

# 1994–2024: The international protection of human rights between rise, decline or stagnation – Challenges ahead

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## Abstract

This article takes the 30th anniversary of the Human Rights Centre at the University of Potsdam as an opportunity to take stock of where the regional and universal systems of human rights protection stand today and where they could develop in the coming years. The article reflects on the historical development of human rights protection since the founding of the Human Rights Centre in 1994, from the changes in Europe after 1990 to contemporary global challenges. The article surveys how international human rights mechanisms have expanded since the Cold War, but also highlights stagnation in new treaty ratifications and emerging challenges such as climate change, new technologies like artificial intelligence, and evolving perspectives from States from the Global South.

## Keywords

human rights system, international protection of human rights, multilateralism, United Nations

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## I. Introduction

The Human Rights Centre of the University of Potsdam, which celebrates its 30<sup>th</sup> anniversary in 2024<sup>1</sup>, and which anniversary is the focus of this short piece, is a child of its time. Prior to 1990, the building where it has been located since 2001, hosted the East German ‘Academy of State and Law of the German Democratic Republic’.<sup>2</sup> This ‘academy’ functioned as a Marxist-Leninist educational institution for senior employees of the GDR’s State apparatus, administration and diplomatic service.<sup>3</sup> It was thus both, an academic institution, a university and an institution for training and further education. But first, and foremost, if not exclusively, it served the interests of the GDR government and its understanding of international law, including human rights law. What is more, said Academy was located a mere 300 meters, if not less, from the wall which separated the GDR from the Western sectors of Berlin, and where people trying to exercise their right enshrined in Art. 12, para. 2 ICCPR to “leave any country, including his own”<sup>4</sup>, which the GDR had ratified in 1973, did run the risk not only to be captured, but likely

even be shot. Hence, it was only after the fundamental changes that took place from 1989 throughout Europe, and that brought about the collapse of the bloc confrontation in Europe and beyond<sup>5</sup>, that the newly created University of Potsdam, and its law faculty, could decide in 1994 not only to hire Eckart Klein to hold its chair of international law, who soon thereafter was elected a member of the Human Rights Committee in 1995<sup>6</sup>, but also to create the Human Rights Centre of the University of Potsdam.<sup>7</sup>

It is against this background that the 30<sup>th</sup> anniversary of the Human Rights Centre

<sup>1</sup> As to the MRZ’s 20<sup>th</sup> anniversary see *Logi Gunnarsson*, *Künftige Forschungsarbeiten des MenschenRechtsZentrums*, in: MRM 2014, pp. 82–85.

<sup>2</sup> The building also hosted the GDR’s Committee for Human Rights, an official GDR NGO (1959–1990). The committee’s publications are kept in the Centre’s library.

<sup>3</sup> Cf. further *Ulrich Bernhardt*, *Die Deutsche Akademie für Staats- und Rechtswissenschaft, “Walter Ulbricht” 1948–1971, Rechtshistorische Reihe 160* (1997); also *Bundesministerium für gesamtdeutsche Fragen*, *DDR-Handbuch*, 3. Ed., 1985, pp. 36–37.

<sup>4</sup> See generally on this right *Rainer Hofmann*, *Die Ausreisefreiheit nach Völkerrecht und staatlichem Recht* (2012), *passim*; UN Human Rights Committee, Article 12 (Freedom of Movement), CCPR General Comment No. 27, CCPR/C/21/Rev.1/Add.9, from 2 November 1999.

<sup>5</sup> As to the impact of these political developments on the international legal order see generally *Anne Orford*, *Regional Orders, Geopolitics, and the Future of International Law*, in: *Current Legal Problems* 74 (2021), pp. 149–194; *Sebastião C. Velasco e Cruz*, *After the Cold War: Geopolitical Evolution, Scenarios, and Prospects*, in: *The United States in a Troubled World*, 2022, pp. 37–85.

<sup>6</sup> Besides Eckart Klein, the following German nationals have been members of one or more of the treaty bodies set up by the various universal human rights treaty bodies, namely Bernhard Graefrath (HRC, 1976–1986), Christian Tomuschat (HRC, 1976–1986), Edith Oeser (CEDAW, 1982–1992), Hanna B. Schöpp-Schilling (CEDAW, 1989–2008), Bruno Simma (CESCR, 1990–1996), Eibe Riedel (CESCR, 1996–2012), Brun-Otto Bryde (CERD, 2000–2001), Gabriele Britz (CERD, 2001–2002), Lothar F. Krappmann (CRC, 2003–2013), Theresia Degener (CRPD, 2011–2018), Anja Seibert-Fohr (HRC, 2012–2018), Mehrdad Payandeh (CERD, 2019–2024), Michael Windfuhr (CESCR, since 2016), Andreas Zimmermann (HRC, 2018–2020).

It is noteworthy that Edith Oeser, who was nominated by the GDR, continued to be a member of the CEDAW Committee until 1992, while Hanna B. Schöpp-Schilling, who was nominated by the FRG, was a member of said committee from 1989 to 2008. There has thus been a short overlap of two nationals of the same State, i.e. reunified Germany, serving on the CEDAW Committee, formally contrary to Art. 17 para. 2 CEDAW.

<sup>7</sup> See on the founding *Eckart Klein*, *The Founding of the Human Rights Centre in 1994*, in: MRM 2019, pp. 5–11.

might provide less an opportunity to look back, but rather to take stock, albeit with a rather broad brush, where the regional and universal system of the protection of human rights stands today, and where it might eventually move in the years to come.

## II. 1990 as a watershed and beyond in the built-up of the international human rights protection machinery

To state the obvious, the international system of human rights protection did exist well before 1990.<sup>8</sup> As a matter of fact, it is still surprising that it was in 1966, *i.e.* while the confrontation between the two then existing major ideological blocs was still very much ongoing, States agreed on the two human rights covenants which still as of today constitute the bedrock of the universal machinery of human rights protection.<sup>9</sup> Yet, the effectiveness of the overall system was still quite limited, while the Charter-based system of human rights protection, exemplified by the creation

of the then Human Rights Commission, proved to be highly politicized.<sup>10</sup>

The regional system of human rights protection in Europe, established by the European Convention of Human Rights, in turn, for one, was limited in its membership to States from Western Europe.<sup>11</sup> What is more, even some Western European States such as Portugal, Spain or Greece only joined (respectively re-joined) the Council of Europe at a relatively late stage,<sup>12</sup> and indeed could only join the Council, and then ratify the European Convention on Human Rights, after democracy and the rule of law had been (re-)established in those countries.<sup>13</sup>

What is however more is that the overall system established by the European Convention of Human Rights was, when

<sup>8</sup> See generally on the history of the United Nations human rights protection system *United Nations, The United Nations Human Rights Treaty System*, Fact Sheet No. 30/Rev. 1, 2012.

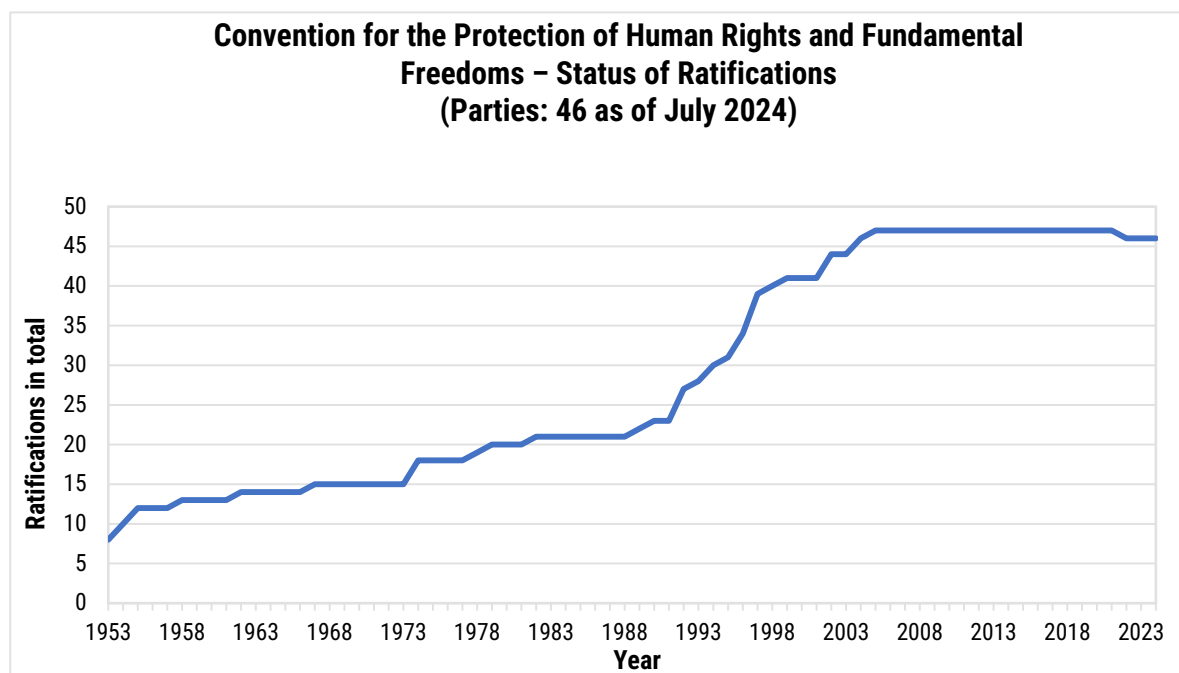
<sup>9</sup> As to the underlying compromise, namely to split up the body of human rights into two separate treaties, namely the ICCPR protecting ‘first generation’ civil and political rights, and the ICESCR guaranteeing ‘second generation’ social, economic and cultural rights see *Maya Hertig Randall, The History of the Covenants: Looking Back Half a Century and Beyond*, in: Daniel Moeckli/Helen Keller/Corina Heri (eds.), *The Human Rights Covenants at 50: Their Past, Present, and Future*, 2018.

<sup>10</sup> See generally the discussion on the reform of the Human Rights Commission prior to 2005 *Paul Lauren, To Preserve and Build on its Achievements and to Redress its Shortcomings, The Journey from the Commission on Human Rights to the Human Rights Council*, in: *Human Rights Quarterly* 29 (2007), pp. 307–345; also *Maximilian Spohr, United Nations Human Rights Council Between Institution-Building Phase and Review of Status*, in: Armin von Bogdandy/Rüdiger Wolfrum (eds.), *Max Planck Yearbook of United Nations Law* 14 (2010), pp. 169–218 (172 et seq.).

<sup>11</sup> See as to the early years of the European Convention on Human Rights *Gordon L. Weil, The Evolution of the European Convention on Human Rights*, in: *The American Journal of International Law* 57 (1963), pp. 804–827.

<sup>12</sup> Portugal became a contracting party in 1978, Spain in 1979 and Greece rejoined the Convention in 1974.

<sup>13</sup> As to the requirement of the guarantee of the rule of law as prerequisite of joining the Council of Europe under Art. 3 Statute of the Council of Europe (and thereby also be (typically) eligible to accede to the European Convention on Human Rights) see Eckart Klein, *Membership and Observer Status*, in: Stefanie Schmah/Marten Breuer (eds.), *The Council of Europe, Its Law and Policies*, 2017, pp. 40–92 (45 et seq.).



**Graph 1** Convention for the Protection of Human Rights and Fundamental Freedoms – Status of Ratifications (Parties: 46 as of July 2024)

compared with the current system as revised in 1994 by virtue of the Protocol no. 11,<sup>14</sup> much more embryonic in nature. As a matter of fact, the ECtHR, as it then stood until the entry into force of the said protocol, depended on the willingness of the contracting parties to submit to the jurisdiction of the then still existing European Commission on Human Rights under Art. 25 ECHR,<sup>15</sup> and possibly also the European

Court of Human Rights under Art. 46 ECHR (version prior to the entry of force of Prot. no. 11 ECHR).<sup>16</sup> In that regard, it is telling that it was only in 1990 that all then 23

against which the complaint has been lodged has declared that it recognizes the competence of the Commission to receive such petitions. Those of the High Contracting Parties who have made such a declaration undertake not to hinder in any way the effective exercise of this right.

(2) Such declarations may be made for a specific period.

(3) The declarations shall be deposited with the Secretary-General of the Council of Europe who shall transmit copies thereof to the High Contracting Parties and publish them.

(4) The Commission shall only exercise the powers provided for in this article when at least six High Contracting Parties are bound by declarations made in accordance with the preceding paragraphs.”

<sup>16</sup> Art. 46 ECHR read:

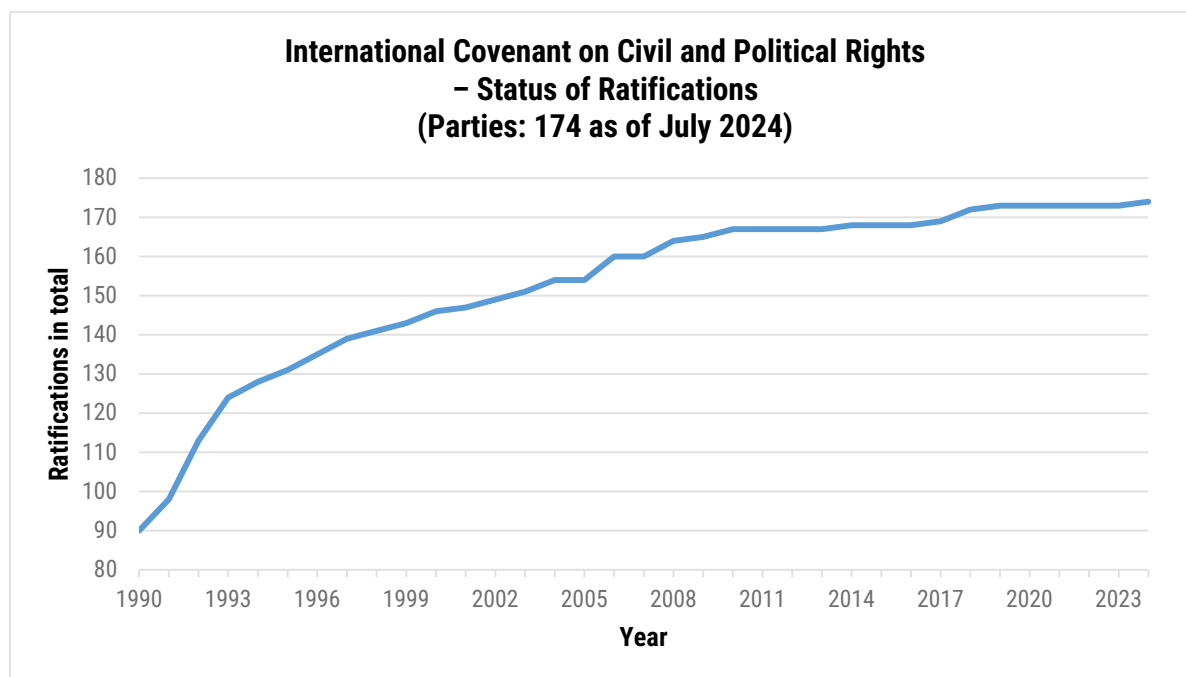
“(1) Any of the High Contracting Parties may at any time declare that it recognizes as compulsory ‘ipso facto’ and without special agreement the jurisdiction of the Court in all matters concerning the interpretation and application of the present Convention.

(2) The declarations referred to above may be made unconditionally or on condition of reci-

<sup>14</sup> Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, restructuring the Control Machinery Established Thereby, ETS No. 155. See as to the reform brought about by the 11th Additional Protocol to the ECHR *Rudolf Bernhardt*, Reform of the Control Machinery under the European Convention on Human Rights: Protocol No. 11, in: *American Journal of International Law* 89 (2017), pp. 145–154.

<sup>15</sup> Art. 25 ECHR then read:

“(1) The Commission may receive petitions addressed to the Secretary-General of the Council of Europe from any person, non-governmental organization or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in this Convention, provided that the High Contracting Party



**Graph 2** International Covenant on Civil and Political Rights – Status of Ratifications (Parties: 174 as of July 2024)

contracting parties of the ECHR<sup>17</sup> had submitted declarations under Art. 25 and 46 ECHR (as they then stood) accepting the Commission's respectively the Court's jurisdiction to receive individual complaints. As a matter of fact, to provide but some examples, while *e.g.* Germany had submitted such declarations as early as 1955, other contracting parties of the ECHR such as the United Kingdom (1966), Switzerland (1974), France (1974/1981), Malta (1987), Cyprus (1980/1989) or Türkiye (1987/1990) only did so significantly later.

This fundamental change of the political circumstances led to a dramatic increase

in the number of ratifications of the ECHR as can be seen in graph 1 with a sharp increase in the years after 1990, and with even the Russian Federation becoming a contracting party despite warning voices already then uttered against such step by a group of eminent experts tasked by the Council of Europe.<sup>18</sup>

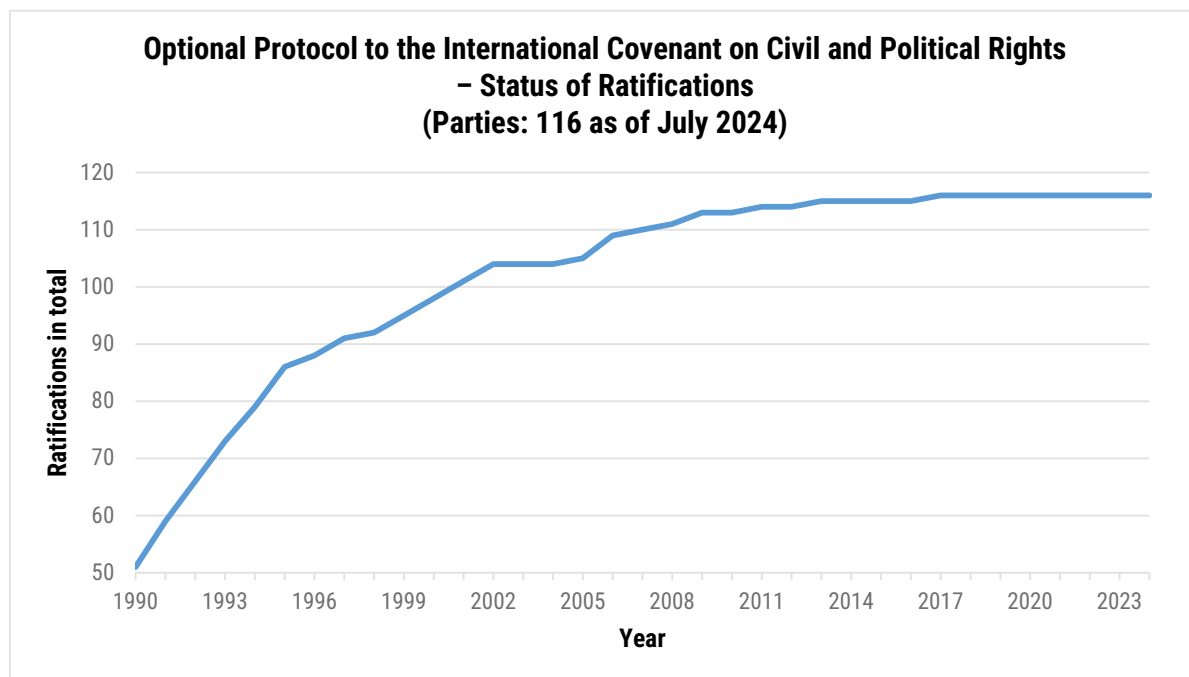
As far as the universal human rights protections system is concerned, a parallel, although less dramatic, positive development can be perceived since the early 1990s as *inter alia* exemplified by the number of ratifications of the ICCPR (see graph 2), which increased from around 90 contracting parties in 1990 to by now more than 170 State parties. What is even more impressive is that from 1990 until today the number of States that have ratified the

procuity on the part of several or certain other High Contracting Parties or for a specified period. (3) These declarations shall be deposited with the Secretary-General of the Council of Europe who shall transmit copies thereof to the High Contracting Parties."

<sup>17</sup> Those contracting parties were Austria, Belgium, Cyprus, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Netherlands, Norway, Portugal, San Marino, Spain, Sweden, Switzerland, Türkiye, and the United Kingdom.

<sup>18</sup> Norman Weiß/Theresa Anna Lanzl, Die wechselvolle Geschichte der Mitgliedschaft Russlands im Europarat, in: ZaöRV 82 (2022), pp. 801–829; Rudolf Bernhardt et al., Report of the conformity of the legal order of the Russian Federation with Council of Europe standards, in: HRLJ 15 (1994), pp. 249–300.





**Graph 3** Optional Protocol to the International Covenant on Civil and Political Rights – Status of Ratifications (Parties: 116 as of July 2024)

Optional Protocol, providing for the possibility to bring individual complaints, more than doubled and increased from 50 State parties in 1990 to by now more than 110 parties (see graph 3).

At the same time, however, it cannot be overlooked that the number of ratifications *per year* of the ICCPR (with more than 10 ratifications per year in the early 1990s) has gone down to a very low single digit number since 2008 (see graph 4).

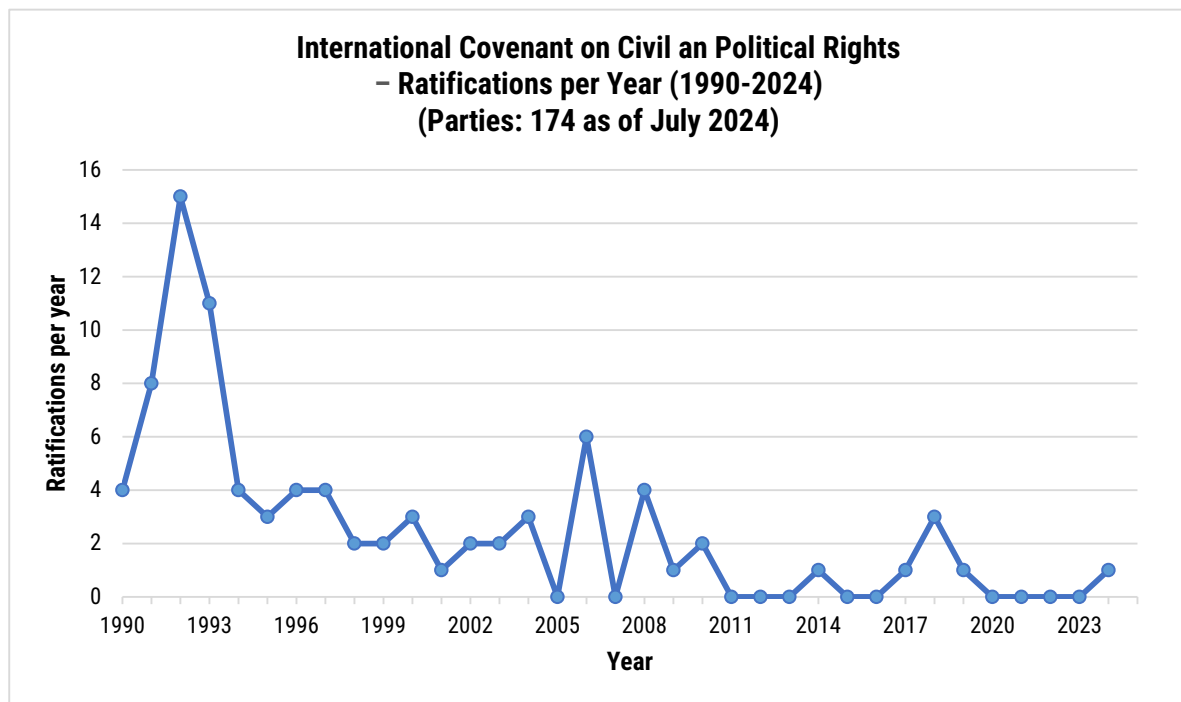
The same holds true *mutatis mutandis* for the Optional Protocol, as shown by graph 5.

Similar developments can also be perceived as far as the other universal human rights treaties, such as the International Covenant on Social, Cultural and Economic Rights, are concerned. It is true that even in more recent years we have seen some additional universal human

instruments to be adopted.<sup>19</sup> Yet the latest, namely the International Convention for the Protection of All Persons from Enforced Disappearance, as well as the Convention on the Rights of Persons with Disabilities, both already date from 2006 and, besides, one of them, namely the former one which entails a stricter enforcement mechanism,<sup>20</sup> has by now received only

<sup>19</sup> These include notably the International Convention on the Elimination of All Forms of Racial Discrimination (1965), the International Covenant on Economic, Social and Cultural Rights (1966), the Convention on the Elimination of All Forms of Discrimination against Women (1979), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), the Convention on the Rights of the Child (1989), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990).

<sup>20</sup> See Art. 30 para 1 ICCPED whereby “a request that a disappeared person should be sought and found may be submitted to the Committee, as a matter of urgency, by relatives of the disappeared person or their legal representatives, their counsel or any person authorized by them, as well as by any other person having a legitimate interest”.



**Graph 4** International Covenant on Civil and Political Rights – Ratifications per Year (1990–2024) (Parties: 174 as of July 2024)

75 ratifications. At the same time, more recent attempts to draft additional universal human rights treaties under the auspices of the United Nations such as the proposed Convention on the Rights of Older Persons (UNCROP) have so far not been proven to be successful.<sup>21</sup>

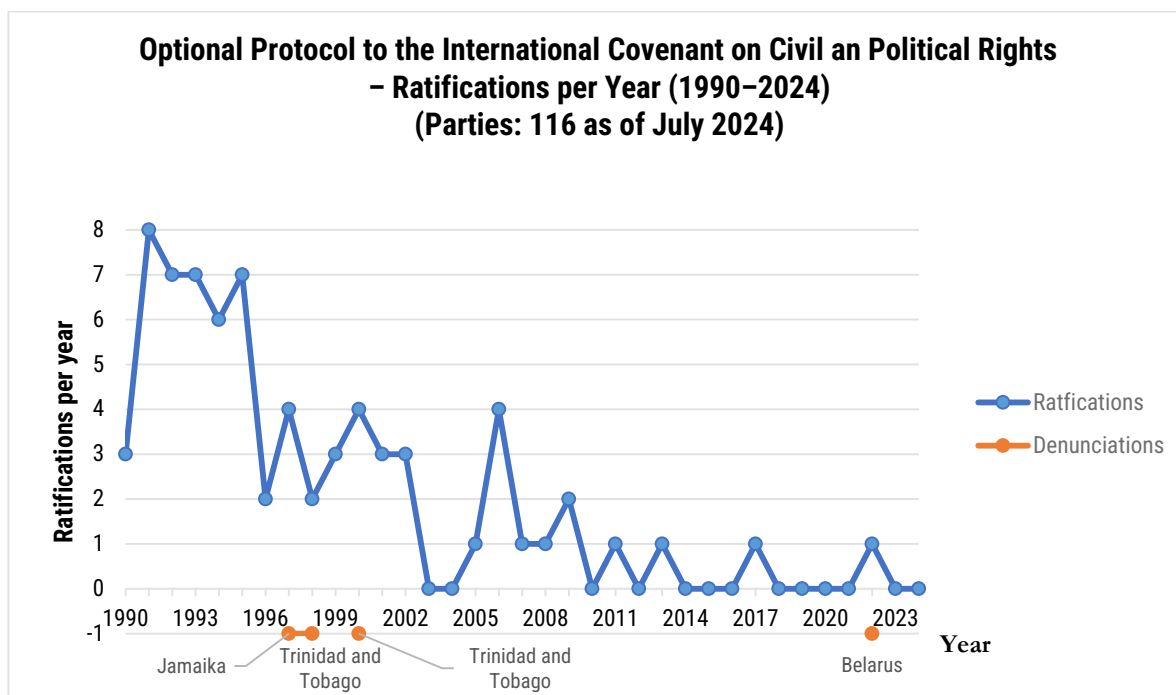
On the whole, it might thus be said that the ‘high times’ of human rights law making, at least as far as the universal level is concerned, has reached its peak by now. It is true that this development has in the last decencies be somewhat bal-

anced by the fact that at least in Africa and the Americas regional human rights protection systems have developed.<sup>22</sup> Yet, notwithstanding that, at least as far as the Inter-American Court of Human Rights is concerned, quite impressive jurisprudential developments have taken place,<sup>23</sup> one cannot but note that both the inter-American and the African human rights protection system both lack sufficient funding and suffer from adequate follow-up by the State parties concerned. As a matter of fact, while contracting parties of the

<sup>21</sup> As to the ongoing debate and negotiation process as to the elaboration of such additional human rights treaty see *Mallika Ramachandran*, Older persons and the international human rights framework: argument for a specific international convention, in: *Journal of the Indian Law Institute* 56 (2014), pp. 523–549; furthermore see *Kwong-Leung Tang/Jik-Joen Lee*, Global Social Justice for Older People: The Case for an International Convention on the Rights of Older People, in: *The British Journal of Social Work* 36 (2006), pp. 1135–1150.

<sup>22</sup> See on the American Human Rights Convention *Ludovic Hennebel/Hélène Tigroudja*, The American Convention on Human Rights, A Commentary, 2022 and on the African Charter on Human and Peoples’ Rights: *Rachel Murray*, The African Charter on Human and Peoples’ Rights, A Commentary, 2019.

<sup>23</sup> See on the dynamic approach by the Inter-American Court for Human Rights *Antônio Augusto Cançado Trindade*, The developing case law of the Inter-American Court of Human Rights, in: *Human Rights Law Review* 3 (2003), pp. 1–25.



**Graph 5** Optional Protocol to the International Covenant on Civil and Political Rights – Ratifications per Year (1990–2024) (Parties: 116 as of July 2024)

African Charter on Human and Peoples' Rights ('Banjul Charter') have to provide State reports to the African Commission on Human Rights on a biannually basis, most State parties do not fulfill this obligation.<sup>24</sup> What is more is that the jurisdiction of the African Court on Human and Peoples' Rights, which was established by the 1998 Protocol on the Establishment of the African Court on Human and Peoples' Rights (ratified by 33 States), to receive cases brought to it directly by individuals and NGOs by virtue of Art. 34 (6) of the said Protocol, is currently only accepted by nine State parties after Rwanda, Tanzania, Benin and Cote d'Ivoire have withdrawn their declarations accepting such jurisdiction. Besides, while the Court has so far delivered a quite significant number

of judgments,<sup>25</sup> there is a significant lack as far as the implementation of the Court's judgments are concerned.

Finally, concerning the working methods of the treaty bodies established under the various universal human rights treaties are concerned, it is first, and again in line with the fundamental change of the political setting occurring in the 1990s, almost stunning how those have developed. It is worth recalling that originally it was even doubtful and disputed among the members of the treaty bodies whether the treaty bodies as such could adopt country-specific concluding observations or General Comments,<sup>26</sup> while as of today the

<sup>24</sup> See *Frans Viljoen*, State Reporting under the African Charter on Human and Peoples' Rights: A Boost from the South, in: *Journal of African Law* 44 (2000), pp. 110–118.

<sup>25</sup> For an overview on the Court's jurisprudence see <https://www.african-court.org/cpmt/> (last accessed on 17 September 2024).

<sup>26</sup> See *Eckart Klein/David Kretzmer*, The UN Human Rights Committee: The General Comments – The Evolution of an Autonomous Monitoring Instrument, in: *GYIL* 58 (2015), 2016, S. 189–229; *Dinah Shelton*, The Development of Human Rights



treaty bodies have developed a full range of procedures including but not limited to follow-up mechanisms to both, Concluding Observations and Views.<sup>27</sup> Yet, there by now is an urgent need to strengthen the treaty body system by overhauling and streamlining their procedures. It remains doubtful, however, whether State parties in their entirety, given an increasing lack of homogeneity among them, and divergent perspectives on the role of independent supervisory bodies, are willing to support the treaty bodies in such endeavor and provide adequate funding to be able to do so.

### III. Mainstreaming human rights

Traditionally ‘human rights law’ was perceived, and also taught, as a separate, and sometimes even somewhat esoteric, field of international law only so-called ‘droits de l’homme’ would deal with.<sup>28</sup> This has certainly changed with human rights bodies and courts having plaid a major

role in ‘mainstreaming’ human rights issues as part of general international law. This relates *inter alia*, to provide but some examples, to concepts such as obligations *erga omnes* and of a *jus cogens* character,<sup>29</sup> the law on reservations to treaties,<sup>30</sup> or the concept of extraterritorial jurisdiction.<sup>31</sup> It also suffices to have a look at the current docket of the International Court of Justice, which apart from more ‘traditional’ boundary and similar cases, includes a whole set of human rights-related cases.<sup>32</sup> Those relate to issues of racial discrimination under CERD,<sup>33</sup> State responsibility

<sup>29</sup> *Andrea Bianchi*, Human Rights and the Magic of Jus Cogens, in: *The European Journal of International Law* 19 (2008), pp. 491–508; *Karin Oellers-Frahm*, Comment: The Erga Omnes Applicability of Human Rights, in: *Archiv des Völkerrechts* 30 (1992), pp. 28–37.

<sup>30</sup> On the relationship between human rights and reservations see *Eric Neumayer*, Qualified Ratification: Explaining Reservations to International Human Rights Treaties, in: *The Journal of Legal Studies* 36 (2007), pp. 397–429; *Kelebogile Zvobgo/Wayne Sandholtz/Suzie Mulesky*, Reserving Rights: Explaining Human Rights Treaty Reservations, in: *International Studies Quarterly* 64 (2020), pp. 785–797.

<sup>31</sup> On the relationship between human rights and extraterritorial jurisdiction see *Marko Milanovic*, Extraterritorial Application of Human Rights Treaties: Law, Principles, and Policy, in: *Oxford Monographs in International Law*, Oxford 2011.

<sup>32</sup> See generally as to this change in the Court’s docket *International Court of Justice*, List of All Cases, available at: <https://www.icj-cij.org/list-of-all-cases> (last accessed on 17 September 2024); see also *Bruno Simma*, Human Rights Before the International Court of Justice: Community Interest Coming to Life?, in: *Christian J. Tams/James Sloan* (eds.), *The Development of International Law by the International Court of Justice*, Oxford 2013, pp. 300–325.

<sup>33</sup> *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)*, Order of 17 November 2023; *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the*

Law and Challenges Faced by UN Treaty Bodies 1969–2022, in: *Max Planck Yearbook of United Nations Law Online* 25 (2023), pp. 682–717; *Nils-Hendrik Grohmann*, Strengthening the UN Human Rights Treaty Bodies, 2024.

<sup>27</sup> See as to the Human Rights Committees’ practice in that regard *inter alia*: *International Covenant on Civil and Political Rights*, Human Rights Committee concluding observations, in: *International Legal Materials* 47 (2008), pp. 598–606; as well as Committee on the Elimination of Racial Discrimination, Concluding observations on the combined initial and second to ninth periodic reports of Benin, CERD/C/BEN/CO/1-9 from 16 September 2022.

<sup>28</sup> *Alain Pellet*, “Droits-de-l’Hommisme” et Droit International, in: *Droits fondamentaux* 2001, pp. 167–179.

for acts of genocide,<sup>34</sup> the interrelationship between State immunity and human rights,<sup>35</sup> torture under UNCAT,<sup>36</sup> as well as the right to strike under ILO Convention No. 87.<sup>37</sup>

Not only have human rights issues thus become part and parcel of the more general discourse of general international law; rather, and even more importantly, human right discourse had an impact on the way international law as a legal order is to be perceived. It is thus not surprising that during its existence, the Human Rights Centre of the University of Potsdam has

also dealt with these various forms of interactions.<sup>38</sup>

## IV. New challenges ahead

On the whole, one is thus tempted to state that during the existence of the Centre, which, as mentioned, was created against the background of the then recent fall of the Berlin Wall and the ensuing collapse of the bloc confrontation in Europe, we have witnessed divergent developments.

On the one hand, we have seen an almost stunning rise in the number of States subscribing to substantive treaty-based international human rights standards and accepting, one way or the other, the international supervision of their human rights records.

On the other hand, and more recently, one cannot but note that the number of such States is at least no longer significantly increasing (if at all). Besides, certain States, and notably the Russian Federation and China, have become more critical of the previously uncontested and universally recognized canon of human rights standards (to which they themselves have in many cases formally subscribed) by stressing *inter alia* the relevance of so-called ‘traditional and family values’, as well as, surprisingly, the concept of non-interference in internal affairs, which claim had long become obsolete at the latest in light of relevant State practice post 1990, as well as *inter alia* that of the Security Council and other organs of the United Nations ever since.

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*Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)*, Judgment of 31 January 2024; *Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem*, Advisory Opinion of 19 July 2024.

<sup>34</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia)*, Judgement, I.C.J. Reports 1996, pp. 595 – 624; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Order of 24 May 2024; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Order of 3 July 2024.

<sup>35</sup> *Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)*, Judgement, I.C.J. Reports 2012, pp. 99–156; *Questions of Jurisdictional Immunities of the State and Measures of Constraint against state-owned Property (Germany v. Italy)*, Order of 5 December 2023.

<sup>36</sup> *Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgement, I.C.J. Reports 2012, pp. 422–463; *Application of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Canada and the Netherlands v. Syrian Arab Republic)*, Order of 16 November 2023.

<sup>37</sup> *Right to Strike under ILO Convention No. 87*, Request for Advisory Opinion, Order of 16 November 2023.

<sup>38</sup> See Norman Weiß/Jean-Marc Thouvenin (eds.), *The Influence of Human Rights on International Law*, 2015.

In light of these and other developments I venture to note three forthcoming challenges for the protection of human rights, as I perceive them, that ought to also inform the research agenda of the Human Rights Centre of the University of Potsdam in the years to come.

For one, climate change is one of the biggest, if not the biggest, challenges for mankind in our time and in the foreseeable future. It raises the fundamental issue as to whom human rights obligations are owed, namely whether not yet born members of future generations can be perceived as bearers of human rights as such, or whether at the very least the currently living population owes them (and if so which) human rights obligations. Climate change also raises a fundamental issue as to vis-à-vis whom such obligations are owed and by whom, namely whether they extend to individuals living beyond the national boundaries of one emitting State, and how to construe the joint responsibility of emitting States.<sup>39</sup>

Besides, as ever, new technologies pose new, and so far uncharted, challenges for human rights. While some of them, such as the use of unmanned weapons systems or surveillance, have been addressed for quite some time by now, and where

at least we see a nucleus of international attempts to regulate them, international human rights issues related to the use of artificial intelligence are so far largely, if not completely, unexplored. As a matter of fact, the crucial question might be how international law might in the future be able to regulate where certain States, given the technological advantages they currently possess, perceive an advantage for them in a lack of any international regulation, and where therefore the concept of a veil of ignorance does not come into play. Even more importantly, the very development of artificial intelligence might even eventually lead to a point where human rights threats might emanate from the to be created artificial intelligence systems themselves. This in turn raises fundamental issues as to what human rights obligations States have *ex ante* in allowing such systems to be developed, come into being and to what degree their actions must (continue to) be controlled by human beings.

Finally, the international community of States has much diversified since the early 1990s, with States from the Global South increasingly playing an important role in shaping the further development of international law, including human rights law. Hence, the need to further critically analyze the approaches of such States to human rights issues and in order to do so also increase the interaction with academic institutions from that part of the world working in the field of human rights.

<sup>39</sup> Nora Jauer, Two Milestones in Favour of the Environment in Just a Few Days?, *Völkerrechtsblog* of 2 November 2021, available at: <https://voelkerrechtsblog.org/two-milestones-in-favour-of-the-environment-in-just-a-few-days/> (last accessed on 2 October 2024); Nora Jauer, States' obligations to protect human rights against climate change – a “perverse absurdity” or a matter of fact?, *JuWissBlog* No. 57/2022 of 12 October 2022, available at: <https://www.juwiss.de/57-2022/> (last accessed on 17 September 2024); Paul Mougeolle, Due diligence von Staaten und Unternehmen bezüglich des Menschenrechts- und Umweltschutzes (Staat, Recht und Politik – Forschungs- und Diskussionspapiere, No. 4), 2018.