Commissioner.[23] There has been no shortage of summits and solemn statements.

Vienna was a long and hard road; negotiations of the final document, the debates within civil society, the regional intergovernmental meetings presented were symptomatic of the monumental nature of the change that was going on. This is epitomised in the VDPA, couched as it states, in,

> "[…] the spirit of our age and the realities of our time which call upon the peoples of the world and all States Members of the United Nations to rededicate themselves to the global task of promoting and protecting all human rights and fundamental freedoms so as to secure full and universal enjoyment of these rights".

Challenges continue to emerge, such as shrinking government, the failure to effectively address the phenomenon of "people flows", those posed by globalisation and the threats to freedom of expression, the erosion of democratic principles and the corresponding reluctance to ensure a functioning administration of justice system.

Vienna went a long way in setting the values and the institutions to encounter these challenges. Much has been done; there has been no lack of reports and plans. Much needs to be done to ensure that these reports and these plans do not remain glib statements floating further and further from the day-to-day realities faced by the victims of human rights violations.

In summary, the core value established in Vienna, namely the value of universality has made some progress in its acceptance but its practical

[23] UN Doc. A/66/749 of 16 March 2012.

realisation has faltered. Efforts at "mainstreaming" still have not overcome "compartmentalisation". Serious management reform within OHCHR, Action 5 of 2002 notwithstanding, remains elusive, in spite of efforts by the various High Commissioners. Changing the prevailing "silo" culture – not new to OHCHR and its predecessor, the Centre for Human Rights and before that, the Division of Human Rights - is a vital pre-requisite to strengthening the architecture for the protection of human rights. OHCHR requires a change of this culture internally, as much as the UN system needs to change its culture towards human rights. In other words, mainstreaming needs to be effectively realised within OHCHR itself, before it can be meaningfully applied to the UN system. For this to happen, OHCHR needs to develop a culture of adaptation to its clients, a vision founded on its statutory responsibility as "the United Nations official with principal responsibility for United Nations human rights activities".

True universality as spelled out by Vienna, needs to be introduced in the Human Rights Council including a wider substantive interface with civil society.

Is there room for more/other institutions? The revival of the proposal for a World Court of Human Rights has much merit and needs to be examined closely and in a positive spirit. The International Commission of Jurists has played a historical role in keeping this proposal on the international agenda and deserves credit for its consistency over the decades.[24] There is no doubt that the current system does not provide an effective remedy to victims of human rights violations – this will remain even if - and hopefully when - the current architecture is strengthened. A Human Rights Court should address that gap.

At all times it is vital not to lose sight of the objective of ensuring protection of victims of violations of human rights and enabling States to undertake their responsibility to do so. As Secretary-General Boutros-Ghali stated at the opening of the Conference on 14 June 1993:

> "[…] the State should be the best guarantor of human rights. It is the State that the international community should principally entrust with ensuring the protection of individuals. However, the issue of international action must be raised when States prove unworthy of this task, when they violate the fundamental principles laid down in the Charter of the United Nations, and when - far from being protectors of individuals - they become tormentors."

It is therefore imperative to ensure that the architecture addressed in this paper is prevented from stagnating and the spirit launched by the Vienna process is re-invigorated, so as to enable a meaningful and on-going review of the nature and scope of the Council and of the High Commissioner, and their outreach to the international inter-governmental and non-governmental sectors. In this manner, this architecture may better

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[24] See International Commission of Jurists, Towards a World Court of Human Rights: Questions and Answers, December 2011.

serve to address the human rights realities on the ground, and address the widening gap between these realities and the conference room.