GLOBAL HUMAN RIGHTS INSTITUTIONS



GERD OBERLEITNER

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GLOBAL HUMAN RIGHTS INSTITUTIONS

BETWEEN REMEDY AND RITUAL

GERD OBERLEITNER

with a foreword by Conor Gearty

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FOREWORD

The idea of universal human rights needs more than ethics on its side if it is to survive in these turbulent times. Fortunately it has that something extra: a range of global human rights institutions with which to drive home its perspective while guarding against its evisceration by the countervailing forces of nationalism, extremism, ethnic particularism, politicized religion, or from wherever it is that the latest challenge has sprung. Global human rights institutions need to see these enemies off while protecting their own core from the dangers of bureaucratization, legalization and systematic hypocrisy. They must do all this while also developing and maturing as the world around them changes, finding new ways to help people both to avoid cruelty and to flourish through the assertion of their dignity. It is a tough task and of course these are failures along the way. But the trajectory is broadly upward, with the idea of human rights having been embedded in the public mind much more effectively for the existence of these institutions than would have been the case had they never been established.

alobal human rights institutions have their biographer. True, Gerd Oberleitner's book contains much that is rightly critical of the bodies that he surveys; his is not only a descriptive account of the origins and development of global human rights institutions, but one which engages also with the darker side, the contact with political reality from which not even the purest of international institutions is immune. But Oberleitner's support for his subject matter also shines through, his commitment to the cause of the institutionalization of human rights evident not only in the devotion that has produced this comprehensive account but also in the argument that he develops for the improvement

and reform of the various organs that he has brought under his careful scrutiny. It is clear that 'global human rights institutions matter as the best presently available format for realizing human rights', with 'their proliferation [being] more a benefit than a danger' (p. 182). This diversity 'offers multiple channels of influence: where once individuals stood alone in facing governmental oppression, today there are a multitude of formalized avenues for redress and assistance in global human rights institutions' (p. 179). Dr Oberleitner sees global human rights institutions as particularly important because they 'reflect the move from vision to reality. ... They allow the move from the acknowledgment of values to their realization on the international level: agreeing on community norms, casting them in legal form, and inventing tools, mechanisms and instruments' (p. 189). Their output 'may often be scant and their power may rest solely on persuasion', despite which 'they realize, in a manner, what would practical otherwise remain philosophical, moral, religious or political discourse, and as such would be even more remote from meeting the demands of those whose dignity is being trampled upon' (p. 190).

It is clear that Gerd Oberleitner is right when he suggests that 'much would be lost if international institutions were to disappear from the global institutional landscape' (p. 179). Consider as a case study in their indispensability the current crisis generated by the inauguration by the United States and some of its allies of a 'war on terror' in the immediate aftermath of the attacks on New York and Washington on 11 September 2001. Initially human rights took a back seat while the Security Council and other international bodies sought to steer a course between the threat of serious international criminality on the one hand and the urge to sanction extreme state action in the name of counterterrorism on the other. Gradually, however, as time has

gone on, the language of human rights has reasserted itself, quietly at first and then with increased confidence and assurance. This could not have been done without the work of human rights functionaries such as high commissioner Louise Arbour, the special rapporteur on terrorism and human rights Kalliopi Koufa and, more recently, Martin Scheinin, with his report in December 2005 to the old Commission on Human Rights on 'the promotion and protection of human rights and fundamental freedoms while countering terrorism'. At the time of writing, human rightsbased pressures are growing to rein in the tendency of Security Council resolutions to disregard due process and fundamental rights in their rush to take strong but nonmilitary action in trouble spots across the world. How would basic rules of fair play, of equity and of respect for human dignity have fared in the first decade of the twenty-first century had they not had their ethical advocate embedded in institutional form within the United Nations and other global bodies?

Gerd Oberleitner has performed an important service in providing an account of global human rights institutions which manages to combine an authoritative descriptive style with a critical scholarly eye. His definition of terms frees him to roam widely across global institutions, assessing those that are obviously central, of course, and also unafraid to delve down pathways that might have been missed by a more hurried writer, but at the end of which are important issues so far as human rights are concerned: the World Bank and IMF, for example (pp. 129-35) and the World Trade Organization (pp. 135-9). Even the role of NGOs, very important is this field, is not missed, securing a chapter all to themselves (chapter 7). The overall effect is one of concise authoritativeness; the interested reader need look no further than Oberleitner for a definitive introductory account of the milieu of global human rights institutions and organs with a brief including human rights that are now to be found scattered across the global stage.

What of the future? In his moving final paragraphs Oberleitner says this:

Administering and managing human rights, dispersing them into diverse institutional formats and diffusing them in an ever wider array of governmental and human activities may be unexciting and uninspiring and be accompanied by deficiencies and failures common to bureaucracies. This, however, is what it means to pursue a utopian aspiration in a tight political and normative framework, and this is what global human rights institutions do. After all, the road from vision to reality is called pragmatism. (p. 191)

Do we still as a community of nations want to pursue this 'utopian aspiration' or human rights? If we do not, then global human rights institutions will not save us from ourselves; they will drift into one of those nooks into which we manoeuvre ideas whose days have come and gone, an appendix on the international body politic, waiting its turn to be removed. But this is not an inevitable or even a probable future. The idea of human rights has demonstrated its flexible robustness in the past and gives no impression today of not continuing to capture the essence of the ethical life to which many of the worlds' citizens aspire. As long as dreams of justice and fairness and equality remain, there will always be a utopian language of human rights to help put their hopes into words. And with those words comes via global human rights institutions the possibility of concrete action, slow maybe, tedious often, but as essential in its way as the dreams that made such progress conceivable in the first place.

Conor Gearty

ACKNOWLEDGEMENTS

A book is never just the product of a certain time of and writing. This one is the result of researching encountering human rights, over many years, in different international institutions. It draws on experiences made, as a researcher, in human rights bodies in the UN and in the European and African human rights systems; on being involved with local and international human rights NGOs; on repeated secondments to the human rights department in the office of the legal adviser of the Austrian Ministry for ensuing participation Affairs and the governmental delegate in international human bodies; and even on having been an intern, way back in the early 1990s, in the (then) UN Centre for Human Rights in Geneva. In each of these situations I saw human rights institutions with different eyes. The hopes which their work could raise and (more often) the frustrations which their shortcomings could provoke made me want to understand better what those institutions are for, what they do, and why they do it. More specifically, I became interested in what they do with human rights and to human rights.

When Polity Press expressed an interest in producing a textbook on global human rights institutions, I felt that mapping the field with a critical eye would allow me to wrestle with some of my assumptions, questions and doubts. The original plan of the book was laid out together with Conor Gearty, when I was a lecturer at the Centre for the Study of Human Rights at the London School of Economics and Political Science. I am indebted to Conor not only for working out the original proposal with me and for agreeing to write the preface, but for his encouragement throughout, for many comments on the draft, and for constantly reminding me to be guided by the kind of critical

inter-disciplinary human rights scholarship which the centre has come to stand for under his leadership. While most of the book was written at my home institution, the Institute of International Law and International Relations at the University of Graz, I benefited greatly from having been accepted (back) so warmly as a Visiting Fellow at the Centre for the Study of Human Rights. I am grateful to colleagues at both institutions for their continuing support.

Louise Knight and Emma Hutchinson at Polity Press have been supportive and patient in equal measure, and I owe them my warm thanks for kicking off the whole project, putting their trust in me, and agreeing to the interdisciplinary approach I have taken. I am indebted to many friends and colleagues who provided ideas and commented on various drafts. My particular thanks go to Wolfgang Benedek, Christine Chinkin, Frank Elbers, Francesca Klug, Renate Kicker, Zdzislaw Kedzia, Jan Klabbers, Manfred Pippan, Nowak. Catrin Pekari. Christian Kirsten Schmalenbach, Andrea Shemberg and Bert Theuermann, as well as to the two anonymous reviewers. The book also benefited greatly from many stimulating thoughts and questions from the students I have had the privilege to teach over the years in my human rights classes in the MSc human rights programme at the LSE, at the University of Graz, on the web, and in summer schools and courses in many places. The support of my wife throughout the writing has been essential - thanks. Carla! The book is dedicated to Felix, who makes such a difference.

ABBREVIATIONS

CAT Convention against Torture and Other Cruel, Inhuman or Degrading

Treatment

CEDAW Convention on the Elimination of All Forms of Discrimination against

Women

CERD Convention on the Elimination of All Forms of Racial Discrimination
CMW Convention on the Protection of the Rights of All Migrant Workers

and Members of Their Families

Convention on the Rights of the Child

CSW Commission on the Status of Women

doc. document

CRC

DPKO Department of Peacekeeping Operations

DSB Dispute Settlement Body ECOSOC Economic and Social Council

FAO Food and Agricultural Organization

FIFA Fédération Internationale de Football Association

GATS General Agreement on Trade in Services
GATT General Agreement on Tariffs and Trade

GRULAC Group of Latin American and Caribbean Countries
HABITAT United Nations Human Settlements Programme

HIV/AIDS Human Immuno-Deficiency Virus/Acquired Immuno-Deficiency

Syndrome

HURIST Global Programme on Human Rights Strengthening

IBRD International Bank for Reconstruction and Devel-opment

ICC International Criminal Court

ICCPR International Covenant on Civil and Political Rights

ICESCR International Covenant on Economic, Social and Cultural Rights
ICISS International Commission on Intervention and State Sovereignty

ICI International Court of Justice

ICRC International Committee of the Red Cross

ICSID International Centre for the Settlement of Investment Disputes

ICTR International Criminal Tribunal for Rwanda

ICTY International Criminal Tribunal for the Former Yugoslavia

IDA International Development Association

IFC International Finance Corporation ILO International Labour Organization

IMF International Monetary Fund

ITU International Telecommunication Union

MDGs Millennium Development Goals

MIGA Multilateral Investment Guarantee Agency

NGO non-governmental organization OCHA Office for Humanitarian Affairs

OHCHR Office of the High Commissioner for Human Rights

para. paragraph

PCIJ Permanent Court of International Justice

PMC Permanent Mandates Commission
PRSP Poverty Reduction Strategy Paper
TPRM Trade Policy Review Mechanism

TRIPS Trade-related Aspects of Intellectual Property Rights

UN United Nations

UNDP United Nations Development Programme

UNESCO United Nations Educational, Scientific and Cultural Organization

UNHCR United Nations High Commissioner for Refugees

UNICEF United Nations Children's Fund

UNIFEM United Nations Development Fund for Women

UPR Universal Periodic Review

VDPA Vienna Declaration and Programme of Action

WEOG Western European and Others Group

WHO World Health Organization

WIPO World Intellectual Property Organization
WSIS World Summit on the Information Society

WTO World Trade Organization

INTRODUCTION

The establishment of a breadth and range of global human rights institutions over the past half century seems a achievement. Today, a complex remarkable institutions is entrusted with protecting and promoting human rights and with preventing and remedying human rights violations. They fulfil a variety of functions that would have been inconceivable a few years, let alone decades, ago. What is often described as a system, though, is a multitude of entities which vary greatly in their range, remit and composition. Established ad hoc in response to concrete needs rather than as part of any master plan, institutions have experienced sustained, vet unplanned and uncoordinated, growth and internal development. In addition to the proliferation of institutions specifically entrusted with human rights matters, the idea of mainstreaming is increasingly leading human rights charged with humanitarian. development. institutions health-related, economic and other issues to perceive human rights as part of their mandate or to develop policies and activities on human rights.

The sustained development and growth of global human rights institutions pose considerable challenges to international politics, international legal and international relations scholarship and reveal a series of questions: Why do states create human rights institutions in the first place, knowing that all they will do is nag about states' preparedness to respect human rights? What do states seek to achieve through such cooperation, and is it different from

what the institutions themselves seek to accomplish? Questions as to the practical consequences and the effectiveness of establishing and expanding an ever tighter institutional web composed of bodies, councils professional commissions. with their riahts human bureaucrats, monitors, judges and experts, flow from these queries: Are multilateral forums suitable venues for protecting human rights, or do they provide a fig leaf for governmental inaction in the face of massive human suffering? What happens to human rights when they are being encased in global institutions? What are the benefits, consequences and drawbacks of institutionalizing human rights? Does the latter turn human rights, this powerful force for social change, into a stale bureaucratic routine? Or does it give practical meaning to otherwise lofty goals? How does the design of a global human rights 'infrastructure' impede the implementation of human rights, and how does their continuing institutionalization affect our understanding of human rights? Many of these questions have never been systematically examined (Steiner, 2003: 760).

Like states, individuals, too, have long since joined forces and established voluntary associations on a global scale. The likes of Amnesty International, Human Rights Watch and the International Commission of Jurists have over time acquired a strong position towards both states and interorganizations. governmental In fact. those nonorganizations governmental (NGOs) have become indispensable to the successful development implementation of human rights, and their impact on the inter-governmental organizations considerable. As with inter-governmental organizations, their spread and rising influence deserves critical appraisal: What is their role and legal standing in international affairs and international law? Who do they represent? Are they the antithesis of inter-governmental organizations or merely another component in a proliferating global 'bureaucratic' web?

This book is an introduction both to the world of global human rights institutions and to the challenges and paradoxes of 'institutionalizing' human rights. It provides a treatment such institutions. comprehensive of governmental non-governmental. and lt examines institutions established within the United Nations (UN) which are explicitly mandated with the promotion and protection of human rights; the process of mainstreaming human rights into formerly 'non-political' or 'technical' institutions; international courts which adjudicate human rights; and human rights NGOs. In mapping the ever more complex network of such global human rights institutions it asks, in essence, what these institutions are and what they are for, and whether this 'hardware' of the global human rights system is fit for today's demands.

This book does not describe or analyse human rights norms, standards and principles, nor is it a handbook on how to use international procedures and mechanisms. Such questions of substance (What are human rights?) and procedure (How are they realized?) find answers in a number of other textbooks. The analysis of institutional aspects of the global human rights system and the relationship between form and function has attracted less attention. What is of interest here are the expectations for and consequences of institutionalizing human rights, as well as the advantages and drawbacks of this process. By assessing appraising and the critically increased 'institutionalization' or 'bureaucratization' of human rights through an ever expanding range of global institutions, the following chapters reflect on how this process may change our perception of human rights. Given the approach and scope of the book as an introductory text, this will amount neither to an empirical assessment of how international

human rights regimes lead to domestic change (such as the one undertaken by, e.g., Risse, Ropp and Sikkink, 1999) nor to the formulation of a comprehensive theory on the behaviour of international organizations (as carried out by, e.g., Barnett and Finnemore, 2004). What this book seeks to achieve is to bring together, in an accessible way, the multitude of global institutions which are concerned with human rights, and to acknowledge and analyse the manifold legal questions and theoretical concerns associated with the institutionalization of international relations in the field of human rights.

examining these questions, the book draws international legal scholarship and international relations literature alike. It goes without saying that such an approach may leave scholars in both fields unsatisfied, as it will not do justice to the particular theoretical depths which each discipline has reached in discussing human rights. This has to be weighed against the hope that the book will contribute to a growing literature that sees human rights as an interdisciplinary concept. understand The need to competences and constraints of human rights institutions necessitates, first and foremost, a dissection of international human rights law. As a consequence the predominance of legal discourse in matters of human rights will become visible in the following chapters. Yet, the book rests on the assumption that 'excessive attention to human-rights law distorts our understanding of human rights' (Freeman, 2002: 12). International law alone is insufficient to understand why human rights institutions are being formed, what they do and why they do it, what they seek to achieve and where they fail, and what sort of human rights infrastructure we are effectively creating.

For the purpose of this analysis, the term 'global human rights institutions' brings together a range of entities of diverse legal character, internal organization and

appearance. The vagueness of the term 'global human rights institution' is one of deliberate choice: this is not a treatise of the law of international organizations, nor does it fan out theories on institutions and regimes as elements of international relations. It simply allows the examination of which formally established institutions have. perceived to have, a profound impact on the way in which human rights are developed, implemented, supervised, enforced or promoted on a global scale. The focus is on formally established institutions and not on 'the human rights movement' or networks and coalitions concerned with the promotion and protection of human rights, or on UN conferences or initiatives, such as the UN Global Compact brings together business, inter-governmental (which agencies and civil society groups in support of social and human rights principles). This is not to deny the importance of such networks and initiatives for the development of human rights; in fact some of those initiatives may have a more profound impact than the work of inter-governmental bodies. Likewise, the discussion of regional human rights institutions in Europe, the Americas and Africa is beyond the remit of this book, notwithstanding that some of these more sophisticated have and sustainable including human institutions. riahts courts, for the protection and promotion of human rights.

The approach of the book is both descriptive in a functional sense, mapping the field of global human rights institutions and their activities, and analytical and critical in its exposure of the advantages and dangers of organizing human rights in institutional formats. Chapter 2 raises some theoretical questions and discusses the process of institutionalizing human rights, the (self-)perception of global human rights institutions and the paradoxes encountered in casting human rights in formal structures. Chapter 3 traces the development of global human rights

institutions, from first attempts of social movements to promote humanitarian issues via the League of Nations and the International Labour Organization (ILO) to the UN. Chapters 4 to 6 present, discuss and critically assess global human rights institutions, thus demonstrating the practical consequences of the theoretical and conceptual concerns raised before. More specifically, chapter 4 introduces UN human rights institutions with an explicit mandate to promote and protect human rights, commonly referred to as the 'UN human rights system', including the UN Human Rights Council as the most recent innovation. Chapter 5 discusses the progress and challenges of mainstreaming rights into institutions entrusted with humanitarian, social, economic and financial concerns. In doing so, it takes stock of a decade of mainstreaming human rights since the UN Secretary-General's proposal on this in 1997 and also highlights the Security Council's position towards human rights. Chapter 6 is devoted to international tribunals, which play an increasingly important role for the adjudication of human rights violations. It examines the International Court of Justice (ICI) and the International Criminal Court (ICC) and discusses prospects for a world court on human rights. Chapter 7 turns to global non-governmental institutions, the rise of which not only accompanies but exceeds the growth of intergovernmental institutions. It focuses less on the role of NGOs vis-à-vis governments, or the emergence of a global civil society, and more on the nexus between intergovernmental and non-governmental institutions as two structural frameworks for human rights.

INSTITUTIONALIZING HUMAN RIGHTS: EXPECTATIONS, PARADOXES AND CONSEQUENCES

The term 'institution' is charged with a specific meaning in various academic disciplines and their schools. As a matter of fact, in both international law and international relations the respective terminology is disputed. While international clearly sets apart inter-governmental from governmental organizations as two types of organization rooted in different legal grounds (the former in international law, the latter in national law), the difference between an international 'organization' and an 'organ' is less clear. At times a sharp distinction is made between the two, at others both terms are used interchangeably, or the notion 'international institution' is used as a synonym (Klabbers, 2002: 10). International relations theory applies the term institution differently from international law (Lang, 1994), and the move in the 1970s away from the study of formally established international organizations to that of 'regimes' has altered the discipline's understanding of what an 'institution' is. Today, a range of usages of the notion 'institution' exist (Simmons and Martin, 2002: 192-4), and often institutions are equated with international regimes, that is 'sets of implicit or explicit principles, norms, rules and decision-making procedures around which actors' expectations converge in a given area of international

relations', to use Krasner's standard definition (Krasner, 1983: 2). In human rights scholarship, the term 'human rights regime' is, in a similar way, often used to describe the totality of relevant standards, procedures and institutions in the field of human rights (Donnelly, 1984; Nowak, 2003; Donnelly, 2003: 127–54).

For the purpose of this analysis, the term 'institution' refers to formally established international organizations and their organs, international courts and international nongovernmental organizations. The following approach global human rights institutions neither from a realist perspective (which would assert that such institutions are nothing but states in disguise) nor with an idealist assumption that their existence and output is necessarily beneficial for all parties concerned. What is said here is based on the premise that such institutions matter, but that we still find it difficult to explain why and how they matter. This analysis presents a range of such institutions, based on a more constructivist approach, which asks if, why, and how they are able to assert themselves as autonomous actors for 'managing' global human rights and what norms consequences this may entail.

The question why states set up global institutions continues to puzzle international relations scholars and drives international lawyers in their ongoing search for a legal theory of international organizations. With idealists and neoliberals pointing out their significance and necessity, functionalists invoking their usefulness, institutionalists and constructivists asserting their influence, realists being sceptical about all that, and normative theories dissecting their foundations, there is no shortage of analytical engagement with international organizations. Yet, as Abbott and Snidal have remarked, neither of these theories 'adequately explains why states use formal international organizations; each holds key insights' (Abbott and Snidal,

12–15). Once set up, international institutions confront us with another set of auestions. interestingly has found less resonance in international relations scholarship (Barnett and Finnemore, 2004: 2): What are such institutions: autonomous actors or puppets on governments' strings? What makes them behave the way that they do? Is it their masters, the states, that set them up, or are they endowed with a will of their own? And where would such a will come from? International lawyers consider such questions in the form of legal theories. They award or deny international institutions different degrees of legal 'personality' or 'subjectivity', and they attribute or withdraw powers on the basis of such theories (e.g., Klabbers, 2002: 42-81).

Human rights institutions seem to be a particularly fertile ground for analysing such questions. The matter they manage - human rights - makes the existence and proliferation of such institutions even more enigmatic than the spread of international institutions in other fields. Unlike alobal institutions devoted cooperation to areas (say, the Universal Postal 'technical' international cooperation in human rights is politically sensitive, and the activities of human rights institutions are more likely to be a constant provocation to governments, a conceptual challenge for international law and an irritation for (realist) international relations scholarship. The idea of human rights continuously tests the established concepts of sovereignty, territoriality and non-interference in domestic affairs, allows individuals to stand up against states in ways unimaginable in other fields of international law, questions the primacy of states in international affairs, and thus forecasts a more participatory and inclusive international legal order. Why would states support all this by setting up human rights institutions? Surprisingly, and in contrast to discussing the existence of international institutions as a

phenomenon, the evolution of international institutions specifically devoted to human rights has attracted less attention in international relations scholarship (Schmitz and Sikkink, 2002; 528), and so has their performance. Likewise, international legal scholarship, while engaging with human rights institutions, has largely been content to describe such institutions rather than to debate the conditions for and consequences of their establishment and proliferation. While this book does not aim to put forward a comprehensive theory to settle such questions, some assumptions and paradoxes with regard to the establishment and behaviour of such institutions will be discerned in the following, as they have a profound impact on the way in which these institutions approach human rights.

Efficiency, Legitimacy, Power

One main assumption as to why states set up international institutions is that such bodies are useful because they provide a means of cooperation in areas in which such cooperation is to the advantage of all participants. Bennett and Oliver, for example, argue that their creation is not only logical for states, but indispensable, because they provide channels for communication; they allow for decisions on such cooperation to be reached; they offer an administrative machinery for supporting this process and putting the decision into action; and they offer a way of settling differences and finding compromises, thus minimizing the effects of conflicts (Bennett and Oliver, 2002). The same is said to be true of the ability of international institutions to guarantee a higher level of stability, durability and predictability than can be achieved by purely inter-state (Abbott and Snidal, 2001). States interested in setting up and acceding to human rights institutions to achieve results they would find difficult or impossible to realize in bilateral encounters: adopting a treaty on the rights of children, defining the scope of the right to housing, or settling disputes over what constitutes a violation of freedom of expression.

The reduction of transaction costs in deciding on and implementing community norms is, however, only part of as to why states set up human the answer institutions. To the rationality and stability international institutions may offer, other (sociological) considerations may be added which link international legitimacy and power (Barnett institutions with Finnemore, 1999: 702). Wielding power, i.e., influencing decisions, is an important, if not the most important, incentive which makes states participate in human rights institutions. Such participation allows them to shape the outcome of the work of these institutions in line with their national interest, to defend their position, to avert scrutiny, to confront other states with accusations, or, at the very minimum, to be kept informed on developments and trends in the field of human rights. Still, states' attitudes towards and expectations for human rights institutions differ. In the Commission on Human Rights, for example, China has repeatedly undertaken considerable efforts to avert, through procedural means, the adoption of a critical resolution on its own human rights situation, while other countries, such as Burma/Myanmar, largely ignore whatever resolution the may consider passing. There Commission are differences in what, e.g., Cuba may seek to achieve by membership in the UN Human Rights Council compared to, e.g., Sweden. Yet, while there is some scholarly engagement with the factors affecting states' desire to wield influence in international organizations (Smith, 2006: 27-8), there is comparably little (empirical) research to analyse and explain such different attitudes and expectations in the field of human rights (with a few exceptions, e.g., Kent, 1999).

Concerns over legitimacy, coupled with an interest in a state's credibility and international reputation, is the third element in explaining why states participate in human rights institutions (Barnett and Finnemore, 1999: 703). Both the creation of an international human rights institution and the participation therein may be considered as endowing governments with legitimacy, credibility and reputation. Moreover, it is worth noting that sometimes institutions are not only set up for what they do, but also for what they are and what they symbolize (ibid.). Human rights institutions may be particularly prone to conveying the doubtful message that participation in such an institution would, in itself, raise a state's reputation in matters of human rights or be a contribution to their advancement. Was this, for example, the reason why Libya sought to chair the UN Commission on Human Rights in 2003 (and succeeded in doing so)? Or was it the result of group dynamics in the African regional bloc in the commission which put its trust in Libya to best represent its concerns? Or was it other considerations that guided Libya's decision? Again, in the absence of studies into these questions, speculations have to fill in where research is lacking. All three considerations together - efficiency, legitimacy and power - may, however, help to explain why international human rights institutions are set up, and why states compete for membership in human rights bodies.

Arena, Instrument, Actor

This description of international institutions as arenas, instruments and actors is also helpful for understanding why states set up human rights institutions and explaining their role, potential and limits (Archer, 2001: 68–92; White, 2005:

47-59). As instruments, international institutions are used by member states for their purposes and act as mere transmissions for participating governments, executing their projecting national and policies decisions international level. As an arena, they provide an (allegedly neutral) space in which inter-governmental action takes place, facilitating meetings, discussions, negotiations and inter-governmental decision-making. As actors. organizations assume independence above and beyond the wishes of member states. Such independence does not mean the elevation to actors on a par with states, but rather that the institutions may respond in ways that differ from states' expectations and requests (Archer, 2001: 79). After all, institutions do not always develop as expected: 'use confers power and power unused diminishes' (O'Donovan, 1992: 105).

Those three functions are usually interwoven, with sometimes one function being foregrounded, then the other. And indeed no single function alone sufficiently explains what international institutions are and what they do. The view that they are mere instruments is proven wrong by many practical instances of institutions acting in their own capacity or simply misbehaving (Barnett and Finnemore, 1999: 715). The view that institutions are mere arenas is naïve, as it assumes that form and procedure of such institutions, and decisions over such form and procedure, are 'apolitical', which they most certainly are not (as will be below). And the view that institutions shown independent has the utopian touch of institutions as global human rights guardians which are able to curtail states as they see fit, which is not the case in reality.

In the Commission on Human Rights, the arena/instrument dichotomy was usually expressed in terms of a 'cooperative' versus a 'confrontational' approach. Whenever a group of states (usually Western) pushed for the adoption of a