THE AVAILABILITY OF INTERNATIONAL JUDICIAL REVIEW OF GOVERNMENT BREACHES OF HUMAN RIGHTS

Thesis

By

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In memory of my beloved mother.

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Abstract

The main objectives of this thesis are to provide a description, analysis and criticism of the existing international instruments for the promotion of respect and protection of human rights, as well as to provide suggestions for the adoption of an additional legal instrument through the United Nations mechanism as a complementary procedure in order to strengthen judicial review of state actions and legislation. This, in turn, should serve to increase pressure upon State governments to bring their internal legal systems into line with international standards for the protection of human rights.

While there is some limited degree of international “review” of States’ compliance with their international human rights obligations, it is argued in this work that the current international procedures available to individuals alleging that their human rights have been abused by a State are no longer sufficient, and therefore it is appropriate to discuss whether another procedure should be introduced.

The thesis considers this issue of increased judicial review by focusing on one of Australia’s closest neighbours, Indonesia, as an example of a State whose conduct remains largely “untouchable” under current international mechanisms. Despite gross and systematic violations of human rights, one could argue that the Indonesian government is still immune due to its “executive-heavy” legislative system, restricted judicial review as a result of a corrupt judiciary, and high level of impunity of the government and other state agencies.

The thesis firstly concentrates on the procedures available at an international level for dealing with individual complaints alleging human rights violations. Different procedures both under Charter and Treaty provisions are analysed in an attempt to describe their advantages and disadvantages. Two Charter-based procedures dealt with in the discussion cover the communication procedure under the United Nations Economic and Social Council (ECOSOC) which includes the “1503” procedure. Treaty-based procedures, including the procedure before the Human Rights Committee (HRC), the Committee on the Elimination of Racial Discrimination
(CERD), the Committee against Torture (CAT) and the Committee on the Elimination of Discrimination against Women (CEDAW) are given special attention in this thesis.

There follows a critical appraisal of these procedures which highlights their limitations and weaknesses, followed by the suggestion that an additional procedure to complement the current mechanisms available to individuals seeking remedies for human rights violations would be highly desirable – both theoretically and in practice. Among the most prominent limitations of these procedures are the non-binding nature of most of the decisions involved and the real obstacle that the admissibility requirement of “exhaustion of domestic remedies” presents.

Finally, the thesis considers the possibility, as has started to be discussed among some international scholars, of an “International Judicial Review” procedure by which a State’s legislation could be examined in order to determine whether or not it is in conformity with international human rights standards and norms. It will be suggested that this power of review be given to the International Court of Justice (ICJ) as the “principal judicial organ of The United Nations”.