Vanderbilt Journal of Transnational Law

Volume 20
Issue 4 *October 1987*

Article 1

1987

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Vanderbilt Journal of
Transnational Law

VOLUME 20 OCTOBER 1987 NUMBER 4

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TABLE OF CONTENTS

* The authors wish to thank Judge Thomas M. Buergenthal, Ms. Christina M. Cerna, Professor Tom J. Farer, Professor Louis B. Sohn, and Professor Colin J. Warbrick for helpful commentary in the preparation of this article. Of course, as per custom here "accepted as law," the authors assume sole responsibility for what is written.

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I. INTRODUCTION

For Americans at least, active concern for human rights on the international plane is demonstrated perhaps most conspicuously in the promotion and protection of human rights through the United Nations and its allied agencies[1]—apart, that is, from the promotion and protection of human rights through United States foreign policy and the work of such nongovernmental organizations as Amnesty International. Supplementing this globally-oriented human rights activity, however, are international human rights regimes operating regionally in Western Europe, the Americas, Africa and the Middle East.[2] Concededly, Asia is not yet represented,[3] and only the first three of the represented regions have gone so

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1. For discussion of the pertinent work of the United Nations proper, see, *e.g.*, Farer, *The UN and Human Rights: More than a Whimper*, 9 HUM. RTS. Q. 550 (1987); Forsythe, *The United Nations and Human Rights, 1945-1985*, 100 POL. SCI. Q. 249 (1985). *See also* J. CAREY, UN PROTECTION OF CIVIL AND POLITICAL RIGHTS (1970); H. TOLLEY, JR., THE U.N. COMMISSION ON HUMAN RIGHTS (1987). For discussion of the pertinent work of certain of the agencies of the United Nations, see Marks, *The Complaint Procedure of the United Nations Educational, Scientific and Cultural Organization (UNESCO)*, in GUIDE TO INTERNATIONAL HUMAN RIGHTS PRACTICE 94 (H. Hannum ed. 1984) (hereinafter HANNUM); Saba, *UNESCO and Human Rights*, in 2 THE INTERNATIONAL DIMENSIONS OF HUMAN RIGHTS 401 (K. Vasak ed. 1982) [hereinafter VASAK]; Swepston, *Human Rights Complaint Procedures of the International Labor Organization*, in HANNUM, *supra*, at 74; Valticos, *The International Labour Organization*, in VASAK, *supra*, at 363.

2. The term "international human rights regimes" and its correlates are used here interchangeably with the term "international human rights systems" and its correlates, in keeping with the standard definition of "international regimes" recommended by Professor Stephen Krasner, to wit, the "principles, norms, rules and decision-making procedures around which actor expectations converge in a given issue-area." Krasner, *Structural Causes and Regime Consequences: Regimes as Intervening Variables*, 36 INT'L ORG. 185, 185 (1982).

For applications of the concept of regimes to international human rights, see Donnelly, *International Human Rights: A Regime Analysis*, 40 INT'L ORG. 599 (1986); FORSYTHE, A NEW HUMAN RIGHTS REGIME: WHAT SIGNIFICANCE? (unpublished manuscript presented at the Annual Conference of the International Studies Association, March 1981); Onuf & Peterson, *Human Rights from an International Regimes Perspective*, 38 J. INT'L AFF. 329 (1984); Ruggie, *Human Rights and the Future International Community*, 112 DAEDALUS 93 (1983).

3. Asia has done relatively little to establish regional human rights institutions. As one commentator has observed:

> Asia is a conglomeration of countries with radically different social structures,

far as to create enforcement mechanisms within the framework of a human rights charter, as evidenced by the European Convention for the Protection of Human Rights and Fundamental Freedoms[4] and the European Social Charter,[5] the American Convention on Human Rights[6] and the Banjul (African) Charter on Human and Peoples' Rights.[7] The Permanent Arab Commission on Human Rights, founded by the Council of the League of Arab States in September 1968[8] but since then understandably preoccupied by the rights of Palestinian Arabs in and to the

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and diverse religious, philosophical, and cultural traditions; their political ideologies, legal systems, and degrees of economic development vary greatly; and, above all, there is no shared historical past even from the times of colonialism. Most research on human rights problems in Asia has, therefore, been national rather than regional.

Yamane, *Asia and Human Rights*, in VASAK, *supra* note 1, at 651.

On the other hand, the United Nations has encouraged the Asian region, so far unsuccessfully, to begin some sort of human rights initiative (*see, e.g., infra* text accompanying notes 22-24), and certain nongovernmental organizations have provided some stimulus by holding conferences to discuss regional human rights issues. In addition, the Standing Committee of Lawasia (a professional association of Asian and Western Pacific lawyers) is working to secure the ratification of the two United Nations human rights covenants (*see infra* notes 18-19) and to establish a Center for Human Rights in the region. For recent discussion regarding these developments, see generally Yamane, *Approaches to Human Rights in Asia*, in INTERNATIONAL ENFORCEMENT OF HUMAN RIGHTS 99 (R. Bernhardt & J. Jolowicz eds. 1987) [hereinafter BERNHARDT & JOLOWICZ].

4. European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, Europ. T.S. No. 5 (entered into force, Sept. 3, 1953) [hereinafter European Convention]. Eight protocols supplement the European Convention, six of which have entered into force: Protocol (No. I), Mar. 20, 1952, Europ. T.S. No. 9 (entered into force, May 18, 1954) [hereinafter Protocol I]; Protocol (No. II), May 6, 1963, Europ. T.S. No. 44 (entered into force, Sept. 21, 1970) [hereinafter Protocol II]; Protocol (No. III), May 6, 1963, Europ. T.S. No. 45 (entered into force, Sept. 21, 1970); Protocol (No. IV), Sept. 16, 1963, Europ. T.S. No. 46 (entered into force, May 2, 1968) [hereinafter Protocol IV]; Protocol (No. V), Jan. 20, 1966, Europ. T.S. No. 55 (entered into force, Dec. 20, 1971); Protocol (No. VI), Europ. T.S. No. 114 (entered into force Mar. 1, 1985); Protocol (No. VII), Nov. 22, 1984, Europ. T.S. No. 117; Protocol (No. VIII), Mar. 19, 1985, Europ. T.S. No. 118.

5. European Social Charter, Oct. 18, 1961, Europ. T.S. No. 35 (entered into force, Feb. 26, 1965) [hereinafter European Social Charter].

6. American Convention on Human Rights, Nov. 22, 1969, OAS T.S. No. 36, at 1, OAS Off. Rec. OEA/Ser. L/V/II.23 doc. 21 rev. 6 (1979), *reprinted in* 9 I.L.M. 673 (1970) (entered into force, July 18, 1978) [hereinafter American Convention].

7. Banjul Charter on Human and Peoples' Rights, June 28, 1981, OAU Doc. CAB/LEG/67/3/Rev. 5 (1981), *reprinted in* 21 I.L.M. 58 (1982) (entered into force, Oct. 21, 1986) [hereinafter African Charter].

8. *See* Council of the Arab League, Res. 2443/48, Sept. 3, 1968.

Israeli-occupied territories,[9] has yet to bring a proposed Arab Convention on Human Rights to successful conclusion, and so far has tended to function more in terms of the promotion than the protection of human rights.[10] Nevertheless, the regional development of human rights norms, institutions and procedures is likely to grow. Already an important dynamic of international human rights law and policy, it is, in any event, here to stay.[11]

From a progressive point of view, this proliferation of human rights activity from the global to the regional plane must be seen as salutary. The greater the dispersion of human rights initiatives, after all, the greater the likelihood that international human rights and their challenge to traditional notions of state sovereignty will be taken seriously. Yet, because the world community has seen fit to arrange for the advancement of human rights through the United Nations and its allied agencies virtually from the United Nations' founding, and because the United Nations system has worldwide competence, one may legitimately ask why it has been deemed necessary or even desirable to arrange for the advancement of human rights on a regional basis as well. It is, indeed, precisely this question that arose at the United Nations' beginning. Because many believed regional approaches to human rights might detract from the perceived universality of human rights, the wisdom of encouraging the creation of regional human rights systems was to some extent doubted.[12]

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9. For discussion of the human rights conditions of Arabs in the Israeli-occupied territories, see, alternatively, Dinstein, *Self-Determination and the Middle East*, in SELF-DETERMINATION: NATIONAL, REGIONAL AND GLOBAL DIMENSIONS 43 (Y. Alexander & R. Friedlander eds. 1980); and Zeidan, *A Human Rights Settlement: The West Bank and Gaza*, in HUMAN RIGHTS AND THIRD WORLD DEVELOPMENT 165 (G. Shepherd & V. Nanda eds. 1985). *See also* REPORT OF THE NATIONAL LAWYERS GUILD 1977 MIDDLE EAST DELEGATION, TREATMENT OF PALESTINIANS IN ISRAELI-OCCUPIED WEST BANK AND GAZA (1978).

10. For discussion of the background of the League of Arab States and the Permanent Arab Commission on Human Rights, see Boutros-Ghali, *The League of Arab States*, in VASAK, *supra* note 1, at 575; Marks, *La Commision permanente arabe des droits de l'homme*, 3 REV. DROIT DE L'HOMME [HUM. RTS. J.] 101 (1970). *See also* A. ROBERTSON, HUMAN RIGHTS IN THE WORLD 164-65 (2d ed. 1982).

11. One can find evidence supporting this proposition in the numerous specialized human rights treaties that now supplement the European, American, and African Conventions. *See, e.g.*, Marie, *International Instruments Relating to Human Rights*, 8 HUM. RTS. L.J. 217 (1987).

12. *See* Vasak, *Introduction*, in VASAK, *supra* note 1, at 451 [hereinafter Vasak, *Introduction*]. Of course, the United Nations Charter itself encouraged some degree of regional initiative. *See* U.N. CHARTER art. 52, para. 1, expressly stating that nothing in the Charter precludes the creation of regional arrangements as long as they are consistent

At least three interrelated responses to this doubt have influenced the development of regional human rights systems, however. Each explains, at any rate, why the idea of regional human rights regimes is no longer a matter of real controversy.

First, regions (by which we mean geographic areas or units marked by relatively high socioeconomic, cultural, political and juridical commonalities)[13] tend toward homogeneity. While by no means guaranteeing unanimity of viewpoint, this fact appears nonetheless to facilitate debate over the substance of the rights to be protected, to assist in the development of more or less familiar systems of redress and, consequently, to enhance the actual promotion and protection of human rights.[14]

Second, geographic proximity, like cultural propinquity, generally leads to socioeconomic, environmental and security interdependence—which in turn helps to breed a reciprocal tolerance and mutual forbearance (or, in any event, less concern over alliance conflict and power balances) that can secure the cooperative transformation of universal proclamations of human rights into more-or-less concrete realities. The development of human rights instruments and mechanisms among states generally is facilitated when alliances based on common interests are in place, and this circumstance not infrequently occurs at the regional level more than it does at the global.[15]

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with the purposes and principles of the United Nations.

13. For an early search into the meaning of "region" in the post-1945 world, including a discussion of its definitional complexity, see B. RUSSETT, INTERNATIONAL REGIONS AND THE INTERNATIONAL SYSTEM: A STUDY IN POLITICAL ECOLOGY 1-7, 167-90 (1967). *See generally* REGIONAL POLITICS AND WORLD ORDER (R. Falk & S. Mendlovitz eds. 1973).

14. One author writes:

> It . . . would appear that the regional approach holds, at least for the time being, a greater promise of effectiveness. Why should this be so? For one thing, political and cultural homogeneity are prerequisites for an effective human rights system, and these are more likely to be found on the regional plane. Other preconditions for such a system include reasonably well-developed legal systems as well as shared juridical traditions and institutions. Here again, smaller regional groupings of states are more likely to meet these requirements than the human rights systems that are open to the entire international community.

Buergenthal, *The American and European Conventions on Human Rights: Similarities and Differences*, 30 AM. U.L. REV. 155, 156 (1981) [hereinafter Buergenthal, *Similarities and Differences*]. *Accord* R. LILLICH & F. NEWMAN, INTERNATIONAL HUMAN RIGHTS: PROBLEMS OF LAW AND POLICY 548 (1979).

15. As A.H. Robertson explains:

> A state cannot be forced to submit itself to a system of international control; it will do so only if it has confidence in that system. It is much more likely to have such confidence if the international machinery has been set up by a group of like-

Finally, both geographic proximity and cultural propinquity make more probable the investigation and remedying of violations. The proverbial "bottom line" to the promotion and protection of human rights is, as with other kinds of legal claims, not merely the intention but also the capacity to apply some sort of pressure on states to redress violations. Regional human rights regimes are more likely than global ones to manifest this competence and, hence, are more likely to be effective in applying diplomatic, economic, and other sanctions in defense of human rights.[16]

In any event, recognizing the advantages of a regional approach to human rights and stirred by World War II Axis Power atrocities, both the European and the American communities set out to create their own human rights systems. Indeed, influenced by United Nations efforts to articulate an "international bill of rights" (begun in 1946 and culminating in the 1948 Universal Declaration of Human Rights,[17] the 1966 International Covenant on Economic, Social and Cultural Rights[18] and the 1966 International Covenant on Civil and Political Rights),[19] the region-

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minded countries, which are already its partners in a regional organisation, than if this is not the case. Moreover, it will be willing to give greater powers to a regional organ of restricted membership, of which the other members are its friends and neighbours, than to a world-wide organ in which it (and its allies) play a proportionally smaller part.

A. ROBERTSON, *supra* note 10, at 175. *Accord* Tucker, *Regional Human Rights Models in Europe and Africa: A Comparison*, 10 SYRACUSE J. INT'L L. & COM. 135, 139 (1983).

16. Tucker writes:

Neither sovereign states, which are autonomous, nor supranational human rights organizations, which depend upon voluntary compliance, nor private organizations, which lack resources and enforcement mechanisms, however, can adequately protect human rights. A protective mechanism is needed which will function at an intermediate level, exercising authority which is broader than the sovereign state yet closer to the affected communities than a global supranational organization. This can be achieved through regional human rights organizations.

Tucker, *supra* note 15, at 139.

17. Dec. 10, 1948, G.A. Res. 217A (III), U.N. Doc. A/810, at 71 (1948) [hereinafter Universal Declaration].

18. International Covenant on Economic, Social and Cultural Rights, *opened for signature* Dec. 19, 1966, G.A. Res. 2200 (XXI), 21 U.N. GAOR, Supp. (No. 16) at 49, U.N. Doc. A/6316 (1967), *reprinted in* 6 I.L.M. 360 (1967) (entered into force, Jan. 3, 1976). The United States has signed but not ratified this Covenant as of this writing.

19. International Covenant on Civil and Political Rights, *opened for signature* Dec. 19, 1966, G.A. Res. 2200 (XXI), 21 U.N. GAOR, Supp. (No. 16) at 52, U.N. Doc. A/6316 (1967), *reprinted in* 6 I.L.M. 368 (1967) (entered into force, Mar. 23, 1976). The United States has signed but not ratified this Covenant as of this writing.

alization of human rights norms, institutions and procedures began even before the United Nations adopted the Universal Declaration in December 1948. Meeting in Bogotá in spring 1948, the Ninth International Conference of American states proclaimed the American Declaration of the Rights and Duties of Man;[20] meeting in The Hague in May 1948, the Congress of the European Movement announced that it would receive proposals for a European Charter of Human Rights.[21]

As the European and Inter-American systems evolved, United Nations resistance to the idea of regional human rights regimes waned. In fact, through an ad hoc study group, the United Nations actually considered creating regional human rights regimes of its own.[22] It ultimately concluded, however, that the Member States themselves bore the responsibility for forming regional human rights systems.[23] Thus, in 1977, via Resolution 32/127, the General Assembly asked states not belonging to regional human rights regimes "to consider agreements with a view to the establishment within their respective regions of suitable regional machinery for the promotion and protection of human rights."[24] Shortly thereafter, in 1979, the Assembly of Heads of State and Government of the Organization of African Unity (OAU) called on the Secretary General of the OAU to draft an "African Charter on Human and Peoples'

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20. OAS Res. XXX, adopted by the Ninth International Conference of American States (Mar. 30 - May 2, 1948), Bogotá, OAS Off. Rec. OEA/Ser.L/V/I.4 Rev. (1965).

Perhaps explaining the American Declaration's adoption a full seven months *before* the Universal Declaration of Human Rights is the fact that elements of ongoing concern for the international promotion and protection of human rights in the Americas can be traced to the very origins of the inter-American system in 1826, when the Congress of Panama, urged by Simon Bolivar to consider a confederation of Latin American States, adopted the Treaty of Perpetual Union, League, and Confederation. While the proposed Treaty was ratified only by Colombia and therefore never entered into force and effect, it nonetheless recognized the principle of juridical equality of nationals of a state and foreigners. Also, the Contracting Parties pledged themselves to cooperate in the abolition of the slave trade. *See* the Treaty of Perpetual Union, League and Confederation, Arts. 23 & 27, THE INTERNATIONAL CONFERENCES OF AMERICAN STATES xxviii-xxxxiii (J. Scott ed. 1931).

21. *See* A. ROBERTSON, *supra* note 10, at 81.

22. *See* Vasak, *Introduction, supra* note 12, at 451-52.

23. *Id.*

24. G.A. Res. 32/127, 32 U.N. GAOR (105th plen. mtg.), U.N. Doc. A/32/458 (1977), *reprinted in* 31 Y.B. U.N. 740 (1977). Two resolutions reiterating the plea of the General Assembly followed this resolution. G.A. Res. 33/167, 33 U.N. GAOR (90th plen. mtg.), U.N. Doc. A/33/509 (1978), *reprinted in* 32 Y.B. U.N. 734 (1978), and G.A. Res. 34/171, 34 U.N. GAOR (106th plen. mtg.), U.N. Doc. A/34/829 (1979), *reprinted in* 33 Y.B. U.N. 871 (1979).

Rights."[25]

Thus began the regionalization of regimes designed to promote and protect international human rights. In this Article, we first describe the origins and structures of the European, Inter-American, and African human rights regimes, noting especially the similarities and dissimilarities among them. Thereafter, although limited by the unattainability and scarcity of certain data, we consider the effectiveness of each human rights regime from the standpoint of their accessibility to victims of state violation and from the standpoint of the admissibility of the human rights grievances brought to them for judgment. We conclude with a few thoughts about how the international community might improve the efficiency of the three human rights regimes.[26]

II. THE ORIGINS AND STRUCTURES OF THE REGIONAL HUMAN RIGHTS REGIMES

A. *The European Regime*

The European human rights regime began following the entry into force, in September 1953, of the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention).[27] The first regional human rights regime created, it was developed deliberately to safeguard against the revival of aggressive and repressive dictatorships by ensuring "the collective enforcement of certain of the rights stated in the Universal Declaration [of Human Rights]."[28] It was

25. Decision 115 (XVI) Rev. 1, O.A.U. Doc. AHG/115 (XVI) (1979).

26. For earlier but less comprehensive comparative treatments, see Buergenthal, *Similarities and Differences*, *supra* note 14; Frowein, *The European and the American Conventions on Human Rights: A Comparison*, 1 HUM. RTS. L.J. 44 (1980); Kunig, *Regional Protection of Human Rights: A Comparative Introduction*, in P. KUNIG, W. BENEDEK & C. MAHALU, REGIONAL PROTECTION OF HUMAN RIGHTS BY INTERNATIONAL LAW: THE EMERGING AFRICAN SYSTEM 31 (1985); Tucker, *supra* note 15.

27. European Convention, *supra* note 4. On the European human rights system, see generally R. BEDDARD, HUMAN RIGHTS AND EUROPE: A STUDY OF THE MACHINERY OF HUMAN RIGHTS PROTECTION OF THE COUNCIL OF EUROPE (1980); F. CASTBERG, THE EUROPEAN CONVENTION ON HUMAN RIGHTS (1974); J. FAWCETT, THE APPLICATION OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS (2d ed. 1987); F. JACOBS, THE EUROPEAN CONVENTION ON HUMAN RIGHTS (1975); C. MORRISSON, THE DEVELOPING EUROPEAN LAW OF HUMAN RIGHTS (1967); PROTECTION OF HUMAN RIGHTS IN EUROPE (I. Maier ed. 1982); A. ROBERTSON, *supra* note 10; P. VAN DIJK & G. VAN HOOF, THEORY AND PRACTICE OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS (1984); J. WRIGHT, THE EUROPEAN CONVENTION ON HUMAN RIGHTS: AN ANALYSIS AND APPRAISAL (1978).

28. A. ROBERTSON, *supra* note 10, at 82.

thought that "[i]f the dictators had built their empire by suppressing individual freedoms, then an effective system for the protection of human rights would constitute a bulwark against any recrudescence of dictatorship."[29]

Thus, pursuant to the European Convention, a series of additional protocols[30] and the European Social Charter[31] (whose drafting began immediately after the European Convention entered into force), the Council of Europe (Council), led by a liberal-socialist coalition and believing that European institutions and values favored human rights, has sought to guarantee a broad range of both "first generation" (civil and political) and "second generation" (economic, social and cultural) rights. Believing also that their relations were strong enough to withstand a human rights regime based on reciprocal scrutiny, they have done so through a combination of adjudicative and reportorial procedures within the framework of the Council of Europe,[32] including a commission, a court of human rights and certain of the administrative and parliamentary organs of the Council—all located in Strasbourg, France.

1. The European Convention

Together with its first and fourth additional protocols,[33] the European Convention, in force and effect relative to all twenty-one Member States of the Council of Europe,[34] addresses primarily civil and political rights and freedoms.[35] A broad nondiscrimination provision supplements these

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29. *Id.* at 80.

30. European Convention, *supra* note 4.

31. European Social Charter, *supra* note 5.

32. The Council of Europe, the first Western European intergovernmental political organization created after World War II, is a quasi-parliamentary organization of twenty-one Western European States established in 1949 to promote cooperation and unity among its members. Its Statute created, *inter alia*, a Committee of Ministers and a Parliamentary Assembly. *See, e.g.*, Vasak, *The Council of Europe*, in VASAK, *supra* note 1, at 457.

33. Protocols I and IV, *supra* note 4.

34. Austria (1958), Belgium (1955), Cyprus (1962), Denmark (1953), France (1974), the Federal Republic of Germany (1952), Greece (1974), Iceland (1953), Ireland (1953), Italy (1955), Liechtenstein (1982), Luxembourg (1953), Malta (1967), the Netherlands (1954), Norway (1952), Portugal (1978), Spain (1979), Sweden (1952), Switzerland (1974), Turkey (1954), and the United Kingdom (1951). *See* COUNCIL OF EUROPE, YEARBOOK OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS App./Tab. 1 (1983).

35. European Convention, *supra* note 4, art. 2 (the right to life); art. 3 (the right to humane treatment); art. 4 (freedom from slavery and involuntary servitude); art. 5 (the right to personal liberty and security); art. 6 (the right to a fair trial); art. 7 (freedom

declared rights and freedoms and secures their enjoyment "without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."[36] Also, to guarantee these rights and freedoms, the Convention establishes two primary organs—the European Commission of Human Rights (European Commission)[37] and the European Court of Human Rights (European Court)[38]—and, in addition, frequently relies on the Council's Committee of Ministers.[39]

The European Commission is elected by the Committee of Ministers of the Council of Europe[40] and presently consists of twenty-one members (no two from the same state),[41] each serving for a six-year term.[42] The Commission's jurisdiction extends to inter-state applications automatically, without the express consent of the States Parties involved,[43] and to petitions by any person, group of individuals or nongovernmental organization (NGO) claiming to be the victim of a violation by a State Party to the European Convention, provided that the respondent State Party has made a declaration recognizing the Commission's competence to receive such petitions.[44]

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from ex post facto laws); art. 8 (the right to privacy); art. 9 (freedom of thought, conscience and religion); art. 10 (freedom of expression); art. 11 (freedom of assembly and association); art. 12 (the right to marriage and family); and art. 13 (the right to legal protection).

Protocol I, *supra* note 4, art. 1 (the right to personal property); art. 2 (the right to free choice of education); and art. 3 (the right to free elections).

Protocol IV, *supra* note 4, art. 1 (freedom from debtor prison); art. 2 (the right to free movement and residence); art. 3 (freedom from national territorial expulsion); and art. 4 (freedom from the collective expulsion of aliens).

To compare the civil and political rights and freedoms articulated in the American Convention of Human Rights and the African Charter on Human and Peoples' Rights, see *infra* notes 84 and 131.

36. European Convention, *supra* note 4, art. 14.

37. *Id.* art. 19(1).

38. *Id.* art. 19(2).

39. *See infra* text accompanying notes 62-66.

40. European Convention, *supra* note 4, art. 21.

41. *Id.* art. 20. "The Commission shall consist of a number of members equal to that of the High Contracting Parties" (*i.e.*, presently twenty-one). *Id.*

42. *Id.* arts. 22-23.

43. *Id.* art. 24.

44. *Id.* art. 25. As of this writing, twenty of the twenty-one States Parties had formally recognized the competence of the Commission to receive individual applications: Austria, Belgium, Denmark, France, the Federal Republic of Germany, Greece, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, the Netherlands (and the Dutch An-

The Commission's duties are to determine the admissibility of applications,[45] to ascertain the facts concerning an application properly before the Commission[46] and to attempt "to secure a friendly settlement."[47] If the Commission cannot secure a friendly settlement, the European Convention directs it to report the facts and its opinion of the case to the Council's Committee of Ministers and, optionally, to make recommendations to the Committee.[48] Alternatively, the Commission may bring suit before the European Court of Human Rights[49] provided, however, that the respondent State Party has formally recognized the Court's compulsory jurisdiction.[50]

The European Court—elected by the Consultative Assembly of the Council of Europe for a renewable term of nine years[51] and, like the Commission, also consisting of twenty-one members (no two from the same state),[52] all "of high moral character and . . . recognized competence"[53]—has jurisdiction only over States Parties that have consented to the Court's jurisdiction explicitly.[54] As of early 1987, twenty of the twenty-one members of the Council had accepted the Court's compulsory

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tilles), Norway, Portugal, Spain, Sweden, Switzerland, Turkey and the United Kingdom. *See* Letter from Professor Colin J. Warbrick to Burns H. Weston (Sept. 21, 1987) (discussing the status of the European Convention and indicating that all but Cyprus have formally recognized the competence of the Commission to receive individual applications). *See also* Marie, *supra* note 11, at 226 (indicating that all but Malta, Cyprus and Turkey had formally recognized the competence of the Commission to receive individual applications).

45. *Id.* arts. 24-27.

46. *Id.* art. 28(a).

47. *Id.* art. 28(b).

48. *Id.* art. 31. Professor Kevin Boyle describes the process as follows:

> Under article 31 of the Convention, the Commission is required to draw up a report for the Committee of Ministers if no settlement is achieved. . . .
>
> The report is transmitted to the Committee of Ministers and to the state concerned, which may not publish it, but not to the applicant. The applicant is, however, informed that a report has been adopted. After a three-month interval, the Committee of Ministers decides whether a breach of the Convention has occurred and whether to publish the Commission's report.

Boyle, *Practice and Procedure on Individual Applications under the European Convention on Human Rights*, in HANNUM, *supra* note 1, at 133, 148.

49. European Convention, *supra* note 4, arts. 44, 48.

50. *Id.* art. 46.

51. *Id.* arts. 39, 40.

52. *Id.* art. 38. "The European Court of Human Rights shall consist of a number of judges equal to that of the Members of the Council of Europe" (*i.e.*, presently twenty-one). *Id.*

53. *Id.* art. 39(3).

54. *Id.* art. 48.

jurisdiction.[55] For consideration of each case brought before it, the Court sits as a "chamber" of only seven judges, six of whom the President of the Court chooses by lot before the opening of each case and the seventh of whom is a concerned state national or other person sitting in *ex officio* capacity chosen by the concerned State Party.[56]

The Court is directed to interpret and apply the European Convention whenever cases are brought to it by the Commission or by a State Party.[57] Significantly, however, individuals have no official standing before the Court; thus, to ensure fairness, the Commission has relied increasingly on the input of individual complainants in its representation of their cases before the Court,[58] and the Court, in turn, has made it possible for counsel to represent individuals if the individuals so desire.[59] In addition, although a judgment of the Court is both final and binding,[60] the Court is not responsible for its execution. Indeed, the Court lacks the capacity to execute a judgment. Instead, the Court is directed to transmit a judgment to the Committee of Ministers which, in turn, "shall supervise its execution."[61]

Finally, the Committee of Ministers, though not a creature of the European Convention and composed of persons who, unlike the members of the Commission and Court, serve not in their individual capacity but as governmental representatives, also plays a major role in the promotion and protection of human rights under the European Convention and its additional protocols. Indeed, as one commentator has suggested, the Committee is the "ultimate guarantor of human rights under the [Euro-

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55. *Id.* art. 46. Austria, Belgium, Cyprus, Denmark, France, the Federal Republic of Germany, Greece, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, the Netherlands (and the Dutch Antilles), Norway, Portugal, Spain, Sweden, Switzerland and the United Kingdom. Missing is Turkey. Letter from Professor Colin J. Warbrick to Burns H. Weston, *supra* note 44 (indicating that all but Turkey have accepted the Court's compulsory jurisdiction). *See also* Marie, *supra* note 11, at 226 (indicating that all but Turkey and Malta have accepted the Court's compulsory jurisdiction).

56. European Convention, *supra* note 4, art. 43.

57. *Id.* art. 45. In addition, the Court has a limited advisory jurisdiction. Pursuant to Protocol II, *supra* note 4, the Committee of Ministers may request an advisory opinion of the Court "concerning the interpretation of the Convention and the Protocols thereto." *See infra* note 123.

58. Boyle, *supra* note 48, at 149. "[I]t has become the Commission's practice, sanctioned by the Court, to invite the applicant or lawyer to assist the Commission in both the preparation and presentation of its case before the Court." *Id.*

59. *See* Mahoney, *Developments in the Procedure of the European Court of Human Rights: The Revised Rules of Courts*, 3 Y. B. EUR. L. 127, 134-35 (1983).

60. European Convention, *supra* note 4, arts. 52, 53.

61. *Id.* art. 54.

pean] Convention."[62] Absent the referral of an application to the Court by the Commission or a concerned State Party, the Committee is responsible for deciding whether a breach of the European Convention has occurred.[63] Additionally, as indicated, the Committee is the sole organ within the framework of the European human rights system with the power to execute judgments,[64] and in this capacity the Committee often has passed resolutions requiring states to remedy proven violations.[65] It has not yet actually imposed, however, the most serious sanction: expulsion from the Council of Europe.[66]

2. The European Social Charter

The European human rights regime so far described, an adjudicative process available only for applications and petitions claiming violations of civil and political rights, is available for complaints brought pursuant to the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention). By contrast, economic, social and cultural rights—so-called second generation rights—are left to be promoted and protected elsewhere, under the European Social Charter (Charter)[67] and primarily by reportorial means.

Under the Charter, in force and effect relative to fourteen of the twenty-one Member States of the Council of Europe,[68] the States Parties

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62. Boyle, *supra* note 48, at 135.

63. European Convention, *supra* note 4, art. 32(1). In order to establish a breach, a consensus of two-thirds of the Committee must exist. *Id.*

64. *Id.* arts. 32(4), 54.

65. *See* Boyle, *supra* note 48, at 136.

66. On the other hand, following a military coup in Greece in 1967 and a subsequent history of severe human rights violations by the Greek junta that came to power, a report of the Benelux and Nordic members of the Council of Europe condemning human rights abuses in Greece did raise the specter of the explusion of Greece from the Council. Greece withdrew from the Council, however, before this could happen and did not rejoin until 1973 after political conditions in Greece had changed and Greece had moved to comply with the Council's human rights demands, including the lifting of a declared state of emergency, the release of political detainees, the restoration of human rights, and the holding of elections under a genuinely democratic constitution.

67. European Social Charter, *supra* note 5.

68. Austria (1969), Cyprus (1968), Denmark (1965), France (1973), the Federal Republic of Germany (1965), Greece (1984), Iceland (1976), Ireland (1965), Italy (1965), the Netherlands (1980), Norway (1965), Spain (1980), Sweden (1965) and the United Kingdom (1965). Missing are Belgium, Liechtenstein, Luxembourg, Malta, Portugal, Switzerland and Turkey. *See* Marie, *supra* note 11, at 228; MULTILATERAL TREATIES: INDEX AND CURRENT STATUS 53 (M. Bowman & D. Harris eds., 3rd Cum. Supp. 1986). For background and analysis, see generally D. HARRIS, THE EUROPEAN

undertake to consider the economic, social and cultural rights enumerated therein[69] "as a declaration of aims which [they] will pursue by all appropriate means"[70] and to submit biennial progress reports to the Council's Secretary-General concerning those substantive provisions "as they have accepted."[71] A Committee of Experts, consisting of not more than seven members nominated by the States Parties and appointed by the Council's Committee of Ministers "from a list of independent experts of the highest integrity and of recognized competence in international social questions," examines the reports that the Secretary-General has received.[72] A subcommittee of the Governmental Social Committee[73] then considers both the reports of the States Parties and the conclusions of the Committee of Experts,[74] and the Secretary-General submits the conclu-

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SOCIAL CHARTER (1984).

69. European Social Charter, *supra* note 5, pt. II, art. 1 (the right to work); art. 2 (the right to just conditions of work); art. 3 (the right to safe and healthy working conditions); art. 4 (the right to a fair remuneration); art. 5 (the right to organize); art. 6 (the right to bargain collectively); art. 7 (the right of [employed] children and young persons to protection); art. 8 (the right of employed women to protection); art. 9 (the right to vocational guidance); art. 10 (the right to vocational training); art. 11 (the right to protection of health); art. 12 (the right to social security); art. 13 (the right to social and medical assistance); art. 14 (the right to benefit from social welfare services); art. 15 (the right of physically or mentally disabled persons to vocational training, rehabilitation, and social resettlement); art. 16 (the right of the family to social, legal, and economic protection); art. 17 (the right of mothers to social and economic protection); art. 18 (the right to engage in a gainful occupation in the territory of other contracting parties); and art. 19 (the right of migrant workers and their families to protection and assistance).

In addition, Protocol I, *supra* note 4, art. 2, states that "[n]o person shall be denied the right to education."

To compare the economic, social, and cultural rights articulated in the American Convention and the African Charter on Human and Peoples' Rights, see *infra* notes 87 and 132.

70. European Social Charter, *supra* note 5, art. 20(1)(a).

71. *Id.* art. 21.

72. *Id.* art. 25.

73. According to article 27(2) of the European Social Charter:

> The sub-committee shall be composed of one representative of each of the Contracting Parties. It shall invite no more than two international organisations of employers and no more than two international trade union organisations as it may designate to be represented as observers in a consultative capacity at its meetings. Moreover, it may consult no more than two representatives of international non-governmental organisations having consultative status with the Council of Europe, in respect of questions with which the organisations are particularly qualified to deal, such as social welfare, and the economic and social protection of the family.

Id. art. 27(2).

74. *Id.* art. 27(1).

sions of the Committee of Experts to the Council's Consultative Assembly.[75] Ultimately, however, similar to its enforcement powers under the European Convention relative to civil and political rights, the Committee of Ministers is responsible for the promotion and protection of the economic, social and cultural rights that the Charter enumerates. Article 29 of the Charter provides that "the Committee of Ministers may, on the basis of the report of the Sub-committee, and after consultation with the Consultative Assembly, make to each Contracting Party any necessary recommendations."[76]

B. *The Inter-American Regime*

In 1948, concurrent with its establishment of the Organization of American States (OAS), the Ninth International Conference of American states adopted the American Declaration on the Rights and Duties of Man,[77] an instrument similar to, but coming a full seven months before, the Universal Declaration of Human Rights.[78] Subsequently, in 1959, the Fifth Meeting of Consultation of Ministers of Foreign Affairs created—under the auspices and within the framework of the OAS, by means of a political resolution—the Inter-American Commission on Human Rights, which since has undertaken important investigative activities concerning human rights in the Americas.[79] Finally, in 1969, the Inter-American Specialized Conference on Human Rights, at a meeting in San José, Costa Rica, adopted the American Convention on Human Rights (American Convention)[80] which, among other things, committed the previously established OAS Inter-American Commission on Human Rights to the implementation of the Convention.[81] The American Con-

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75. *Id.* art. 28.

76. *Id.* art. 29.

77. *Supra* note 20. For a concise history of the Inter-American human rights system, see T. BUERGENTHAL, R. NORRIS & D. SHELTON, PROTECTING HUMAN RIGHTS IN THE AMERICAS 1-26 (1986) [hereinafter T. BUERGENTHAL, R. NORRIS & D. SHELTON].

78. Universal Declaration, *supra* note 17. In contrast to the Universal Declaration, the American Declaration sets out the duties as well as the rights of the individual citizen.

79. *See* 1 THE INTER-AMERICAN SYSTEM: TREATIES, CONVENTIONS AND OTHER DOCUMENTS - PART II, at 23 (F. Garcia-Amador ed. 1983).

80. American Convention, *supra* note 6.

81. *Id.* art. 33(a). The Inter-American Commission, created as early as 1959, was not an organ of the OAS at its founding. Res. VIII, Final Act of the Fifth Meeting of Consultation of Ministers of Foreign Affairs, OAS Doc. OEA Ser. C/II.5 (1960A). The Commission became a principal organ of the OAS in 1967 when the Protocol of Buenos Aires reformed the OAS Charter. *See infra* note 88. Yet from its beginning, though its

vention, also known as the Pact of San José, entered into force on July 18, 1978, when Grenada became the eleventh State Party to the treaty,[82] thus setting into motion a regional human rights regime comparable to the one already evolving in Europe.[83]

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statutory authority was quite narrow, the Inter-American Commission liberally interpreted its powers to investigate allegations of human rights violations. *See* Norris, *Observations In Loco: Practice and Procedure of the Inter-American Convention on Human Rights: 1979-1983*, 19 TEX. INT'L L.J. 285 (1984); Statute of the Inter-American Commission on Human Rights, art. 9, OAS Doc. OEA/Ser. G/II C-a-371 (1960), *reprinted in* T. BUERGENTHAL, R. NORRIS & D. SHELTON, *supra* note 77, at 5. The limitations were altered when the Second Special Inter-American Conference passed a resolution explicitly allowing the Commission to examine petitions as well as to interact significantly with member States. *See* Buergenthal, *The Revised OAS Charter and the Protection of Human Rights*, 69 AM. J. INT'L L. 828, 831 (1975) (discussing Res. XXII, Organization of American States, Second Special Inter-American Conference, Rio de Janeiro, Brazil, Nov. 17-30, 1965, Final Act, OAS Doc. OEA/Ser.c/I.13/Final Act at 32-34 (1965)). *See also* Peddicord, *The American Convention on Human Rights: Potential Defects and Remedies*, 19 TEX. INT'L L.J. 139 (1984). Additionally, in 1967 the Inter-American Commission was directed to protect as well as to promote human rights. Charter of the Organization of American States, Apr. 30, 1948, 2 U.S.T. 2416, T.I.A.S. No. 2361, 119 U.N.T.S. 48, *amended* 21 U.S.T. 658, T.I.A.S. No. 6847, 729 U.N.T.S. 324, *reprinted in* 1 HUMAN RIGHTS: THE INTER-AMERICAN SYSTEM, Pt. 1, at 1 (T. Buergenthal & R. Norris eds. 1978). *See* ORGANIZATION OF AMERICAN STATES, THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS: TEN YEARS OF ACTIVITIES 7 (1982).

82. As of this writing, twenty of the thirty-two OAS Member States have ratified the American Convention: Argentina (1984), Barbados (1981), Bolivia (1979), Colombia (1973), Costa Rica (1970), Dominican Republic (1978), Ecuador (1977), El Salvador (1978), Grenada (1978), Guatemala (1978), Haiti (1977), Honduras (1977), Jamaica (1978), Mexico (1981), Nicaragua (1979), Panama (1978), Peru (1978), Surinam (1987), Uruguay (1985) and Venezuela (1977). *See* ORGANIZATION OF AMERICAN STATES, ANNUAL REPORT OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS 1985-1986, at 8 (1986); MULTILATERAL TREATIES: INDEX AND CURRENT STATUS, *supra* note 68, at 63. Missing are Brazil, Chile, Paraguay, the United States and the remaining English-speaking Caribbean nations.

83. For recent clear explication, see Buergenthal, *The Inter-American System for the Protection of Human Rights*, in HUMAN RIGHTS IN INTERNATIONAL LAW: LEGAL AND POLICY ISSUES 39 (T. Meron ed. 1984). *See also* T. BUERGENTHAL & R. NORRIS, HUMAN RIGHTS: THE INTER-AMERICAN SYSTEM (1982); T. BUERGENTHAL, R. NORRIS & D. SHELTON, *supra* note 77; L. LEBLANC, THE OAS AND THE PROMOTION AND PROTECTION OF HUMAN RIGHTS (1977); *Symposium: The American Convention on Human Rights*, 30 AM. U.L. REV. 1 (1980); Buergenthal, *Implementation in the Inter-American Human Rights System*, in BERNHARDT & JOLOWICZ, *supra* note 3, at 57 [hereinafter Buergenthal, *Implementation*].

One should note, however, that all the OAS Member States, regardless of whether or not they have ratified the Convention, are obligated to observe the human rights of individuals as defined by the pre-existing American Declaration, *supra* note 20. *See* Statute

Like the European Convention, the American Convention guarantees a wide range of civil and political rights.[84] Also, like the European Convention,[85] a broad non-discrimination provision supplements these guarantees by ensuring the free and full exercise of the enumerated rights and freedoms "without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition."[86] Additionally, reminiscent of the European Social Charter but without comparable detail, the American Convention obligates the States Parties to achieve progressively "the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States."[87]

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of the Inter-American Commission on Human Rights, OEA/Ser. L/V/II.49, Doc. 6, July 1, 1980, which provides that "[f]or the purposes of this Statute, human rights are understood to be . . . [t]hose set forth in the American Declaration of the Rights and Duties of Man in relation to [OAS] Member States" as well as "[t]hose set forth in the American Convention on Human Rights in relation to the state parties thereto." *Id.* art. 1(2). As pointed out by Judge Buergenthal, the obligation derives from the OAS Charter. *See* Buergenthal, *Implementation*, *supra*, at 65-66.

84. American Convention, *supra* note 6, art. 3 (the right to juridical personality); art. 4 (the right to life); art. 5 (the right to humane treatment); art. 6 (freedom from slavery and involuntary servitude); art. 7 (the right to personal liberty); art. 8 (the right to a fair trial); art. 9 (freedom from ex post facto laws); art. 10 (the right to compensation for miscarriage of justice); art. 11 (the right to privacy); art. 12 (freedom of conscience and religion); art. 13 (freedom of thought and expression); art. 14 (the right of reply); art. 15 (the right of assembly); art. 16 (freedom of association); art. 17 (rights of the family); art. 18 (the right to a name); art. 19 (rights of the child); art. 20 (the right to nationality); art. 21 (the right to property); art. 22 (freedom of movement and residence); art. 23 (the right to participate in government); art. 24 (the right to equal protection before the law); and art. 25 (the right to judicial protection).

To compare the civil and political rights and freedoms articulated in the European Convention and the African Charter on Human and Peoples' Rights, see *supra* note 35 and *infra* note 131.

85. *Compare supra* text accompanying note 36.

86. American Convention, *supra* note 6, art. 1(1).

87. *Id.* art. 26. The OAS Charter referred to is the 1948 Charter as amended by the Protocol of Buenos Aires in 1967. *See* Charter of the Organization of American States, Apr. 30, 1948, 2 U.S.T. 2394, T.I.A.S. No. 2367, 119 U.N.T.S. 3 [hereinafter OAS Charter], and Protocol of Amendment, Feb. 27, 1967, 21 U.S.T. 607, T.I.A.S. No. 6847 [hereinafter Protocol of Amendment].

The economic, social, educational, scientific and cultural "standards" of the OAS Charter are detailed in Chapters VII-IX thereof. *The economic "standards" include*: increase in the per capita national product; equitable distribution of national income; adequate and equitable systems of taxation; modernization of rural life in accordance with equitable and efficient land-tenure systems; accelerated and diversified industrialization; stability in domestic pricing; fair wages, employment opportunities, and acceptable

Also like the European Convention, the American Convention provides for two specialized—and comparable—enforcement mechanisms: the above-mentioned, preexisting Inter-American Commission on Human Rights,[88] headquartered at the OAS in Washington, D.C.; and an Inter-American Court of Human Rights,[89] situated in San José, Costa Rica. Each is accorded "competence with respect to matters relating to the fulfillment of the commitments made by the States Parties to [the American] Convention."[90] In addition, resembling the functions of the Committee of Ministers of the Council of Europe within the European human rights regime,[91] the General Assembly of the OAS plays an important role.[92]

The Inter-American Commission on Human Rights, composed of seven members (no two from the same state) elected in their personal

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working conditions; rapid eradication of illiteracy and expansion of educational opportunities; extension and application of modern medical science; proper nutrition; adequate housing; healthful urban conditions; promotion of socially responsible private enterprise; and expansion and diversification of exports. OAS Charter, *supra*, art. 31. *The social "standards" include*: a nondiscriminatory right to material well-being and spiritual development; a right to work; a right to collective bargaining; fair and efficient systems and procedures for economic consultation and collaboration; operation of socially responsible systems of public administration, banking and credit, enterprise, and distribution and sales; incorporation and increasing participation in society of the marginal sectors of the population; recognition of the importance of labor unions, cooperatives, and professional and community associations; development of an efficient social security policy; and adequate legal aid for all persons. *Id.* art. 43. *The educational, scientific and cultural "standards" include*: encouragement of education, science, and culture in development plans; Member State cooperation in meeting educational needs, promoting scientific research, encouraging technological progress, and preserving and enriching the cultural heritage of their peoples; ensuring the effective exercise of the right to education; and giving special attention to the eradication of illiteracy and the strengthening of adult and vocational educational systems. *Id.* arts. 45-48.

One should note, in addition, that the OAS is currently considering a draft treaty dealing with economic, social and cultural rights—to be presented to the 1987 OAS General Assembly—which, if adopted, will supersede all of the above. *See* Preliminary Draft Additional Protocol to the American Convention on Human Rights, OEA/SER.P/AG Doc. 1656/83, at 17.

To compare the economic, social, and cultural rights articulated in the European Convention and the African Charter on Human and Peoples' Rights, see *supra* note 69 and *infra* note 132.

88. American Convention, *supra* note 6, arts. 33(a), 34-51. For pertinent historical discussion, see *supra* note 83.

89. *Id.* arts. 33(b), 52-69.

90. *Id.* art. 33.

91. *See supra* text accompanying notes 62-66.

92. *See infra* text accompanying notes 115-16.

capacities by the Member States of the OAS General Assembly for a one-time renewable term of four years,[93] has a dual role, one as an organ of the American Convention and the other, an older role, as an organ of the OAS, with the OAS Charter[94] and the American Declaration[95] as its normative instruments. Thomas Buergenthal, former President of the Inter-American Court of Human Rights, on which he still sits, comments on this dual role:

> As [an O.A.S.] Charter organ, the Commission has jurisdiction over all O.A.S. Member States, whether or not they have ratified the Convention; as a Convention organ, its jurisdiction extends only to the States Parties to the Convention. Here its jurisdiction is more specific and its powers more extensive. The powers of the Commission as Charter organ lack precision, which is just as well, for the ambiguities about the scope of its powers gave it greater flexibility to deal imaginatively with gross violations of human rights prior to the entry into force of the Convention. It retains that flexibility in dealing with states that have not ratified it and in responding to emergency situations involving large-scale human rights abuses in the region.[96]

In any event, under the American Convention the main function of the Inter-American Commission is to "promote respect for and defense of human rights."[97] This purpose is to be accomplished, according to the American Convention, by developing awareness of human rights, making recommendations to OAS Member States, preparing studies or reports, requesting information from OAS Member States, responding to and advising OAS Member States on matters relating to human rights and submitting annual reports to the OAS General Assembly.[98] Also, it is to be accomplished by taking action on petitions and other communications,[99] a function the Convention details at some length. Like the European Commission, the American Commission is directed to determine the admissibility of individual (private) petitions,[100] to undertake fact-finding

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93. American Convention, *supra* note 6, arts. 36, 37.

94. *Supra* note 81.

95. *Supra* note 20.

96. Buergenthal, *Human Rights in the Americas: View from the Inter-American Court*, 2 CONN. J. INT'L L. 303, 306-07 (1987) [hereinafter Buergenthal, *View from the Inter-American Court*].

97. American Convention, *supra* note 6, art. 41. For related pertinent comment indicating other Commission functions, see *infra* text accompanying notes 126-27.

98. American Convention, *supra* note 6, art. 41.

99. *Id.*

100. *Id.* arts. 46, 47.

and attempt friendly settlements,[101] to report to the OAS Secretary General as well as to the parties involved, *for publication*, about the facts and the solution reached if it achieves a friendly settlement and, if it fails to achieve a friendly settlement, to prepare a confidential report and, optionally, to tender proposals and recommendations[102] and submit cases to the Inter-American Court of Human Rights.[103] In addition, the Commission is charged to receive and review annual reports from the States Parties so as to monitor progress relative to economic, social and cultural rights.[104]

The Inter-American Court, like the Commission, consists of seven members (no two from the same state) elected in individual capacity, for a renewable term of six years, by the States Parties to the Convention "from among jurists of the highest moral authority and . . . recognized competence in the field of human rights."[105] It is directed to interpret and apply the American Convention in both contentious and advisory jurisdiction.[106] In exercising its contentious jurisdiction, however, which may result in an order for compensatory damages, permanent or temporary injunctive relief, or both,[107] the Court is accessible only to the Inter-American Commission[108] and to those States Parties to the American Convention that, like their European counterparts, have expressly recognized such jurisdiction.[109] As in the European human rights regime, in-

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101. *Id.* art. 48.

102. *Id.* art. 50.

103. *Id.* art. 61.

104. *Id.* art. 42. One also should mention article 43, which requires the States Parties "to provide the Commission with such information as it may request of them as to the manner in which their domestic law ensures the effective application of any provision of this Convention." *Id.*

Former President of the Inter-American Commission, Professor Tom Farer, observes that the country reports, which "usually deal . . . with civil, political, economic, and social rights" as well as with the observance of personal security rights enumerated in the Commission's statute, "have multiplied dramatically" since 1974. T. FARER, THE GRAND STRATEGY OF THE UNITED STATES IN LATIN AMERICA 171 (1987) [hereinafter T. FARER, GRAND STRATEGY].

105. American Convention, *supra* note 6, art. 52.

106. Article 62 of the Convention defines the contentious jurisdiction of the Court. *Id.* art. 62. Article 64 defines its advisory jurisdiction. *Id.* art. 64.

107. *Id.* arts. 63(1), (2). According to Judge Buergenthal, writing in 1987, the authority to grant temporary injunctions has not yet been utilized. *See* Buergenthal, *Implementation*, *supra* note 83, at 71.

108. American Convention, *supra* note 6, art. 61(1).

109. *Id.* art. 62(3). As of this writing, ten of the nineteen States Parties to the American Convention have accepted the Court's contentious jurisdiction: Argentina, Colombia, Costa Rica, Ecuador, Guatemala, Honduras, Peru, Surinam, Uruguay and Venezuela.

dividuals have no formal standing before the Court[110]—they have standing only before the Commission, which alone may file an individual's case with the Court, provided the Commission has completed its proceedings applicable to the case.[111] Also, as in Europe, and notwithstanding that all judgments rendered pursuant to the Court's contentious jurisdiction are "final and not subject to appeal,"[112] the Court lacks the power to enforce its judgments and preliminary rulings; instead, it must rely mainly on the OAS General Assembly (just as the European Court must rely on the Council of Europe's Committee of Ministers).[113] In exercising its advisory jurisdiction, on the other hand, the Court is open not only to the States Parties to the Convention and to the Inter-American Commission, but also to all Member States of the OAS (including non-States Parties to the Convention, such as the United States) and to the OAS and all its organs as well (including, obviously, the Commission).[114]

Finally, the OAS General Assembly, though a creature of the OAS Charter and not the American Convention, also plays an important role in the promotion and protection of human rights under the American Convention. To quote Judge Buergenthal: "The Assembly is the principal organ of the [O.A.S.] whose human rights powers have their source both in in the O.A.S. Charter and in the [American] Convention."[115] The annual reports that the Court must submit to the General Assembly, specifying "in particular, the cases in which a state has not complied with its [the Court's] judgment, making any pertinent recommendations,"[116] thus take on added significance. The General Assembly's freedom to discuss the matter and to adopt whatever OAS sanctions it deems appropriate at least partially mitigates the Court's incapacity to enforce its judgments and rulings.

Thus, the core structure of the Inter-American human rights system is similar to that of its European counterpart. Some significant differences exist, however, and four stand out in particular.

See ORGANIZATION OF AMERICAN STATES, *supra* note 82, at 8.

110. *But see supra* text accompanying notes 58 and 59 for indication of the European Court's relaxation of this restriction.

111. For pertinent discussion, see In the Matter of Viviana Gallardo, et al. (Government of Costa Rica), Inter-American Court of Human Rights, No. G.101/81 (Nov. 13, 1981), *reprinted in* 20 I.L.M. 1424 (1981).

112. American Convention, *supra* note 6, art. 67.

113. *Id.* art. 65.

114. *Id.* art. 64.

115. Buergenthal, *Implementation*, *supra* note 83, at 58.

116. American Convention, *supra* note 6, art. 65.

First, reminiscent of the American Declaration on the Rights and Duties of Man,[117] albeit with little apparent practical significance, the American Convention, unlike the European Convention, details individual duties as well as individual rights. Thus article 32 (entitled "Relationship Between Duties and Rights") reads:

> 1. Every person has responsibilities to his family, his community, and mankind.
>
> 2. The rights of each person are limited by the rights of others, by the security of all, and by the just demands of the general welfare, in a democratic society.

Comparable obligation language exists also in the African Charter on Human and Peoples' Rights.[118]

Second, relative to individual petitions and complaints by one State Party against another, the American Convention reverses the approach taken under the European Convention. Whereas Europe utilizes a mandatory inter-state complaint and optional individual petition procedure, the Americas utilize an optional inter-state complaint and mandatory individual petition procedure. In contrast to the European Commission of Human Rights, the Inter-American Commission on Human Rights has authority to consider inter-state complaints only if both of the States Parties, in addition to ratifying the Convention, have formally recognized the competence of the Commission to receive and review such complaints.[119] On the other hand, the Commission may accept a private individual petition against any state simply on the basis of the respondent state being a party to the American Convention.[120] In addition, unlike the European Convention, the American Convention does not limit the right to file individual petitions only to victims of violations, leaving the process open to almost everyone.[121]

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117. *Supra* note 20. The American Convention also addresses duties. *See infra* text accompanying note 118.

118. *See infra* text accompanying note 136.

119. American Convention, *supra* note 6, art. 45.

120. *Id.* art. 44.

121. Christina M. Cerna, Staff Attorney at the Inter-American Commission, comments:

> We have the broadest standing requirement of any international body, and anyone may file a case before the Inter-American Commission. There is one exception. Unlike the European Commission, we do not take petitions from companies, only from persons. . . . Additionally, one need not be a victim or related to a victim to present a petition to the Commission. Anyone can present a petition based on a violation of human rights, provided that the right is included in the catalogue of rights either in the American Declaration or in the American Convention.

Third, and as already noted, the Inter-American Court of Human Rights has advisory as well as contentious jurisdiction,[122] whereas the European Court, while also possessed of advisory jurisdiction, is more constricted in this respect.[123] The Inter-American Court's advisory jurisdiction, defined in article 64 of the American Convention, is extensive.[124] As Judge Buergenthal explains:

> An analysis of art. 64 indicates, first, that standing to request an advisory opinion from the Court is not limited to the States Parties to the Convention; any O.A.S. Member State may seek it. Second, the advisory jurisdiction is not limited to interpretations of the Convention; it also extends to interpretations of any other treaty "concerning the protection of human rights in the American states." Third, all O.A.S. organs, including the Inter-American Commission on Human Rights, have standing to request advisory opinions. Fourth, all Member States of the O.A.S. may seek advisory opinions from the Court regarding the compatibility of their domestic laws with the Convention or any of the aforementioned human rights treaties.[125]

Cerna, *The Inter-American Commission of Human Rights*, 2 CONN. J. INT'L L. 311, 316 (1987).

Judge Buergenthal explains the mandatory Western Hemispheric approach to individual petitions as follows:

> The drafters of the American Convention opted for this approach in part because of Latin America's historical opposition to, and experience with, governmental intervention in the internal affairs of other governments. The solution they adopted makes considerable sense. Experience with inter-state complaints indicates that they contribute to the politicization of the human rights enforcement process. A variety of political factors enters into a government's decision whether to file a human rights complaint against another government. These may or may not have anything to do with a concern for human rights or the interests of individual victims.

Buergenthal, *Similarities and Differences, supra* note 14, at 160.

122. *See supra* text accompanying notes 105-14.

123. Under Protocol II, *supra* note 4, the European Court may render advisory opinions on legal questions concerning interpretations of the Convention and the protocols. However, it can render these opinions only at the request of the Committee of Ministers, and the question cannot involve the content or scope of the rights granted under the Convention. In addition, the European Court may not give an opinion if it concerns substantive questions that may appear before the European Commission, the Committee of Ministers, or the Court itself. *See* J. WRIGHT, *supra* note 27, at 118.

124. Buergenthal, *Implementation, supra* note 83, at 72. For more extensive treatment of the advisory practice of the Inter-American Court, see Buergenthal, *The Advisory Practice of the Inter-American Court on Human Rights*, 79 AM. J. INT'L L. 1 (1985) [hereinafter Buergenthal, *Advisory Practice*].

125. Buergenthal, *Implementation, supra* note 83, at 72.

Until recently the Inter-American Court has decided all cases referred to it pursuant to its advisory jurisdiction.

Finally, both the Inter-American Commission and the Inter-American Court (but especially the Commission) operate beyond as well as within the framework of the American Convention. The Commission is as much an organ of the OAS Charter as it is of the American Convention, with powers and procedures that differ significantly depending on the source of the Commission's authority, particularly in relation to human rights petitions and communications.[126] The Court, while primarily an organ of the Convention, nonetheless has jurisdiction to interpret human rights provisions of treaties other than the American Convention, including the human rights provisions of the OAS Charter.[127]

C. *The African Regime*

In 1981, following twenty years of pleas by the United Nations Commission on Human Rights, interested states, nongovernmental organizations and others, adopted at the Eighteenth Assembly of Heads of State and Government of the OAU the African Charter on Human and Peoples' Rights,[128] formally known as "the Banjul Charter on Human and

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126.

> Parties to the Convention are subject to the petition procedure set forth in article 19(a) of the Statute [of the Commission], pursuant to articles 44-51 of the Convention, while other Member States continue to be subject to the former procedure of the [Commission], preserved in its basic form in article 20 of the Statute. . . .
>
> The principal difference between the remedies available under either procedure is that petitions brought against state parties may eventually be referred to the Inter-American Court of Human Rights for a binding decision, if the state concerned has accepted the Court's jurisdiction. . . .
>
> The relevant human rights are those defined by the American Convention on Human Rights in the case of parties to the Convention and those found in the 1948 American Declaration of the Rights and Duties of Man in the case of non-party states.

Norris, *The Individual Petition Procedure of of the Inter-American System for the Protection of Human Rights*, in HANNUM, *supra* note 1, at 108-09 [hereinafter Norris, *Individual Petition Procedure*].

For pertinent discussion, see Shelton, *Implementation Procedures of the American Convention on Human Rights*, 26 GER. Y.B. INT'L L. 238 (1983). *See also supra* note 83.

127. American Convention, *supra* note 6, art. 64. For pertinent discussion, see Buergenthal, *Advisory Practice*, *supra* note 124, at 3-15.

128. African Charter, *supra* note 7. For pertinent historical background, see P. KUNIG, W. BENEDEK & C. MAHALU, REGIONAL PROTECTION OF HUMAN RIGHTS BY INTERNATIONAL LAW: THE EMERGING AFRICAN SYSTEM (1985); E. MBAYA, LA CHARTE AFRICIANE DES DROITS DE L'HOMME ET DES PEUPLES: MYTHES ET REAL-

Peoples' Rights."[129] The Charter entered into force on October 21, 1986, and, as of this writing, thirty-one of the fifty OAU Member States have ratified it.[130]

Like its European and Inter-American counterparts, the African Charter provides for both "first generation" (civil and political) rights[131]

ITES (1984); Aluko, *The Organization of African Unity and Human Rights*, 70 ROUND TABLE 235 (1981); Balonda, *African Charter on Human and Peoples' Rights*, in NEW PERSPECTIVES AND CONCEPTIONS OF INTERNATIONAL LAW: AN AFRO-EUROPEAN DIALOGUE 134 (K. Ginther & W. Benedek eds. 1983); Esiemokhai, *Towards Adequate Defense of Human Rights in Africa*, 24 Q. J. ADMIN. 451 (1980); Gittleman, *African Commission on Human and Peoples' Rights: Prospects and Procedures*, in HANNUM, *supra* note 1, at 153 [hereinafter Gittleman, *Prospects and Procedures*]; Gittleman, *The African Charter on Human and Peoples' Rights: A Legal Analysis*, 22 VA. J. INT'L L. 667 (1982) [hereinafter Gittleman, *Legal Analysis*]; Kannyo, *The Banjul Charter on Human and Peoples' Rights: Genesis and Political Background*, in HUMAN RIGHTS AND DEVELOPMENT (C. Welch, Jr. & R. Meltzer eds. 1984); Kunig, *The Protection of Human Rights by International Law in Africa*, 25 GER. Y.B. INT'L L. 138 (1982); Lihau, *Comments on the Banjul Charter*, 11 HUM. RTS. INTERNET REP., Nov. 1986, at 12, 14; Mbaya, *La Charte Afrique en tant que mécanisme de protection des droits de l'homme*, in BERNHARDT & JOLOWICZ, *supra* note 3, at 77; Ojo & Sesay, *The O.A.U. and Human Rights: Prospects for the 1980s and Beyond*, 8 HUM. RTS. Q. 89 (1986); Umozurike, *The African Charter on Human and Peoples' Rights*, 77 AM. J. INT'L L. 902 (1983). For pertinent cultural background, see Cobbah, *African Values and the Human Rights Debate: An African Perspective*, 9 HUM. RTS. Q. 309, 322 (1987).

129. The drafting of the Charter was completed at an OAU Ministerial Meeting, Banjul, The Gambia, January 7-19, 1981.

130. Benin (1986), Botswana (1986), Burkina Faso (1984), Central African Republic (1986), Chad (1986), Comoros (1986), Congo (1982), Egypt (1984), Gabon (1986), Gambia (1983), Guinea (1982), Guinea-Bissau (1985), Liberia (1982), Mali (1981), Mauritania ("no date"), Niger (1986), Nigeria (1983), Rwanda (1983), Saharawi Arab Democratic Republic (1986), Sao Tome & Principe (1986), Senegal (1982), Sierra Leone (1983), Somalia (1985), Sudan (1986), Tanzania (1984), Togo (1982), and Tunisia (1983), Uganda (1984), Zambia (1984) and Zimbabwe (1986). In addition, Algeria, Cape Verde, Lesotho and Libya have signed the Charter, thus leaving fifteen African States that have neither signed nor ratified the Charter. *See Banjul Charter Comes Into Force*, 11 HUM. RTS. INTERNET REP., Sept. 1986, at 46.

131. African Charter, *supra* note 7, art. 3 (the right to equal protection before the law); art. 4 (the right to life); art. 5 (the right to humane treatment, including freedom from slavery); art. 6 (the right to personal liberty and security); art. 7 (the right to a fair trial, legal protection, and freedom from *ex post facto* laws); art. 8 (freedom of conscience and religion); art. 9 (the right to information and freedom of expression); art. 10 (the right to free association); art. 11 (the right to assembly); art. 12 (freedom of movement and residence, freedom from national territorial expulsion, and freedom from the collective expulsion of non-nationals); art. 13 (the right to participate in government and free elections and of equal access to public property and services); art. 14 (the right to property); and art. 18 (the right to marriage and family).

Notably absent from the foregoing list of rights is the right to privacy. Probably this is

and "second generation" (economic, social, and cultural) rights.[132] Also resembling its European and Inter-American predecessors, it ensures the enjoyment of the rights and freedoms that the Charter recognizes and guarantees "without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth, or other status."[133] In addition, reminiscent of, but going beyond the American Declaration on the Rights and Duties of Man[134] and the American Convention,[135] it details individual duties as well as individual rights—to the family, society, the state, and the international African community.[136]

In contrast to its European and Inter-American counterparts, however—indeed, going distinctively beyond them—the African Charter recognizes the rights of "peoples," or so-called third generation or solidarity rights, to wit: the right of all peoples to equality without "domination of a people by another";[137] the right of all peoples to existence and self-determination;[138] the right of all peoples to freely dispose of "their wealth and natural resources";[139] the right of all peoples to their economic, social and cultural development, including "equal enjoyment of the common heritage of mankind";[140] the right of all peoples to national

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due to African customs and traditions that see human identity more in group than individual terms. As Josiah Cobbah has recently written, "The pursuit of human dignity is not concerned with vindicating the right of any individual against the world. The African notion of family seeks a vindication of the communal well-being. The starting point is not the individual but the whole group including both the living and the dead." Cobbah, *supra* note 128, at 322.

To compare the civil and political rights and freedoms articulated in the European Convention and the American Convention, see *supra* notes 35 and 84.

132. African Charter, *supra* note 7, art. 15 (the right to work); art. 16 (the right to physical and mental health); art. 17 (the right to education and to cultural participation); and art. 18 (the right to family assistance and to protection of women, children, the aged, and disabled).

To compare the economic, social, and cultural rights articulated in the European Convention and the American Convention, see *supra* notes 69 and 87.

133. African Charter, *supra* note 7, art. 2.

134. *See supra* note 20.

135. *See supra* text accompanying notes 117-18.

136. African Charter, *supra* note 7, arts. 27-29. For related discussion, see *supra* text accompanying note 118.

137. African Charter, *supra* note 7, art. 19.

138. *Id.* art. 20.

139. *Id.* art. 21.

140. *Id.* art. 22. The term "common heritage of mankind," originally used in conjunction with the resources of the deep seabed, is now understood to embrace shared Earth-space resources; scientific, technical, and other information and progress; and cul-

and international peace and security;[141] and the right of all peoples to "a general satisfactory environment favorable to their development."[142] The States Parties to the Charter undertake to promote and ensure, through "teaching, education and publication," respect for and understanding of these rights and freedoms together with the first and second generation rights and freedoms that the Charter enumerates.[143]

Similarities and differences with the European and American human rights regimes are evident also in the enforcement mechanisms and procedures that the African Charter embraces for the purpose of promoting and protecting the rights and freedoms it recognizes and guarantees. In contrast to its European and Inter-American counterparts, for example, it does not provide for a court of human rights. Commentators have stated that African customs and traditions favor mediation, conciliation and consensus over the adversarial and adjudicative procedures common to Western legal systems.[144] Like its European and American counterparts, however, it does provide for the establishment of a commission.[145] Known as the "African Commission on Human and Peoples' Rights,"[146] it exists within the framework of the OAU[147] and consists of eleven members (no two from the same state) elected in their personal capacities[148] by the OAU Assembly of Heads of State and Government[149] for a renewable term of six years.[150] Its purpose is "to promote human and peoples' rights and ensure their protection in Africa."[151]

To these ends, the Commission is authorized to promote human and peoples' rights by various informational, educational, prescriptive and cooperative means;[152] to ensure their protection pursuant to the Charter

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tural traditions, sites and monuments. *See* Weston, *Human Rights*, 20 ENCYCLOPEDIA BRITANNICA 714, 717 (15th ed., 1986 Printing).

141. African Charter, *supra* note 7, art. 23.

142. *Id.* art. 24.

143. *Id.* art. 25. For comment critical of the "peoples" or "third generation" rights set forth in the African Charter, see Partsch, *The Enforcement of Human Rights and Peoples' Rights: Observations On Their Reciprocal Relations*, in BERNHARDT & JOLOWICZ, *supra* note 3, at 25.

144. *See, e.g.*, Gittleman, *Legal Analysis, supra* note 128, at 674.

145. African Charter, *supra* note 7, art. 30.

146. *Id.*

147. Article 30 of the African Charter states explicitly that the Commission "shall be established within the Organization of African Unity." *Id.*

148. *Id.* arts. 31, 32.

149. *Id.* art. 33.

150. *Id.* art. 36.

151. *Id.* art. 30.

152. To serve its promotional function, the Commission is mandated, under article

(in its contentious jurisdiction);[153] to interpret the Charter at the request of a State Party, an institution of the OAU or an African organization recognized by the OAU (in its advisory capacity);[154] and to "[p]erform any other tasks which may be entrusted to it by the [OAU] Assembly of Heads of State and Government."[155] Additionally, in its contentious jurisdiction, the Commission may resort "to any appropriate method of investigation"[156] and receive, investigate, report on and make recommendations concerning both inter-state complaints of alleged violations of the Charter[157] and private (individual) "communications" of alleged violations of the Charter,[158] the latter being in no way limited to victims of violations.[159] Legally competent to preside over both public and private human rights complaints, the African Commission is thus comparable to its European and Inter-American counterparts. However, because this

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45(1) of the Charter:

> a) to collect documents, undertake studies and researches on African problems in the field of human and peoples' rights, organize seminars, symposia and conferences, disseminate information, encourage national and local institutions concerned with human and peoples' rights, and [*sic*] should the case arise, give its views or make recommendations to Governments.
>
> b) to formulate and lay down, [*sic*] principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African Governments may base their legislations. [*sic*]
>
> c) co-operate with other African and international institutions concerned with the promotion and protection of human and peoples' rights.

African Charter, *supra* note 7, art. 45(1).

153. *Id.* art. 45(2).

154. *Id.* art. 45(3). In this advisory capacity the African Commission resembles the advisory jurisdiction of the Inter-American Court of Human Rights. *See supra* text accompanying note 114.

155. African Charter, *supra* note 7, art. 45(4).

156. *Id.* art. 46.

157. *Id.* arts. 47-54. There are two methods by which a State Party can bring a human rights complaint to the attention of the Commission. The first is unique to the African system—that is, the petitioner state has the option of initially contacting the alleged violator state outside the Commission process in order to attempt bilateral settlement of the matter. *Id.* art. 47. If unsuccessful, the petitioner state then can apply directly to the Commission. *Id.* art. 48. Alternatively, the petitioner state can directly apply to the Commission without attempting a bilateral settlement. *Id.* art. 49.

158. *Id.* arts. 55-59.

159. Article 46 of the African Charter reads in part: "The Commission . . . may hear from the Secretary General of the Organization of African Unity *or any other person capable of enlightening it*" (emphasis added). *Id.* art. 46. In this openness to communications from all quarters, the African system is thus akin more to the Inter-American than the European system, which limits the right to file individual petitions to victims of violations. *See supra* text accompanying note 121.

legal competency is conditional almost entirely on the concerned states being parties to the African Charter,[160] the African Commission also is distinctive. Whereas the European regime favors a mandatory inter-state complaint and optional individual petition procedure and the American regime favors an optional inter-state complaint and mandatory individual petition procedure,[161] the African regime opts for a mandatory approach in both instances.[162]

The African Commission is distinctive, finally, in yet another way—again, it seems, as a consequence of African customs and traditions. Like the European and Inter-American Commissions, the African Commission, after determining an application to be admissible, is expected, in its contentious jurisdiction, to undertake fact-finding, attempt an amicable settlement, prepare a report and, generally in its discretion, make recommendations[163] (to the OAU Assembly of Heads of State and Government).[164] Beyond these procedural steps, however, in the absence of a human rights court to which it might make further appeals and through which enforceable decisions might be rendered, the Commission (and, therefore, the concerned state and private parties) has little recourse. As a consequence its emphasis is on mediation, conciliation and consensus as opposed to adversarial processes.[165] In contrast to its European and Inter-American counterparts, the African Commission is expected to function more in a reportorial than an adjudicative fashion.

All of this suggests, of course, that the African Commission may prove less effective than its European and Inter-American counterparts in guarding against and correcting human rights abuses. The principle of state sovereignty or domestic jurisdiction is not easily surmounted even under the best of circumstances. On the other hand, given the African Commission's deliberate creation as an organ of the OAU[166] and its con-

160. This condition is expressly indicated relative to inter-state complaints but only implied in the case of private communications. *See* African Charter, *supra* note 7, arts. 47, 55. For related discussion, see *infra* text accompanying notes 204-06.

161. *See supra* text accompanying note 119.

162. However, the African Commission may examine communications from private individuals and non-governmental institutions and groups only if the OAU Assembly of Heads of State and Government so request and only if a majority of the Commission so decides. *See* African Charter, *supra* note 7, arts. 55, 58. For related discussion, see *infra* text accompanying notes 204-06.

163. *See supra* notes 46-47 (pertaining to the European Commission) & 101 (pertaining to the Inter-American Commission) and accompanying texts.

164. African Charter, *supra* note 7, arts. 53, 58.

165. *See, e.g., supra* text accompanying note 144.

166. *See supra* text accompanying note 147.

sequent intended close relationship to the OAU Assembly of Heads of State and Government (analogous to the European Commission's affiliation with the Committee of Ministers of the Council of Europe and the Inter-American Commission's ties to the General Assembly of the OAS),[167] the case reports it must submit to the OAU Assembly and the periodic activity reports it must likewise submit[168] naturally could take on added significance. With the OAU Assembly free to adopt whatever sanctions it deems appropriate, the African Commission's relatively limited capacity to act on its findings could be at least partially mitigated. Of course, given the inexperience of the African regime, it remains to be seen how the Commission and the OAU Assembly will act.

III. THE EFFECTIVENESS OF THE REGIONAL REGIMES

From a humanistic standpoint, the European, Inter-American and African human rights regimes hold out great promise. However favorably or unfavorably they may compare to some ideal human rights system or to each other, the rights they recognize, the institutions they establish and the procedures they prescribe add up to an assault on the global state sovereignty system that is of truly historic proportions.[169] International relations, it seems, are at long last beginning to be conducted, in theory and on the regional plane at least, as if people—not only states—really mattered.[170]

But how good is the promise in fact? How effective are the three regional regimes in actuality, or how effective might they realistically be, in safeguarding the human rights they are designed to promote and protect?

We consider this question briefly, first, from the standpoint of the accessibility of each regime to those persons whose rights are alleged to be violated, a threshold issue that ordinarily does not affect state-to-state complaints but one that clearly impacts on individual petitions; and second, from the standpoint of the admissibility of the human rights griev-

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167. *See supra* text accompanying notes 62-66 & 115-16.

168. African Charter, *supra* note 7, art. 54: "The Commission shall submit to each ordinary Session of the Assembly of Heads of State and Government a report on its activities."

169. *See generally* Weston, *supra* note 140.

170. *See* Preiswerk, *Could We Study International Relations as if People Mattered?* (prepared for the 50th Anniversary of the Institut Universitaire des Hautes Etudes Internationales, 1977) (noting E. SCHUMACHER, SMALL IS BEAUTIFUL: A STUDY OF ECONOMICS AS IF PEOPLE MATTERED (1974)) in TRANSNATIONAL ACADEMIC PROGRAM, INSTITUTE FOR WORLD ORDER, PEACE AND WORLD ORDER STUDIES: A CURRICULUM GUIDE 2, 3 (1981).

ances brought for judgment, an issue that affects inter-state and private complaints in common but not identically. Each of these issues is fundamental to the larger question of effectiveness. If entry to the regime is in some way foreclosed or if the constraints on admissibility are unduly rigid or burdensome, then the effectiveness of the regime in promoting and protecting human rights obviously is cast in doubt.

A. *Accessibility*

As mentioned above, unlike state-to-state complaints, petitions by individuals and groups are subject to the threshold problem of accessibility. States Parties are presumed to have the capacity to avail themselves of the human rights regime that is their creation; private parties are not. A variety of factors essentially external to the human rights systems themselves ineluctably condition whether an individual or group can reasonably apply to a human rights regime to claim a human rights violation, and among these externalities one must certainly include the following: knowledge of one's human rights; knowledge of the existence of systems designed to promote and protect human rights; surrounding socioeconomic and political conditions; expectations that the regime actually will provide redress versus expectations that the application will result only in retribution by the state; and the availability of counsel in the form of NGOs, lawyers and others to assist in the drafting and processing of complaints. This last factor—the availability of counsel—may be at times the most critical.[171]

Taking these conditioning factors into account, it seems evident that, comparatively speaking, the European human rights regime is the most accessible of the three regional regimes. First, there is reason to believe that knowledge of the rights recognized by the European Convention and of the institutions and procedures designed to guarantee them is relatively widespread. Being the oldest of the three regional regimes, the Eu-

171. Robert Norris describes the importance of securing counsel in the Inter-American context:

> Although it is not necessary to presentation of a case, legal representation may assist that presentation in several ways. First, the petitioner may be in prison or subject to harassment and may therefore wish to avoid direct communication with the Commission by working through a representative whose name or address is less likely to attract attention. Naming a representative also will provide a permanent address and a reliable means of communication, which lessens the likelihood of failure to enter a timely plea or rebuttal. In a complicated case or one that might eventually be referred to the Court, the counsel of an attorney with specialized human rights expertise may prove crucial.

Norris, *Individual Petition Procedure, supra* note 126, at 122.

ropean is, logically, a relatively familiar feature of the legal-political landscape. Operating in a First World setting where socioeconomic and political conditions favor high literacy rates and general access to the media, it is likely that knowledge about, and opportunity to know of, the regime is relatively easily accomplished.[172] The 34,015 individual applications received by the European Commission between 1973 and 1986[173] suggest as much. Indeed, so well known is the regime that one prominent jurist, an Associate Justice of the Supreme Court of Ireland and Judge of the European Court of Human Rights, has stated that "it would now be politically impossible in most countries to withdraw from the Convention, as it has captured the minds of the public to a great extent."[174]

Second, bearing in mind the essentially democratic legal and political arrangements of the Council of Europe's Member States, Western Europeans can legitimately expect that a valid human rights grievance brought to the European system will likely result in some form of redress rather than retribution by the respondent state. In fact, as one keen observer of the European regime, Professor Kevin Boyle, has noted, "The most frequent reason for the rejection of complaints is that the applicant has no grounds for invoking international remedies, given the state of protection secured for his or her rights under domestic law."[175]

Finally, it seems clear that private counsel in the form of NGOs and lawyers are important players in the European system. The statistics alone, with the number of individual applications filed by private counsel increasing from 4% in 1955 to 45% in 1986,[176] appear to prove the point. Furthermore, to quote Boyle again, "One of the most innovative and, in practical terms, important features of the European machinery is the provision for legal aid that has been established for individual

172. This is not to disregard the reality that there exist in Western Europe many persons who are poor and illiterate or who, for other economic and social reasons, may lack opportunity to take advantage of the European human rights regime. It is a safe, though troubling, conclusion that those persons most in need of human rights protection often are the persons with the least access to the regimes designed to provide it.

173. *See* EUROPEAN COMMISSION OF HUMAN RIGHTS, COUNCIL OF EUROPE, SURVEY OF ACTIVITIES AND STATISTICS 13 (1986) [hereinafter EUROPEAN COMMISSION OF HUMAN RIGHTS, SURVEY OF ACTIVITIES].

174. Walsh, *The European Court of Human Rights*, 2 CONN. J. INT'L L. 271, 284 (1987).

175. Boyle, *supra* note 48, at 134.

176. EUROPEAN COMMISSION OF HUMAN RIGHTS, SURVEY OF ACTIVITIES, *supra* note 173, at 12.

applications."[177]

In sum, once presented with declarations authorizing it to receive individual petitions, a precondition we already have noted,[178] the European regime appears to be not only impressively accessible by private individuals and groups but highly receptive to facilitating their access as well. All this is very desirable. Private applicants in the European system, it seems, have by and large only the requirements of admissibility to overcome to ensure that something will be done about their human rights grievances.[179]

Regrettably because of the oftentimes oppressive socioeconomic and political conditions in the Americas and Africa, one cannot say the same thing about the Inter-American and African human rights regimes, or at least not to the same extent. The generally lower levels of literacy and education, the lesser availability of the media and of opportunities to exploit the media, and the strained if not altogether terminal economic conditions in these Third World regions necessarily cause the Inter-American and African human rights regimes to compare unfavorably to the European regime vis-á-vis their accessibility by private parties. And, compounding the problem, the legal systems of certain of the Western Hemispheric and African countries—sometimes corrupt or ineffectual or both—frequently inhibit belief that resort to a regional human rights regime will produce tangible positive results. Indeed, in those countries that arbitrarily deny the protection of law and that liberally employ mil-

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177. Boyle, *supra* note 48, at 143. Professor Boyle explains:

> The assistance is paid out of the general funds of the Council of Europe and is governed by an Addendum to the Rules of Procedure of the Commission. The Commission may grant free legal aid in connection with the representation of a case either at the request of an applicant lodging an application or on its own initiative.
>
> . . . Legal aid covers not only fees but traveling and subsistence expenses and "other necessary out-of-pocket expenses." It normally is available only after the application has been communicated to the respondent government, and observations are sought from the applicant on the government's response. Thereafter, legal aid will be available for preparation of all written pleadings and also for appearances at oral hearings. The fees normally authorized are not generous. They are determined by reference to the average fees paid for legal aid work within the Council of Europe, and representation of a poor applicant remains semi-volunteer work. However, the fact that necessary expenses incurred in preparation of a case are reimbursed and that travel and subsistence for all appearances at hearings are paid is extremely important, and it does ensure that a case can be adequately prepared without the actual outlay of funds by an applicant.

Id. at 143-44.

178. *See supra* text accompanying notes 43-44.

179. *See infra* text accompanying notes 231-48.

itary and paramilitary means to sustain the traditional power structures, there is not only scarce expectation that a human rights complaint will be justly redressed but a legitimate fear that it will result in retribution, not uncommonly of the most severe kind.[180]

Of course, our analysis cannot end simply with a description of the difficulties concerning accessibility because, operationally, the human rights regimes themselves—most notably the Inter-American regime—make up for these inadequacies to some extent by encouraging certain modalities and procedures that help to overcome some of the difficulties inhibiting or otherwise complicating individual access. Two techniques stand out in particular: the on-site study and the granting of standing to non-victims (*i.e.*, NGOs and other interested parties) to bring petitions on behalf of victims.

The on-site study[181] is important for at least three reasons. First, it is a means to educate persons about their rights and about their system of redress—an attribute recognized by, for example, Haiti, when in 1978 it invited the Inter-American Commission to

> take note of the progress made in the country in the area of human rights and to examine in consultation with Haitian authorities, the most proper means to consolidate that progress and to stimulate in the home of the Haitian people a consciousness and knowledge of all the civil and political rights and in that way to promote permanently the respect and blossoming of human rights.[182]

Haiti is a poor example, perhaps, it having consistently and brutally deprived its citizens of their most basic human rights, particularly under

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180. As Justice Lihau, former Chief Justice of the Supreme Court of Zaire and former Professor of Law at Kinshasa University, has noted of many of the African States:

> Obstacles are inherent in the constitutional arrangements and the political systems of a large number of African States. Fundamentally oriented towards the establishment, the maintenance and the reinforcement of personal dictatorial power, the character of these national arrangements are as problematic as the Inter-African system itself, and only serve to facilitate all sorts of human rights violations. The attitude of the African masses—resignation in the face of the abuse of power, a heritage of the colonial and even the pre-colonial epochs—scarcely encourages them to firmly demand respect for their rights.

Lihau, *supra* note 128, at 14.

181. For a concise description of the on-site study or investigation techniques, see Norris, *Observations In Loco: Practice and Procedure of the Inter-American Commission on Human Rights*, 15 TEX. INT'L L.J. 46, 76-89 (1980).

182. *Id.* at 73 (quoting letter from the Government of Haiti to the IACHR (January 26, 1978) (document on file at the IACHR office in Washington, D.C.)).

the Duvalier regimes. But as Robert Norris points out, "Although the respective governments may fail to make changes, at least the citizens with whom the Commission came into contact will have learned of its existence. Some will now be aware that international human rights standards exist, as well as international institutions to whom [*sic*] they can complain."[183]

Second, the on-site study may significantly facilitate the submission of petitions. The Inter-American Commission, for example, received more than 4,000 individual petitions during its visit to Argentina in 1979, and in 1980 it received approximately 3,000 such petitions while in Nicaragua,[184] in each case a marked increase from the number of petitions it ordinarily received.

Finally, the on-site study may influence attitudes toward the redress of human rights grievances. Professor Tom Farer, former President of the Inter-American Commission, has explained the importance of what he calls "exposure":[185]

> Exposure, or the threat thereof, has accomplished a mitigation of barbarity in many identifiable instances throughout the Western Hemisphere. It cannot be doubted that the prospect or consequences of a Commission inquiry has saved lives, averted torture, terminated arbitrary detentions, and ameliorated conditions of detention. Compared to the totality of human rights violations in the Hemisphere, the scope of the Commission's direct impact on the conditions of life has been modest. But it has not been trivial. And the Commission's indirect impact may have been greater.[186]

Such effect certainly must give individuals more confidence in the redressive possibilities of the human rights regime and, consequently, must encourage applications.

Of course, one must realize that the three regimes vary dramatically in their authority to conduct on-site studies and in their experience in exercising that authority as well, facts that necessarily condition their success in mitigating the difficulties of individual access. The Inter-American

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183. Norris, *Observations In Loco, supra* note 181, at 74.

184. T. BUERGENTHAL, R. NORRIS & D. SHELTON, *supra* note 77, at 261.

185. Farer, *The OAS at the Crossroads: Human Rights*, 72 IOWA L. REV. 401, 403 (1987) [hereinafter Farer, *OAS at the Crossroads*].

186. *Id.* In a unique instance, not since repeated, the Inter-American Commission's on-site study of claimed human rights violations by the Somoza Government in Nicaragua led to a resolution by the OAS Meeting of Consultation of Ministers of Foreign Affairs for the immediate and definitive replacement of the Somoza Government. *See* Resolution II, approved June 23, 1979 at the Seventeenth Meeting of Consultation of Ministers of Foreign Affairs, OEA/ser. F/II, doc. 40/79 rev.2 (original in Spanish). For related discussion, see *infra* note 277 and accompanying text.

Commission—with its jurisdiction extending not only to the States Parties to the American Convention but, drawing on the American Declaration as its normative instrument,[187] also to the Member States of the OAS regardless of their official posture toward the Convention[188]—has the broadest authority[189] and, as it happens, experience.[190] Because on-site studies are not as necessary in the European socioeconomic and political context and among countries where human rights deprivations tend to be individual-specific rather than directed against large numbers of people over long periods of time,[191] the European Commission has both narrower authority[192] and narrower experience.[193] The African

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187. *See supra* note 20.

188. *See* Buergenthal, *View from the Inter-American Court, supra* note 96, at 306.

189. Robert Norris asserts that the Inter-American Commission's authority to conduct on-site studies under the American Convention is much broader than it was prior to the Convention:

> [T]he authority of the Commission to carry out an on-site observation, which has previously been based primarily upon accepted practice, has been considerably strengthened and institutionalized under the new system. The new statute makes specific provision for the sending of fact-finding missions to the territory of any member state of the OAS, albeit with the consent or at the invitation of the government concerned. It is significant that neither the purpose nor the scope of such a mission is limited by the statute. With respect to states parties, the American Convention has taken a giant step forward by eliminating the traditional request for consent, with the exception of the special procedure for the investigation of serious and urgent cases under article 48(2). The Commission need only inform the government of its decision to undertake an observation *in loco* and request the necessary facilities. Should a state party which has accepted the jurisdiction of the Inter-American Court of Human Rights refuse to provide those facilities, the Commission could submit the matter to the Court under article 62(1) for a finding of whether the government is in violation of the American Convention.

Norris, *Observations In Loco, supra* note 181, at 94-95. Farer, on the other hand, writes, "I do not think that the Convention had any operational effect on the Commission's ability or even its authority to conduct on-site studies." Letter from Professor Tom J. Farer to Burns H. Weston (Sept. 4, 1987) (discussing early draft of this essay).

190. The Commission has interpreted its authority liberally and has created a myriad of ways to enter a country to conduct an on-site study. *See generally* Norris, *Observations In Loco, supra* note 181. *See also supra* note 189.

191. Boyle, *supra* note 48, at 134. "[O]nly rarely does the [European] Commission face complaints of human rights violations on the scale or of the kind that are too well known elsewhere in the world." *Id.*

192. [T]he European Commission has no jurisdiction under the European Convention on Human Rights generally to investigate human rights situations in any of the High Contracting States Parties to the Convention. It rather examines in quasi-judicial proceedings complaints concerning breaches of the Convention brought before it either by a High Contracting Party under Art. 24 or by an individual, a group of individuals or a non-governmental organisation, claiming to

Commission, while granted significant enumerated and broad investigatory powers,[194] which is desirable, is still too short-lived to show any on-site study experience. All in all, however, the on-site study is a valuable tool in expanding individual and group accessibility to the regional human rights regimes.

As for the granting of standing to non-victims to bring petitions on behalf of victims, which allows NGOs and others not affected by the barriers to accessibility to become advocates on behalf of those who cannot reasonably gain access to the regime, much good can be said. Noting the importance of NGOs in the context of the African regime, the former Chief Justice of the Supreme Court of Zaire—Justice Lihau—writes:

> It is essential that [private individuals and organizations] act without fail to send the Commission petitions and communications bluntly denouncing all those human rights violations in African countries that come to their attention—whether they are themselves victims of the violations or have seen, or been informed about others whose rights have been abused. If they take prompt action to alert the Commission to human rights violations as they occur, and if they act in concert to document these violations for the Commission and if at the same time they take steps to inform the public, there is no doubt but that they can in the long run contribute greatly towards changing the African human rights situation for the better.[195]

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be the victim of a violation of the Convention, under Art. 25. Moreover, the question of an on-the-spot visit arises in principle only in such cases which have been declared admissible, that is to say, which have been accepted for an examination of the merits. . . . It is therefore not surprising that there have been only few occasions for on-site observations by the Commission.

Kruger, *The Experience of the European Commission on Human Rights*, in INTERNATIONAL LAW AND FACT-FINDING IN THE FIELD OF HUMAN RIGHTS 151, 151 (B. Ramcharan ed. 1982).

193. The European Commission has exercised its limited authority to conduct on-site studies in a very restricted manner, generally in cases concerning the alleged ill-treatment of detainees or prisoners. *See id.* at 158.

194. *See, e.g.*, African Charter, *supra* note 7, art. 46. "The Commission may resort to any appropriate method of investigation." *Id.*

195. Lihau, *supra* note 128, at 14-15. Gittleman also sees an educational role to be played by NGOs in the African context:

> Given the meager public resources currently available for such educational or promotional efforts, NGOs can assist in ameliorating the situation by contributing manpower and resources in any of the areas within the commission's promotional mandate.
>
> . . . Perhaps the greatest need at this stage is for better dissemination of information to the people regarding their rights. The All-African Conference of Churches, for example has stated that "due to the high rate of illiteracy, people

Richard Gittleman adds: "The challenge of the African Commission and interested NGOs and governments will be to build the institutions required to enforce human rights while concurrently disseminating information to the grass-roots level of society."[196]

The African and Inter-American regimes authorize application by non-victims most liberally, allowing applications by nearly anyone as long as the applications meet the tests of admissibility.[197] In contrast, as noted earlier, the European regime allows only victims or those with direct knowledge of a violation to make applications to the European Commission,[198] not the most optimal state of affairs whatever the explanation.

In sum, Western Europe appears to present the fewest problems of accessibility among the three regional human rights systems, and it is perhaps for this reason that the European Convention grants limited authority for on-site studies and disallows surrogate applications by non-victims. The Americas and Africa, on the other hand, as a consequence of their Third World conditions, clearly present serious accessibility problems, and seemingly this fact explains the Inter-American and African regimes' broad grant of authority for on-site studies and their liberal treatment of non-victim applications. The threshold problem of accessibility thus revealed consequently serves as a basis not only for understanding but also for considering how the Member States might strengthen each of the regimes.

B. *Admissibility*

Once a state, individual, group or NGO presents an application or petition to a regional commission, the issue arises whether or not the application or petition is "admissible"—that is, whether the commission to which it is brought is authorized to accept it. Reference to three considerations resolves this issue: first, whether the commission has jurisdiction over the parties; second, whether the application or complaint pertains to a right that the governing instrument expressly enumerates; and

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are unaware of their rights, and when they are aware of them, they see them as a favor from a politician."

Gittleman, *Prospects and Procedures, supra* note 128, at 154 (quoting All African Conference of Churches, *Due Process and the Rule of Law*, STRUCTURES OF INJUSTICE 10 (1975), *cited in* COMMISSION TO STUDY THE ORGANIZATION OF PEACE, REGIONAL PROTECTION AND PROMOTION OF HUMAN RIGHTS IN AFRICA 21 (1980)).

196. *Id.* at 155.

197. *See infra* text accompanying note 204.

198. European Convention, *supra* note 4, art. 25(1).

third, whether the parties have proceeded according to the rules that the governing instrument prescribes.

1. Party Jurisdiction

That the European, Inter-American, and African Commissions are limited in their jurisdiction over states and private parties bears repeating.[199] The European Commission may entertain state-to-state complaints simply on the condition that the petitioner and respondent states are party to the European Convention,[200] but it may entertain individual petitions only if the respondent state "has declared that it recognizes the competence of the Commission to receive such petitions."[201] Conversely, as an organ of the American Convention, the Inter-American Commission has automatic jurisdiction over individual applications,[202] but jurisdiction over state-to-state complaints exists only if the respondent state has formally recognized "the competence of the Commission to receive and examine communications in which a State Party alleges that another State Party has committed a violation of a human right set forth in this Convention."[203] Finally, the African Commission, granted perhaps the broadest jurisdiction among the three regional commissions, has authority to entertain both state-to-state complaints and private petitions automatically, subject almost alone to the requirement that the concerned states be party to the African Charter,[204] an arrangement that certainly improves on the European and Inter-American systems, whose jurisdiction of their commissions (and courts) could well stand expansion to the fullest possible extent, especially in respect of private individuals, groups and NGOs. On the other hand, the African regime is not without its own shortcomings. Regrettably, the African Commission may examine communications from private individuals and non-governmental institutions and groups only if the OAU Assembly of Heads of State and Government so requests and only if a majority of the Commission so decides,[205] a condition that some informed observers have justifiably

199. *See supra* text accompanying notes 43-44, 119-21, and 160-62.

200. European Convention, *supra* note 4, art. 24.

201. *Id.* art. 25(1).

202. American Convention, *supra* note 6, art. 44.

203. *Id.* art. 45. As an organ of the OAS drawing on the 1948 American Declaration, *supra* note 20, for its normative guidance, however, the Inter-American Commission has jurisdiction over OAS Member States even if they have not ratified the American Convention. For related discussion, see *supra* text accompanying note 195.

204. African Charter, *supra* note 7, arts. 47-48, 55-56.

205. *Id.* arts. 55(2), 58. For related discussion, see *supra* text accompanying notes 158-62.

criticized. To quote Justice Lihau once again:

> It is unfortunate that the Commission's proceedings are so heavily dependent upon the Heads of State. When it comes to the Commission's mandate, what can it actually do? It is unlikely that the Commission will be permitted to take the initiative in presenting documented charges to the Conference of Heads of State and Government, except perhaps in those instances where it is in the interests of governments to permit the Commission to do so.[206]

Yet how effective the African regime will be in dealing with specific applications remains to be seen.

2. Enumerated Rights

The second general admissibility requirement—that the inter-state complaint and individual petition allege violation of a right that the governing instrument protects—is on its face unobjectionable. At least two considerations merit attention, however, each of which offers insight into the extent to which, relatively at least, the three regional regimes are effective in safeguarding the rights they are designed to promote and protect.

First, as we have seen, the three regional regimes differ in the breadth and depth of rights they recognize[207]—sometimes markedly—and, of course, the narrower the breadth or the shallower the depth of rights protected the less effective the human rights regime is likely to be in safeguarding human dignity overall. For example, choosing to treat certain "second generation" rights under the reportorial regime of the European Social Charter rather than the adjudicative protections of the European Convention[208]—*e.g.*, "the right of the worker to earn his living in an occupation freely entered upon";[209] "the right of men and women workers to equal pay for work of equal value";[210] or "the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike. . .";[211]—the Council of Europe may have

206. Lihau, *supra* note 128, at 14.

207. *See supra* text accompanying notes 35-36, 67-69, 84-87, and 131-43.

208. *See supra* text accompanying notes 67-69. Like the European regime, the Inter-American regime provides for reportorial procedures to safeguard economic, social and cultural rights. Under the African Charter, however, an individual, group or NGO arguably could bring an application for violations of "first," "second" or even "third generation" rights. *Id.*

209. European Social Charter, *supra* note 5, art. 1(2).

210. *Id.* art. 4(3).

211. *Id.* art. 6(4).

caused the protection of these rights to be less effective than they might otherwise have been.[212] Similarly, within the framework of a single category of rights exclusively (e.g., "first generation" rights), one may pause at the following differences: (1) that the European Convention recognizes the right to be free from debtor prison[213] but the American Convention and African Charter do not; (2) that the American Convention recognizes the right to juridical personality,[214] to reply,[215] to a name[216] and to a nationality[217] but the European Convention and the African Charter do not; or (3) that the European and American Conventions recognize the right to privacy[218] and to legal protection[219] but the African Charter does not. Of course, one also must acknowledge that the regional human rights regimes will be more or less effective in safeguarding human dignity depending on the way they define the rights they actually recognize in common. Like the European and American Conventions, for example, the African Charter recognizes the right to a fair trial.[220] Unlike its European and American counterparts, however, it does not guarantee that the proceedings shall be public.

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212. One could say the same about certain economic, social and cultural rights in relation to the American Convention in the Inter-American system, which similarly places "second generation" rights in a legal regime more or less separate from "first generation" rights. *See supra* note 87 and accompanying text, including the observation that the OAS currently is considering a draft treaty dealing with economic, social and cultural rights.

One should note, however, that increasingly there have been pleas for the inclusion of certain economic, social and cultural rights in the European Convention. *See, e.g.*, Berenstein, *Economic and Social Rights: Their Inclusion in the European Convention on Human Rights—Problems of Formulation and Interpretation*, 2 HUM. RTS. L.J. 257 (1981). Important pleas have come also from the Parliamentary Assembly and the Committee of Ministers of the Council of Europe. *See, e.g.*, *Parliamentary Assembly Recommendation* 838 (Sept. 27, 1978), 26 EUR. Y.B. 391 (1978), advancing the need to examine what basic economic, social, and cultural rights could be incorporated in the Convention without weakening the credibility of the existing system. For critical comment, on the other hand, see, *e.g.*, P. VAN DIJK & G. VAN HOOF, *supra* note 27, at 474-77.

213. Protocol II, *supra* note 4, art. 1.

214. American Convention, *supra* note 6, art. 3.

215. *Id.* art. 14.

216. *Id.* art. 18.

217. *Id.* art. 20.

218. European Convention, *supra* note 4, art. 8; American Convention, *supra* note 6, art. 11.

219. European Convention, *supra* note 4, art. 13; American Convention, *supra* note 6, art. 25.

220. African Charter, *supra* note 7, art. 7(1).

Second, because clauses in the governing instruments allow the regimes to derogate from expressly enumerated rights (and in a potentially abusive manner if they interpret the clauses liberally), the three regional regimes are at some liberty to curtail even rights they formally recognize. For example, the European Convention provides in general that

> [i]n time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.[221]

In addition, the European Convention contains several limiting or "clawback" clauses[222] permitting deviation from specific enumerated rights—in effect defining the specific rights more narrowly than might otherwise have been done. For example, article 8(1), which states that "[e]veryone has the right to respect for his private and family life, his home and his correspondence," is qualified by article 8(2), which provides that

> [t]here shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.[223]

The American Convention contains a similar, perhaps somewhat narrower general derogation clause—*i.e.*, adding that any "suspension" of enumerated rights "[may] not involve discrimination on the ground of race, color, sex, language, religion, or social origin"[224]—and likewise

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221. European Convention, *supra* note 4, art. 15(1).

222. The term is drawn from Higgins, *Derogations Under Human Rights Treaties*, 48 BRIT. Y.B. INT'L L. 281 (1976-1977). It means "one that permits, in normal circumstances, breach of an obligation for a specified number of public reasons." *Id.* at 281. It thus differs from a derogation clause "which allow[s] suspension or breach of certain obligations in circumstances of war or public emergency." *Id.*

223. European Convention, *supra* note 4, art. 8(2). For other similar built-in derogation clauses in the European Convention, see *id.* art. 9(2), qualifying the right to freedom of thought, conscience and religion set forth in art. 9(1); art. 10(2), qualifying the right to freedom of expression set forth in art. 10(1); and art. 11(2), qualifying the right to freedom of assembly and association set forth in art. 11(1). *See also id.* art. 6(1), recognizing the right to public criminal proceedings but permitting the exclusion of the press and public from all or part of a trial "in the interests of morals, public order or national security in a democratic society" as well as in other circumstances.

224. American Convention, *supra* note 6, art. 27(1).

contains several "clawback" clauses of the sort just quoted.[225] And as for the African Charter, which contains no general derogation clause but does include two "clawback" clauses[226] and several restrictive definitions of rights,[227] it does provide for a functional equivalent in the form of a detailed series of duties or "obligations of solidarity"—to the family, society, the state and the international African community—which the individual is expected to honor and which, obviously, a state can construe to limit the rights recognized in the Charter.[228] Indeed, where the European and American Conventions contain language absolutely prohibiting derogations from certain of their enumerated rights,[229] and where both

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225. *See, e.g., id.* art. 8(5), restricting public criminal proceedings "insofar as may be necessary to protect the interests of justice" and art. 12(3), subjecting the freedom to manifest one's religion and beliefs "to the limitations prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights or freedoms of others." *See also id.* arts. 15, 16(2), and 22(3), similarly qualifying the right of assembly, the right to freedom of association and the right to freedom of movement and residence, respectively.

226. *See* African Charter, *supra* note 7, art. 11, permitting "restrictions" on the right to assembly "in the interest of national security, the safety, health, ethics and rights and freedoms of others"; and *id.* art. 12(2), permitting "restrictions" on the right to freedom of movement "for the protection of national security, law and order, public health or morality."

227. *See, e.g., id.* art. 6, which reads, "Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom *except for reasons and conditions previously laid down by law.* In particular, no one may be *arbitrarily* arrested or detained." (Emphasis added). *See also id.* arts. 4, 8, 9(2), 10(1) & (2), and 12(1).

Richard Gittleman writes critically of such provisions:

> The substantive provisions of the African Charter contain "clawback" clauses that permit a state to restrict rights to the extent permitted by domestic law. Such extremely vague standards appear to place no external restraints upon government actions, although that is arguably the purpose of human rights instruments. Article 6, the right to liberty, provides an example. . . . The Charter does not define or limit [the] "reasons and conditions previously laid down by law" or similar phrases such as "within the law" (article 9) or "provided that he abides by the law" (article 10).

Gittleman, *Prospects and Procedures, supra* note 128, at 158.

228. African Charter, *supra* note 7, arts. 27-29. In particular, note *id.* art. 27(2), providing that "[t]he rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest"; *id.* art. 29(3), stipulating that the individual shall have the duty "[n]ot to compromise the security of the state whose national or resident he is"; and *id.* art. 29(4), requiring the individual "[t]o preserve and strengthen social and national solidarity, particularly when the latter is threatened." For related discussion, see *supra* text accompanying notes 135-43.

229. *See* European Convention, *supra* note 4, art. 15(2), prohibiting "derogation" absolutely from the right to life (except from lawful acts of war), the right to be free

also require notice to the Secretaries General of the Council of Europe and the OAS, respectively, in the event of the exercise of the state right of derogation or suspension,[230] the African Charter provides for none of these safeguards. It is a condition that merits great criticism.

3. Rules of Procedure

Except for the general requirement that communications be in writing and addressed to the appropriate offices,[231] only the Inter-American regime indicates any particular procedural preconditions for the lodging of inter-state complaints before its human rights commission.[232] The majority of these are identical to the procedural rules established for individual petitions, discussed below,[233] and on their face they seem unobjectionable. However, the American Convention's additional and previously noted proviso that inter-state complaints be inadmissible until the respondent state has formally recognized the competence of the Inter-American Commission[234] is regrettable, even if explicable.[235] It is just one more instance of the old Adam of state sovereignty serving to retard the effective protection of recognized human rights.

The general picture is a bit more complicated when it comes to inter-

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from torture and other forms of cruel treatment, the right to be free from slavery and the right not to be tried under ex post facto laws. *See also* American Convention, *supra* note 6, art. 27(2), absolutely prohibiting "suspension" of all the non-derogable rights of the European Convention plus the right to juridical personality, the right to freedom of conscience and religion, the rights of the family, the right to a name, the rights of the child, the right to nationality, the right to participate in government, and, one should note, "the judicial guarantees essential for the protection of such rights." On this last point, see the Inter-American Court's Consultative Opinion OC-8/87, adopted at the 16th Regular Session of the Inter-American Court of Human Rights on Jan. 30, 1987.

230. European Convention, *supra* note 4, art. 15(3); American Convention, *supra* note 6, art. 27(3).

231. Except in the case of inter-state complaints lodged with the African Commission, these requirements are more implicit than explicit. *See* European Convention, *supra* note 4, art. 24; American Convention, *supra* note 6, art. 45; African Charter, *supra* note 7, art. 47.

232. According to article 47 of the African Charter, as previously observed, *see supra* text accompanying note 164, the complaining and respondent States Party to the Charter are encouraged to achieve a friendly settlement if at all possible before resorting to the good offices of the African Commission. African Charter, *supra* note 7, art. 47. However, according to African Charter article 49, this stipulation is optional, hortatory rather than mandatory. *Id.* art. 49.

233. *See infra* text accompanying notes 238-48.

234. American Convention, *supra* note 6, art. 45(2). *See supra* text accompanying note 119 for related comment.

235. *See* Judge Buergenthal's observations, *supra* note 121.

state complaints before the European and Inter-American courts. First, States Parties to the conventions must have formally accepted the compulsory jurisdiction of the courts;[236] and second, they must have at least attempted a friendly settlement.[237] The compulsory jurisdiction requirement, though doubtless inescapable, is regrettable, and for the same reasons that one may rue the American Convention's optional inter-state complaint procedure. The friendly settlement requirement, on the other hand, seems unobjectionable—except, that is, for the possibility that States Parties might use it as a delaying tactic against the swift adjudication of otherwise admissible human rights complaints.

More elaborate rules of procedure condition the lodging of individual and other private petitions under the three regional regimes. In all three instances, before the respective commissions may assume jurisdiction the parties must have exhausted all domestic remedies.[238] Also, the petition must have been filed within six months or a reasonable time thereafter,[239] must set forth at least the name of the petitioner (no anonymous petitions are allowed)[240] and must not have been submitted to another international tribunal or proceeding.[241] Under the European Convention, in addition, the petition must be from an individual, group of individuals or NGO claiming to be a victim of a violation[242] (as previously noted)[243]

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236. European Convention, *supra* note 4, arts. 46, 48; American Convention, *supra* note 6, art. 62.

237. European Convention, *supra* note 4, art. 47; American Convention, *supra* note 6, arts. 48-50.

238. European Convention, *supra* note 4, art. 26; American Convention, *supra* note 6, art. 46(1)(a); African Charter, *supra* note 7, art. 56(5). It is a general principle of international law, however, and one to which all three human rights regimes are committed, that fruitless attempts at the exhaustion of domestic remedies is not required. American Convention, *supra* note 6, art. 46(2) is explicit and detailed in this regard. Thus, in a country providing only nominal remedies such exhaustion would not be required. *See generally* Trinidad, *Domestic Jurisdiction and Exhaustion of Local Remedies: A Comparative Analysis*, 16 INDIAN J. INT'L L. 187 (1976).

239. European Convention, *supra* note 4, art. 26 ("six months from the date on which the final decision was taken"); American Convention, *supra* note 6, art. 46(1)(b) ("six months from the date on which the party alleging violation of his rights was notified of the final judgment"); African Charter, *supra* note 7, art. 56(6) ("within a reasonable period from the time local remedies are exhausted or from the date the Commission is seized of the matter").

240. European Convention, *supra* note 4, art. 27(1)(a); American Convention, *supra* note 6, art. 46(1)(d); African Charter, *supra* note 7, art. 56(1).

241. European Convention, *supra* note 4, art. 27(b); American Convention, *supra* note 6, art. 46(1)(c), 47(d); African Charter, *supra* note 7, art. 56(7).

242. European Convention, *supra* note 4, art. 25(1).

243. *See supra* text accompanying note 44.

and must not be "incompatible with the provisions of the . . . Convention manifestly ill-founded, or an abuse of the right of petition."[244] Under the American Convention, the only additional explicit requirements are that the petition state facts "that tend to establish a violation of the rights guaranteed by [the] Convention"[245] and that it not be "manifestly groundless or obviously out of order."[246] Under the African Charter, similarly, the only additional explicit requirements are that the petition be "compatible with the Charter of the [OAU] or with the present Charter"[247] and that it be "not written in disparaging or insulting language directed against the state concerned and its institutions or to the [OAU]."[248]

Assuming the conscientious and honorable administration of the regional regimes, these rules of procedure would not seem to impede the effective handling of legitimate human rights grievances for the most part, although clearly the generality—indeed vagueness—of such preconditional terminology as "an abuse of the right of petition," "manifestly groundless or obviously out of order," and "disparaging or insulting language" is subject to potentially devious manipulation. The European Convention's requirement that only victims of violations may lodge petitions before the European Commission is, on the other hand, most unfortunate. It ignores the fact that, in the struggle for human dignity against the abuses of state power especially, ours truly is a Kafkaesque world.

IV. CONCLUSION

Once the three regional regimes declare a human rights grievance admissible, the initial procedures followed are quite similar, particularly

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244. European Convention, *supra* note 4, art. 27(2). Boyle explains the European Convention procedure from this point on:

> Once the decision to communicate an application is made by the Commission, the respondent government is normally given eight weeks within which to submit its observations. The Commission forwards a copy of the government's observations to the applicant, who is then invited to submit observations in reply. The focus of observations from both parties at this stage will include both issues of fact (unless they are disputed) and admissibility issues under articles 26 and 27 of the Convention. Once the exchange of observations is concluded, a new report on admissibility is prepared by the rapporteur and discussed by the full Commission. If the application is not rejected at this point, the Commission may either immediately declare the application admissible or schedule oral hearings on admissibility.

Boyle, *supra* note 48, at 145-46.

245. American Convention, *supra* note 6, art. 47(b).

246. *Id.* art. 47(c).

247. African Charter, *supra* note 7, art. 56(2).

248. *Id.* art. 56(3).

insofar as individual and other private petitions are concerned.[249] Each commission conducts fact-finding and attempts to achieve a friendly settlement.[250] If the attempts at friendly settlement are successful, each commission then prepares a report stating the facts and its findings for submission to the states concerned and to the regional organs designated by each governing instrument—to the Committee of Ministers and the Secretary General of the Council of Europe in the case of the European regime,[251] to the OAS Secretary General in the case of the Inter-American regime[252] and to the OAU Assembly of Heads of State and Government in the case of the African regime.[253] If the commissions are unable to reach a friendly settlement, then, in the case of the European regime, the commission prepares and submits a similar report to the concerned states and the Committee of Ministers, with the right to make such "proposals" as the European Commission sees fit.[254] In the case of the Inter-American regime, the Commission submits a similar report to the concerned states only, with the right to make such "proposals and recommendations" as the Inter-American Commission sees fit.[255] And in the case of the African regime, the Commission submits a similar report again to the states concerned and to the OAU Assembly of Heads of State and Government, but this time with the right to make such "recommendations" as the African Commission deems useful.[256] Additionally, under the European and Inter-American regimes, but not under the African regime (for lack of an appropriate tribunal),[257] the states concerned and the respective commissions may refer a case to their respective regional courts for final adjudication and disposition.[258] Under the European system, alternatively, the Committee of Ministers may consider and decide the case.[259]

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249. For a detailed chart tracing the procedure upon the filing of an application with the European Commission, see Boyle, *supra* note 48, at 137.

250. European Convention, *supra* note 4, art. 28; American Convention, *supra* note 6, art. 48; African Charter, *supra* note 7, art. 52.

251. European Convention, *supra* note 4, art. 30.

252. American Convention, *supra* note 6, art. 49.

253. African Charter, *supra* note 7, art. 52.

254. European Convention, *supra* note 4, art. 31.

255. American Convention, *supra* note 6, art. 50.

256. African Charter, *supra* note 7, arts. 52-53.

257. For pertinent discussion, see *supra* text accompanying note 165.

258. European Convention, *supra* note 4, art. 48; American Convention, *supra* note 6, art. 61. Under the African Charter, *supra* note 7, arts. 53, 58-59, the OAU Assembly of Heads of State and Government performs this dispositional function. *See supra* text accompanying note 164.

259. Christina Cerna notes that under the Inter-American regime a somewhat simi-

It is not the purpose of this Article to appraise each regional regime's efficiency in dealing with these grievance procedures—in processing the applications and in implementing the decisions reached relative to them. Of course, a thorough empirical study along these lines is very much in order. If bureaucratic or other inefficiency significantly marks the process of handling inter-state complaints and private petitions, then certainly the effectiveness of the human rights regime in handling human rights grievances will be open to serious question. But in exploring these issues we are limited by the infancy of the African regime and by the relative inexperience of the Inter-American regime under the American Convention; also, in general, by a dearth of readily available probative data.[260]

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lar process to the referral to the Committee of Ministers is available:

> [T]he annual and special reports are the documentation the Commission submits to the General Assembly for whatever political decision it deems appropriate. In the past, our reports have also gone to other political bodies such as the Meeting of Consultation of Foreign Ministers, a type of Security Council, which meets to discuss political issues of extreme urgency. . . .
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> For example, in the case of Nicaragua in 1978, the government of Venezuela convoked a Meeting of Consultation of Foreign Ministers to consider the threat to peace in the Central-American region caused by the Nicaraguan civil war. This Meeting of Consultation requested that our Commission accelerate the plan for a visit to Nicaragua and report back to them on the human rights situation, which the Commission did. In June of 1979, just a month before Somoza departed, the Meeting of Consultation made a historic decision based, inter alia, on the Commission's human rights report, and passed a resolution calling for a political solution to that conflict—an immediate and definitive replacement of the Somoza government. This decision is historic if you compare decisions of other international organizations in which the maximum sanction ever applied to a delinquent state has been condemnation or expulsion from the system. . . . This is a unique case, however, not since repeated, and the product of an abundance of political, as well as legal, factors.

Cerna, *supra* note 121, at 314-15. For related discussion, see *supra* note 186 and accompanying text.

260. Farer writes of the difficulty of evaluating the impact of the Inter-American Commission's work:

> Governments . . . do not admit delinquencies. If individuals are freed, their liberation, if it is advertised at all, is presented as an act of official grace. It . . . is difficult to measure achievement outside the paper world of reports and communications because the commission has no absolute right of access to the prisons, detention camps, and interrogation centers where hope is crushed and identity extinguished. Without the permission of governments, the commission remains at a vast distance from the ultimate subject of its concern: individual human beings. Being unable to communicate directly with them or, frequently, with their wives, children, friends, and others intimately familiar with the facts, it can reach a firm and final conclusion in particular cases (the kind of conclusion to which governments would feel a considerable compulsion to respond directly) only in a limited number

Still, by way of conclusion, some general statistical data drawn from the experience of the oldest of the regional human rights regimes—the European—may prove insightful even though it lacks clarity in a number of respects.[261] Of the 34,015 private petitions filed with the European Commission during the period 1973 to 1986 (supplementing 18 inter-state complaints filed with the Commission during the same period),[262] the Commission registered only 12,327 (or about one-third)[263] and declared only 492 of these to be admissible.[264] Later rejecting eight on the merits,[265] the Commission reported to the Committee of Ministers in 310 of these 492 cases.[266] In addition, as of January 1, 1986, the European Court had heard 109 cases,[267] one of them an inter-state case.[268]

On the basis of this data,[269] one surely can say that the European regime has been genuinely receptive to processing human rights grievances, both private and inter-state—so receptive, indeed, that it now suffers in effectiveness from an "unprecedented" backlog of cases such that "the time presently needed . . . to examine an [individual] application as to its admissibility and merits is often more than five years."[270] In addition, however, it seems fair to conclude that the European regime has been either extraordinarily diligent in winnowing out defective claims or, mindful of its statist origins, unduly conservative in defining valid ones.

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of instances, usually where governments tacitly concede the charges.
T. FARER, GRAND STRATEGY, *supra* note 104, at 173-74.

261. For further reference, see, *e.g.*, P. VAN DIJK & G. VAN HOOF, *supra* note 27, at 455-460.

262. *See* EUROPEAN COMMISSION OF HUMAN RIGHTS, SURVEY OF ACTIVITIES, *supra* note 173, at 13 and accompanying text.

263. *Id.*

264. *Id.*

265. *Id.*

266. *Id.*

267. *See* EUROPEAN COMMISSION OF HUMAN RIGHTS, COUNCIL OF EUROPE, STOCK-TAKING ON THE EUROPEAN CONVENTION ON HUMAN RIGHTS 138 (Supp. 1985). Unofficial communications from several colleagues indicate that, as of January 1, 1987, the European Court had heard 14 additional cases for a total of 123 cases.

268. *See* Ireland v. United Kingdom, 23-I Eur. Ct. H.R. (ser. B) (1976).

269. For a conclusory evaluation of such data, see Treschel, *Towards the Merger of the Supervisory Organs: Seeking A Way Out of the Deadlock*, 8 HUM. RTS. L.J. 11, 13-17 (1987).

270. EUROPEAN COMMISSION OF HUMAN RIGHTS, SURVEY OF ACTIVITIES, *supra* note 173, at 2. In the face of this situation, brought about in part by a failure to secure "an adequate increase of staff in the budget for 1987," the European Commission was forced to cancel two of the four additional week-long sessions it had hoped to add in 1987 to its normal five two-week sessions to address the backlog problem. *Id.*

Possibly it has been both. In any event, bearing in mind that statist imperatives often tend to outweigh the values of human dignity even in modern-day Europe, 492 admissible claims out of 34,015 filed and 12,327 registered over a thirteen-year period (or about 1% and 4% respectively) seems not an impressive record from a progressive point of view. On the other hand, informed commentators have said that the European regime has significantly affected the promotion and protection of human rights in the European context—by upholding the rights of individuals,[271] by influencing States Parties[272] and by providing a model upon which the other two regional systems could draw.[273]

Likewise, one may congratulate the Inter-American regime for its efforts to promote and protect rights. While its statistical data is difficult to secure,[274] informed observers conclude that it has been by and large suc-

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271. For an overview of recent cases in which the European Court has upheld the rights of individuals, see Walsh, *supra* note 174, at 277-83. *See generally* P. VAN DIJK & G. VAN HOOF, *supra* note 27, at 181-376.

272. Van Dijk and van Hoof provide these examples:

> Austria had amended its legislation in respect of the right of appeal in criminal cases, issued new directives concerning the treatment of sick and wounded prisoners on public hospitals, and introduced a new system of free legal aid. Belgium has proceeded to amend its criminal legislation, its vagrancy legislation, and its legislation on the use of languages in schools. The Federal Republic of Germany has introduced a new regulation concerning detention pending judicial proceedings. The United Kingdom has provided for a right of action in immigration cases, and there the practice of caning as a penalty is in process of being abolished. Sweden has taken measures to allow certain exceptions to obligatory religious education. Norway has amended its Constitution to guarantee full religious liberty. Switzerland has carried through constitutional reforms in order to extend the suffrage to women and to abolish certain restrictions for Jesuits. The Netherlands, finally, revised its military disciplinary law and introduced modifications in the application of the Act on the Insane. . . .

P. VAN DIJK & G. VAN HOOF, *supra* note 27, at 458-59.

273. As Judge Buergenthal has observed, the Inter-American and European courts "have engaged in regular exchanges since the establishment of [the Inter-American Court]." Buergenthal, *View from the Inter-American Court, supra* note 96, at 304. "The accomplishments of the European system are great," he explains, "and it remains a model for all of us." *Id.* at 305.

274. *But see* T. FARER, GRAND STRATEGY, *supra* note 104, at 171, who reports that "the number of individual cases considered by the [Inter-American] commission," paralleling the experience of the European Commission, "has grown at an exponential rate in recent years." Farer continues:

> In 1968, the Commission opened fourteen new cases and had approximately eighteen pending. Five years later, those figures had changed only modestly: in 1973, approximately twenty-six cases were opened while twenty-four were pending. By 1976, however, the corresponding figures were 139 and 145. In 1980, the number

cessful in pressing states to protect individual rights[275] and in influencing countries to change patterns of abuses.[276] Former President of the Inter-American Commission Tom Farer explains the Commission's subtle yet important influence in Argentina:

> In the Argentine case the Commission's very presence seemed to have opened doors and windows hitherto closed primarily to the Argentine people themselves. The press suddenly discovered the problem of the disappeared. A few judges began, albeit very cautiously, to probe behind official assurances and to question the comprehensiveness and intensity of restrictions on personal freedom.[277]

One must note, however, that Farer is speaking of the Commission in its capacity as an organ of the OAS as opposed to the American Convention. And on this critical distinction, former President of the Inter-American Court, Judge Buergenthal, writing in 1987, had the following to say:

> The entry into force of the American Convention has permitted the existence side-by-side of the juridically more formal Convention system with that of the more flexible [OAS] Charter-based system, giving the Commission and Court many more institutional tools for dealing with human rights violations than are available in other human rights systems. The individual petition machinery of the inter-American system has been a complete failure. Individual cases appear to get lost in a system that is geared to large-scale violations. In part that is due to the fact that the Commission treats individual petitions under the Convention in much the same way as those that come in under the Declaration. By blurring the juridical differences that exist between these two types of petitions, the Commission has failed to take advantage of the greater powers it has under the Convention to dispose of complaints.[278]

Buergenthal added: "The petition system consequently still operates as it did before the Convention entered into force, which may explain, but certainly not excuse, the fact that no contentious case has as yet been referred to the Court by the Commission."[279]

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of cases reached 2,900, while there were approximately 4,730 cases in process. *Id.*

275. *See generally* Buergenthal, *View from the Inter-American Court*, note 96; Cerna, *supra* note 121. *See also* T. FARER, GRAND STRATEGY, *supra* note 104, at 174.

276. *See, e.g.*, Norris, *Observations In Loco, supra* note 181, at 56-59, for a description of the Inter-American Commission's activities in the Dominican Republic.

277. Farer, *OAS at the Crossroads, supra* note 185, at 402.

278. Buergenthal, *Implementation, supra* note 83, at 75.

279. *Id.* As of this writing three contentious cases are before the Inter-American

Thus, the regional human rights regimes, including the African regime which has only recently come into operation, undergo a continuous process of criticism and refinement, appraisal and recommendation. Many commentators have suggested normative, institutional and procedural adjustments necessary to make the three regional regimes more effective[280]—for example: *in the case of the European regime*, placing individual petitions on the same mandatory footing as inter-state complaints, permitting access to non-victims representatives as well as to victims and merging the European Commission and Court; *in the case of the Inter-American regime*, placing inter-state complaints on the same mandatory footing as individual petitions and exploiting the full authority of the Inter-American Commission under the American Convention; *in the case of the African regime*, creating a court, narrowing the derogation clauses of the African Charter and de-politicizing the activities of the African Commission; *in the case of both the European and Inter-American regimes*, raising the standing of individuals at the court level, expending more energy to urge Member States to accept the full extent of the jurisdiction of the commissions and the courts, and narrowing the interpretation of the derogation clauses in both of the conventions; and *in the case of all three regimes*, raising the requirements for the promotion and protection of economic, social and cultural rights.

Hopefully the international legal community will act on these recom-

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Court.

280. Regarding the European human rights regime, see generally A. ROBERTSON, *supra* note 10; P. VAN DIJK & G. VAN HOFF, *supra* note 27, at 460-74; J. WRIGHT, *supra* note 27; Arnull, *Making the European Convention Work*, 1985 PUBL. L. 378; Donnelly, *supra* note 2; Ermacora, *The System of the Protection of Human Rights within the Framework of the Council of Europe*, in HUMAN RIGHTS: THE CAPETOWN CONFERENCE 236 (C. Forsyth & J. Schiller eds. 1979); Jensen, *The Impact of the European Convention for the Protection of Human Rights on National Law*, 52 U. CIN. L. REV. 760 (1983); Russell, *The European Convention on Human Rights: An Assessment*, 1979 CONTEMP. REV. 169. *See also* Second Seminar on International Law and European Law at the University of Neuchâtel, *Merger of the European Commission and European Court of Human Rights*, 8 HUM. RTS. L.J. 1 (1985).

Regarding the Inter-American human rights regime, see, *e.g.*, ORGANIZATION OF AMERICAN STATES, THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS: TEN YEARS OF ACTIVITIES, *supra* note 81; Carreno, *Some Problems Presented by Application of the Interpretation of the American Convention on Human Rights*, 30 AM. U.L. REV. 127 (1981); Donnelly, *supra* note 2; Norris, *Individual Petition Procedure, supra* note 126; Peddicord, *supra* note 81; Pena, *Human Rights: The Statute of the Inter-American Court of Human Rights*, 21 HARV. INT'L L.J. 735 (1980).

Regarding the African human rights regime, see, *e.g.*, Aluko, *supra* note 128; Gittleman, *Legal Analysis, supra* note 128; Lihau, *supra* note 128; Umozurike, *supra* note 128.

mendations without delay especially those that seek to enhance accessibility and reduce the problems of admissibility. Though "[d]ecent, pluralistic societies cannot be built in a day,"[281] the regional promotion and protection of human rights is perhaps the most effective vehicle for advancing the cause of human dignity worldwide. They deserve, therefore, maximum responsible attention and encouragement.

281. T. FARER, GRAND STRATEGY, *supra* note 104, at 174.