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ABSTRACT:

A panel regarding human rights and direct petition is presented.

BODY:

DIRECT PETITION IN THE UN HMUAN RIGHTS TREATY SYSTEM

Today, four UN human rights treaties permit individuals to complain to international bodies of violations of their human rights. The implementation strategies associated with the UN treaty system are essentially three-fold: (1) a state

reporting system in which countries produce state reports on their compliance and those reports are considered by independent monitors ("the treaty bodies"), (2) an individual complaint system, and (3) a state-to-state complaint system. The system of state reporting has experienced a number of serious difficulties, beginning with the failure to produce reports and the quality of reports submitted. There have never been complaints by states against other states, and this does not appear to be a likely avenue in the near future. It might have been expected that individuals would not be similarly inhibited about making human rights claims to an international venue. In fact, however, individuals have generally made little use of the petition system in the UN context.

In the Council of Europe, as Mr. Villiger has indicated, annually there are thirtyseven thousand provisional files opened with ten thousand applications remaining after those have been sifted. In the UN treaty system, annually there are three thousand pieces of correspondence, less than one hundred registered cases, less than one hundred decisions taken, and approximately thirty final decisions. This relates to a potential complainant population of 1.4 billion people-the number of individuals living in countries that have ratified instruments granting the right of individual petition. The rights associated with the International Covenant on Civil and Political Rights (Civil and Political Covenant) cover an extensive range of issues such as freedom of religion, the right to vote, discrimination on any ground or status, and minority rights. Why then are less than one hundred cases registered a year, from one and a half billion people with respect to such a diverse set of rights and freedoms?

DIRECTING CASES TO THE LEGAL SYSTEM

Many people do write. In fact, over one hundred thousand people write to the United Nations to complain of human rights violations every year. They often write generally to the High Commissioner for Human Rights or to the Secretary-General. These letters go to New York, Geneva, or other UN venues all over the world. They usually end up in Geneva at the Office of the High Commissioner for Human Rights. How are over one hundred thousand cases reduced to less than one hundred registered cases before the UN human rights legal system?

Lack of Resources

In part, complaints remain unread because of the lack of personnel and an inability to translate and respond to cases in many languages, including some of the UN official languages.

Streaming

Human rights complaints are frequently streamed away from the legal system. They are sent to the Special Rapporteurs or Representatives (on various thematic subjects or specific states), which have been created over the years by the Commission on Human Rights, or they are channeled to the procedure known as the ECOSOC (UN Economic and Social Council) 1503 Procedure, which deals with systematic and gross violations of human rights, largely behind closed doors. The legal system is generally the default mechanism. In other words, if a case relates to a thematic subject covered by a Special Rapporteur or Representative, it tends to go first to that mechanism. If it relates to systematic and gross violations of human rights concerning groups of persons, it tends to go to the 1503 Procedure. Generally speaking, only cases that do not meet those criteria end up in the legal system. This approach is the wrong way around. The legal system should take priority, so that if a case comes in concerning a country that has ratified any of the individual complaint mechanisms and it relates to a right under one of the treaties, it should be first considered by the treaty bodies.

Streaming cases away from the legal system on the grounds that they deal with systematic and gross violations or affect groups of people is unjustified. The Civil and Political Covenant has a nondiscrimination clause and protection for minority rights. Group rights are covered in a number of contexts. By definition, some of the rights are satisfied in community with others, like freedom of religion. The legal system should be given a greater opportunity to deal with group and systemic violations of human rights. This is even more clear in the context of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) Optional Protocol, which expressly refers to

systemic circumstances.

The streaming problem also relates to so-called "urgent action" cases. It is widely thought that an urgent case cannot be dealt with properly through any kind of legal venue. The treaty system requires individuals to exhaust domestic remedies, and the assumption is made that examining a case from the perspective of determining the exhaustion of domestic remedies takes time. This general assumption should be challenged. There has been a high success rate in terms of treaty body requests for interim measures in response to urgent cases. Furthermore, the treaty bodies have not dealt with the exhaustion of the domestic remedies criterion in an overly formalistic fashion. For example, if an individual has a case that has languished in a domestic forum for too long, then that individual is entitled to go to the international treaty system. Hence, the bias against the treaty system in all cases requiring urgent action is unjustified.

THE FAILURE TO LODGE COMPLAINTS

Thirty percent of states parties to the Civil and Political Covenant have never been the subject of a single complaint, including countries such as Chad, Nepal, and Somalia. The most cases registered against a single state that is currently a party to the Optional Protocol relate to Canada. Even in Canada's case, this amounts to only one hundred cases over a twenty-year period. Considering Canada is not a party to the European human rights system and has not ratified the American Convention on Human Rights, this is a small fraction of the individuals who could potentially come forward. Why do more people not come forward, in principle?

LACK OF MEDIA INTEREST

One important reason is the lack of media attention. A number of key practices inhibit media interest:

- The treaty bodies do not release decided cases at the end of the session at which the case is decided. An author of a communication has no idea when he or she will receive a copy of the decision in the case, making it difficult to arrange a press conference or adequate publicity for the date of the decision's release.

- The treaty bodies do not issue press releases when they do make individual decisions public. Media attention depends on checking Web sites or annual reports months later, or the ability of the author to make the appropriate connections.

- There is an absence of an appropriate spokesperson in the context of individual cases. The treaty bodies are independent and generally not enthusiastic about allowing the Secretariat to act as their spokesperson on individual cases. There are no guidelines as to what the Secretariat should say. On the other hand, in this quasi judicial context, the treaty body members themselves are often reluctant to speak about their own cases.

The lack of media attention has more general consequences because the capacity of individual outcomes to attract further cases is inhibited.

FAILURE TO PRODUCE REMEDIES

The treaty body for the Civil and Political Covenant, the Human Rights Committee, handles the vast majority of individual cases dealt with by the treaty system. Once the Committee has found a violation of the Covenant, it asks states parties to provide a remedy within ninety days. According to the Committee itself, states parties provide a satisfactory reply to this request in only 20 percent of the cases-a very poor record. Particularly disturbing is that many of the states responsible for this record are democratic, such as Canada and Australia. They have been among the first to respond by insisting that the Committee's decisions are not legally binding.

In fact, Article 2 of the Covenant says that states have a legal obligation to provide an effective remedy for violations of Covenant rights. Having ratified the Optional Protocol, states have given authority to the Human Rights

Committee to express a considered opinion as to what constitutes a violation. For twenty years, the Committee has carefully considered whether individual cases do or do not reveal a violation, and this role has virtually never been the subject of objection by states parties. Hence, when the Committee renders its views as to what is a violation and asks to be informed of the remedy provided, taking the process seriously requires providing a remedy and not immediately questioning the Committee's authority. Unfortunately, democratic states have chosen not to take a leadership role in this context, therefore limiting their capacity to encourage other states to take the system more seriously.

LACK OF FOLLOW-UP

Follow-up, according to the Human Rights Committee's rules of procedure, is supposed to be an open process. In reality, however, follow-up is not a public exercise. The follow-up document produced for the Committee is not posted on the OHCHR Web site or issued as a UN document. Similarly, the follow-up discussion reportedly held in public by the Committee once a year at its March session is not on the meeting's agenda, and authors of communications are not informed as to when it will occur. In contrast to the European system (and the Committee of Ministers), follow-up largely depends on the Committee itself. The resolutions of the General Assembly and the Commission on Human Rights carefully avoid reference to a particular finding of the treaty bodies.

PROFESSIONALISM AND THE TREATY SYSTEM

According to the treaties, treaty body members are to be independent experts. However, review of approximately 950 curriculum vitae over a twenty-year period reveals that 50 percent of the members were employed at the time of their election in some capacity by their governments. Treaty body members essentially do not get paid, and they meet for up to twelve weeks per year. They therefore could be expected to have other jobs, and frequently these are government jobs. The result is that the actual or apparent independence of a large proportion of treaty body members is in doubt. This is a significant impediment, for instance, to the ratification of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) individual petition mechanism (Article 14). With respect to the treaty body for CEDAW, the Women's Discrimination Committee, very few members of the committee are lawyers, and it is likely that the difficulties of a largely non-legal committee in dealing with individual cases will impede the ratification of the CEDAW Optional Protocol.

OVERLAP AND THE LACK OF COORDINATION

In the UN human rights system, women's rights are in New York and human rights are in Geneva. The Beijing World Conference on Women proclaimed that women's rights are human rights. While some advocate that being separate but equal will work to the advantage of women, it is more likely to further marginalize women's rights. It makes little sense to construct a completely separate individual petition system based in another part of the United Nations to deal with women's rights alone.

THE LANGUAGE PROBLEM

A case may be filed to the European Court of Human Rights in any of thirty-seven languages. Although subsequently states must answer in English and French, the individual may keep writing in one of these many languages. Practically speaking, a case may be filed with the United Nations in only one of the three or four working languages of the treaty bodies (and certainly no more than one of the six official UN languages). In other words, the 1.4 billion people entitled to use the treaty petition system must write in only three or four languages even to get their case initially considered.

PERSONNEL AND INFRASTRUCTURE

It is hard to avoid the conclusion that the UN treaty system is kept deliberately impoverished in terms of personnel and resources so that states can object to unsatisfactory outcomes. Results might be expected to be less than satisfactory from, for example, a petition team of seven to eight people, severe language constraints, limited meeting time for the

Human Rights Committee to deal with complaints, and the absence of appropriate remuneration for treaty body members.

THE FUTURE

Recommendations to improve the UN petition system, which I outlined in my recent report,1 include the following:

- The streaming of cases should place a clear priority on the legal regime.

- Membership in the treaty bodies should be confined to independent professionals and experts.

- The ability of women to complain of violations of their rights under CEDAW should be joined with their capacity to direct discrimination cases to Genevabased treaty bodies; the Secretariats of the human rights treaty body petition mechanisms should be amalgamated.

- There ultimately should be consolidation of the treaty body mechanisms dealing with individual complaints, so that a single full-time committee deals with complaints related to all the human rights treaties.

In addition, and as a matter with which the ASIL could be directly involved, there should be an international human rights network of lawyers that can provide legal assistance to individuals and their counsel to use the UN human rights treaty complaint scheme.

Over one hundred states now participate voluntarily in the UN petition system, but its credibility depends on reducing the huge gap between right and remedy. Quality decision making, effective media, and actual compliance will subsequently have a broader impact on human rights protection than the number of individual complainants alone.

THE INTER-AMERICAN SYSTEM FOR THE PROTECTION OF HUMAN RIGHTS

INTRODUCTION

In recent years, the distinguished Brazilian jurist and president of the Inter-American Court of Human Rights, Antonio Cancado, suggested that the Inter-American system needed a Protocol 11. Realizing that the implications of such a step would entail the abolition of the Inter-American Commission on Human Rights (for which I work), I set out for Strasbourg last November for three months to study and prove that the European Court of Human Rights wasn 'tworking. Confronted with an impressive human rights "palace," a legal staff of 120 lawyers, and forty-one (soon to be fortythree) full-time judges, I have to admit that the European system does work. I view the problems in Strasbourg, however, differently from those at the Court who are now discussing a reform of the reform. I also met a number of people at the Council of Europe who lamented the elimination of the European Commission and now talk of creating a new filtering body to manage the avalanche of petitions before the Court.

DEVELOPMENT

The Inter-American system developed differently from the European, although our system is modeled after it. The Inter-American Commission was created in 1959, without a Convention, and it applied the American Declaration on the Rights and Duties of Man to all the member states of the region. The American Declaration is the Americas' equivalent of the Universal Declaration, and it was adopted in May 1948 at the time the Organization of American States (OAS) was created. The two regions are approximately the same size. U.S. governmental statistics estimate that the Americas comprise some eight hundred million individuals, whereas Europe comprises approximately seven hundred million.

Until 1989, the European human rights system functioned as a kind of regional Supreme Court, concerned with what I would call lifestyle issues, whereas the InterAmerican system dealt with traditional human rights violations involving the right to life and physical integrity. The human rights treaties were designed to prevent recurrence of the atrocities of World War II, and in the Americas atrocities continued to be perpetrated.

Prior to the entry into force of the American Convention on Human Rights in 1978 and the creation of the Inter-American Court, the work of the Inter-American Commission was easier to evaluate, focusing on gross and systematic violations in the hemisphere. Since many countries in the region were under military dictatorships, the Commission carried out on-site investigations and prepared country studies on largescale violations, such as the systematic practice of torture or forced disappearances. The Argentina report, in 1980, is a classic example. These reports were presented annually to the OAS General Assembly, where they were the center of intense political debates. The main contribution of the Inter-American Commission during this period was toward the delegitimization of military dictatorships in the hemisphere, which facilitated the return of democratic governments, an issue about which I have written in the past.

Since 1979, however, the focus of the system has changed, primarily due to the change in the human rights situation in the region. The American Convention entered into force, the Inter-American Court was created, and the system is becoming "Europeanized," with thirty-four of the thirty-five member states moving toward functioning democracies. In the expanded European region, by contrast, the system is becoming "Latin-Americanized," with new violations such as systematic torture and the burning down of homes (as a result, for example, of the Turkish repression of the Kurds and the violations related to the armed conflict in Chechnya).

Is the increasing focus on the individual living up to its expectations?

CREATION OF A TRIAL COURT

In spite of the vast pool of potential petitioners, each of these systems receives barely a tiny fraction of the possible number of complaints. This is evidence of how little these systems are known to the general public.

The Inter-American Commission, with fifteen lawyers, receives approximately five hundred to seven hundred petitions per year. On average, it issues only about one hundred reports a year, all of which are published in its Annual Report. The European Court received about thirty-seven thousand petitions last year, twenty-seven thousand of which became provisional (or incomplete) files and probably will be thrown out in two years. Of the approximately ten thousand cases that were registered, fewer than one thousand were declared admissible. Consequently, several hundred individuals in the Americas and many thousands in Europe were left disappointed by the respective systems.

During its first ten years of existence, the Inter-American Court primarily considered advisory opinions. In April 1986, the Commission presented the first three contentious cases to the Court, concerning the disappearance of four individuals in Honduras. At that time, the nature of the Court as a trial court was defined. The Commission proceeded to put Honduras on trial, with witnesses and experts attempting to prove the international responsibility of the state for the violations of the American Convention.

Is the vindication of the rights of the individual worth the time, effort, and expense required? In the fifteen years since these first Honduran cases, many of the approximately forty contentious cases that the Commission brought to the Inter-American Court have involved the organization of a full-fledged trial. These trials sometimes cost the Commission tens of thousands of dollars (primarily for transportation and hotels for witnesses and experts), although in some cases the petitioner pays the expenses. The Court, at the end of the day, has on occasion awarded no more than $10,000 in financial compensation.

Although states generally do not comply with Commission decisions, they do comply with at least part of the Court's judgments. Since the El Amparo case in 1995, the Court generally holds that the state must order an investigation, identify the individuals responsible, afford them a fair trial, and sentence them. States routinely comply with the financial reparations part of the Court's judgments, but they rarely put on trial and punish the offenders at the national level. Peru is an exception. Peru had dropped out of the system in July 1999 because it had considered one Court judgment to be impossible to implement. Peru returned this year, as a result of a change of government, and stated that it would comply with ten years of decisions of the Commission, more than one hundred cases, and would

appoint agents to deal with all the Peruvian cases before the Court, both past and present, in order to seek resolution of these cases.

AUTONOMY OF THE PETITIONER

The Inter-American Commission and the Court last year modified their internal Rules of Procedure to enter into force, respectively, in May and June of 2001. The most important amendment in these rules is Article 23 of the Court's Regulations, which provides that the individual will be able to function autonomously at all stages of the Court's procedure. At present, the individual only has autonomy at the reparations stage of the proceedings before the Court. As of May/June 2001, the individual will have indirect access to the Inter-American Court, since only the state or the Commission may present the case to the Court. Nonetheless, the individual will become a party to the proceedings; at present only the Commission and the state are considered parties. This is the first step toward direct access.

In the European System, Protocol 9 gave the individual direct access; he or she no longer had to wait for the Commission or a state to present his or her case to the Court. The European Court, however, did not consider all the cases that the petitioners brought before it but created a pseudo-Commission, a three-judge panel to select the cases that the Court would hear from all the cases presented by the petitioners. Autonomy is a goal sought for and won primarily by human rights nongovernmental organizations (NGOs). Why go through the Commission if you can present your case directly to the Court, which by treaty is the only body empowered to issue legally binding judgments? In Europe, Protocol 9 was later followed by Protocol 11, which certified the redundancy of the European Commission and did away with it, creating a new Court from elements of the previous system.

Another major change in the rules of the Inter-American system is the new Article 44 of the Inter-American Commission's Regulations. This new rule provides that all cases against states that have recognized the Court's jurisdiction but have not complied with the Commission's recommendations will be sent to the Court, unless four of the seven Commissioners provide a reasoned decision not to do so. This rule is designed to increase state compliance with Commission recommendations or, in the alternative, may be expected to increase significantly the case load of the Court.

PURPOSE OF THE SYSTEM

The restructuring of the role of the individual raises certain concerns about the purpose of the system:

- Is the purpose of the system the vindication of the rights of every individual who petitions it?

- Is the purpose of the system to create a jurisprudence that sets a certain minimum standard of conduct for the region?

- Is the purpose of the system the creation of internal mechanisms to remedy violations at the national level?

In my view, the purpose of the system is to reduce human rights violations in the region. The most efficient way to reach that goal is by the creation of internal mechanisms to remedy the violations at the national level. The guiding myth of the European Court is that the system exists to vindicate the rights of every individual who petitions it. As Mark Villiger has stated, this has resulted in over 60 percent of the judgments issued by the Court last year involving one issue: the length of judicial proceedings. This is so because every individual who raises this issue is considered entitled to reparations. The Court has developed an accelerated procedure by which the state is ordered to pay compensation tracked to the amount of delay in the proceedings. For some states it is more economical to pay these sums than to change their judicial systems. Yet one must ask, Is this the most important human rights issue in Europe today?

The Inter-American system also thrives on repetition. There have been innumerable progeny following certain lead cases such as Velasquez Rodriguez, involving detentiondisappearance. In the English-speaking member states of the Organization, the death penalty is an important issue. There are currently three cases from the Caribbean, concerning

thirty-one persons sentenced to death, all dealing with the same issue: the mandatory imposition of the death penalty.

All the human rights treaties state that the supervisory body shall consider a case inadmissible if the petition is "substantially the same" as one previously studied by it or by another international organization. The phrase "substantially the same," however, has received the strictest of interpretation by all of these bodies, whereby only the identical victim and the identical facts are considered to fall within this phrase. Consequently, it is virtually never invoked.

In order to deal with the avalanche of cases flooding the respective systems, in my view, the international treaty bodies ought to revert to the notion of subsidiarity. The treaties were designed for democracies, not for military dictatorships. The state is the primary guarantor of the individual's human rights, and access to an international treaty body is only possible once the individual has exhausted all domestic remedies without satisfaction. Once the international treaty body has found a violation in a specific case, the jurisprudence on the issue has been created. Instead of repeating consideration of that issue in innumerable further cases after the first case or the first set of cases has been decided, the international treaty body should find a violation in subsequent cases, based on the earlier precedent, without continually rewriting the earlier decision. The treaty body should package its decision in a concise, abbreviated form of maybe a paragraph, stating that the holding in the present case is the same as that in the lead case. In addition, it should find a new violation resulting from the state's failure to remedy the violation in the first case or first set of cases.

Article 2 of the American Convention provides that the state is required to take legislative or other measures as may be necessary to give effect to the rights and freedoms set forth in the Convention. As in the Italian "length of proceedings" cases, either the state should be obligated to create a domestic mechanism by which the victim has access to a proceeding that affords financial compensation for the delay at the national level, or the larger task should be undertaken of reforming the judiciary to do away with such delays.

Only by beginning to deal structurally with the kinds of cases presented can the system hope to have an impact on human rights violations in the Americas. Unfortunately, the Inter-American system, like the European system before it, is more concerned with the number of reports it issues per year-almost like a factory engaged in the production of widgets-rather than the reduction in the volume of human rights violations. In my view, the focus of the system should be less on vindicating the rights of the individual petitioner and more on remedying the structural violations in the region.

THE EUROPEAN COURT OF HUMAN RIGHTS

INTRODUCTION

One of the most active international bodies enabling individual petition is the European Court of Human Rights in Strasbourg. This paper offers an overview by looking back at its fifty years of activities, by identifying successes and failures, and finally by looking at the future. The Strasbourg Court should not be confused with the European Court of Justice in Luxembourg. The former operates within the Council of Europe, the latter within the European Union.

The Court interprets and applies the European Convention on Human Rights, an international instrument enshrining classic human rights ranging from the right to life and the prohibition of inhuman treatment and torture, due process, and freedom of expression, to the prohibition of discrimination. European governments have included new rights enshrined in protocols prohibiting, for instance, the death penalty or rights of aliens. The Convention furthermore enables the individual to bring an application before the Court in order to complain about a breach of one of these rights by a state authority and, if the application is successful, to obtain a binding judgment and damages.

DEVELOPMENT

The Convention was signed in 1950 as a reaction to the atrocities of World War II. Looking back, we can distinguish two phases of growing membership: from 1950 until 1985, when virtually all twenty-five Western European

states had joined, and from the fall of the Berlin Wall in 1989 until today, when some further sixteen Eastern European states became members. Currently, forty-one member states have ratified the Convention, Armenia and Azerbaijan are expected to ratify next year, and the geographical area covered by this protection of human rights encompasses some eight hundred million individuals.

Purpose of Individual Petition

Today, the individual petition before the Court serves three purposes. It is the main tool of European states to protect against human rights violations in Europe; it serves individuals to obtain justice when they claim to have been a victim of a violation of human rights; and the Court and the Convention serve to unify human rights standards in Europe and to further European integration.

Quantitative and Qualitative Importance

There can be no doubt as to the quantitative importance of the right to petition. Some 10,500 individual petitions were filed in 2000. The Court issued some seven hundred judgments and seven thousand decisions. Alas, there was also a considerable backlog of cases awaiting examination by the Court, namely sixteen thousand cases on January 1, 2001. The fact that every individual in this world is entitled to file an application against one of the forty-one member states is reflected in the statistics on incoming mail in the Court's Registry, which receives some eight hundred to one thousand letters a day. Approximately 50 percent of the applicants are currently represented by a lawyer.

Applicants are attracted by the binding force of the Court's judgments, by the award of damages in case of a human rights violation, by the absence of any costs in the proceedings, and by the strict equality of arms governing the proceedings. A private person is treated on the same level as government authorities.

There can also be no doubt about the qualitative importance of the Strasbourg Court. In its huge body of case law, the Strasbourg Court has given shape and meaning to human rights. It has provided uniform standards for governments in matters as diverse as the extradition and expulsion of aliens, radio and television broadcasting, medical treatment in psychiatric hospitals, and the right to respect for family life. The Strasbourg Court is renowned for its carefully reasoned judgments that do justice to the individual case while providing governments, public authorities, and domestic courts with the backcloth for legislation, government acts, and court decisions in virtually every area of human rights.

Difficulties Facing the Court

The impressive backlog of some sixteen thousand cases implies delays in handling cases. While inadmissible cases, some 80 percent of the Court's docket, are on average dealt with in periods lasting between six and eighteen months, the cases declared admissible and eventually leading to a judgment on violation or nonviolation may take a number of years.

Naturally, this backlog is worrying. One substantial chunk concerns complaints directed against Italy about the length of proceedings before the Italian courts. The problem lies in that it is not possible in Italy to complain before domestic authorities about the undue length of proceedings. Italian applicants are thus obliged to complain in the first instance before the Strasbourg Court. Another substantial chunk comprises Turkish cases, concerning inter alia complaints about inhuman treatment and torture. Indubitably, these groups of cases sap the Court's resources, and despite considerable efforts to streamline proceedings (such as handling cases in batches), the number has been steadily growing.

Strictly speaking, these are problems for which the Court is not directly responsible. The difficulties with the Italian cases stem from the inability of the Italian government to implement the many judgments in which the Court has found the proceedings in Italy to have lasted too long. The great number of Turkish cases relate also to political difficulties with which the Court has nothing to do. Still, there is hope in sight, in particular as regards the Italian cases. The Italian government has announced a new law providing a right of action based on the length of proceedings before Italian

courts, which may provide damages in cases of breach. Regarding the Turkish cases, the Turkish government has been told by the European Union that any full membership will require strict conformity with human rights norms.

Does the Court Satisfy Applicants?

Having looked at the successes and difficulties of the Court, we can now ask ourselves whether the Court is able to satisfy applicants. If we assume that only 10 to 15 percent of cases are admissible and that only in about 7 percent of the cases will the Court find a human rights violation, obviously the thousands of applicants leaving the Court empty-handed may appear dissatisfied. But this is too simple a manner of dealing with the question. Even losers may be satisfied if they understand the grounds of the decision. Most important, the interpretation and application of human rights by the Strasbourg Court affects legislation and courts all over Europe and thus necessarily improves daily life for eight hundred million individuals in Europe.

Has the Court Reduced Human Rights Violations in Europe?

Why do human rights violations continue despite the impressive judicial machinery instituted in Strasbourg? The basic notion that inspired the authors of the Convention in 1950 was that human rights are most effective when they are controlled. And no control is more effective than that of the "consumer," as it were, the individual affected by legislation, a government action, or a court decision. The steady flow of applications will nevertheless continue, even fifty years after the Convention was signed. New states joining the Convention on Human Rights bring their own typical problems along with them that may need years to be sorted out. New developments in society also bring about new issues and new regulations that will sooner or later be tested by the Strasbourg Court. And the Court is becoming better known among the populations of the forty-one member states.

Reform of the Reform

There will always be petitions filed with the Strasbourg Court, and there can be no doubt that their number will continue to grow. This continuing increase prompted the European governments in the 1980s to consider a reform of the Convention, which entered into force in 1998. This reform involved the merger of two separate bodiesthe former European Commission and the European Court of Human Rights-to one single body, the European Court of Human Rights.

But already there is discussion about a "reform of the reform." The proposals put forward cover a wide range of ideas. Some propose increasing the number of judges or extending their period in office from the current six years to a longer period, or extending the powers of the single judge to deal with cases alone. Other proposals sugBest delegating decisions in straightforward cases to senior lawyers in the Court's Registry.

At the heart of the ongoing discussion are such substantial questions as the subsidiarity of the Strasbourg human rights protection, whether the Convention should continue to offer the right of petition to every individual, or whether the Strasbourg Court should introduce some form of filtering, for instance along the lines of the certiorari procedure before the U.S. Supreme Court or the procedures before the German Federal Constitutional Court.

CONCLUSIONS

If governments offer the individual the right to complain before a court about human rights violations, he or she will increasingly continue to employ this right as long as the court's judgments are convincing and effective. That is the lesson that the European Convention on Human Rights has taught us. The Convention has helped unify human rights standards throughout Europe and assisted countless individuals in obtaining justice.

PETITIONING THE UNITED NATIONS

The Office of the High Commissioner for Human Rights (OHCHR) receives more than one hundred thousand

individual communications or petitions per year from persons who claim to be victims of violations of their human rights or from groups or NGOs that draw the attention of the High Commissioner to a systematic violation of human rights. Communications that eventually reach the OHCHR in Geneva are addressed to the Secretary-General, to the General Assembly, to the OHCHR itself, to the Commission on Human Rights, or to the UN Development Program (UNDP).

Systematic violations affecting the human rights of many persons can be examined by the Sub-Commission and Commission of Human Rights pursuant to the procedure established under ECOSOC Resolution 1503. Under this procedure, if a "consistent pattern of gross and reliably attested violations of human rights" is determined, the Commission will adopt a resolution recommending an appropriate course of action, which may entail the appointment of a Special Rapporteur or Representative. Individual complaints concerning only a specific case and not a consistent pattern fall outside the 1503 procedure.

Other UN bodies and procedures can also be seized of petitions, including the Working Group on Arbitrary Detention, the Working Group on Enforced or Arbitrary Disappearances, and the Special Rapporteurs such as those on torture, religious intolerance, the independence of the judiciary.

Four of the six core human rights treaty bodies also have a quasi-judicial mandate to examine individual petitions and to issue final decisions on the merits, which are specific recommendations to the states parties. These are the Human Rights Committee (under the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR)), the Committee Against Torture (under Article 22 of the Convention against Torture), the Committee on the Elimination of Racial Discrimination (under Article 14 of the Convention on the Elimination of Racial Discrimination), and the Committee on the Elimination of Discrimination Against Women (under its new Optional Protocol). When the Convention on the Rights of All Migrant Workers and Members of Their Families enters into force (sixteen out of the necessary twenty ratifications have been received), a new committee will be established that will have jurisdiction to examine individual communications pursuant to Article 77 of the Convention.

Whereas the recommendations of UN treaty bodies are not legally binding and do not constitute judgments with direct application like those of the International Court of Justice or the European Court of Human Rights, they have considerable political weight and constitute the case law equivalent of nonbinding resolutions of the General Assembly or the Commission on Human Rights.

Coordination is necessary among all these procedures to avoid duplication of work and to ensure coherent and consistent action by the OHCHR. Lack of coordination may compromise the credibility of OHCHR visa-vis states, especially if two or more UN organs address the same state party on the same matter with different, if not partly contradictory, recommendations or initiatives.

PROCESSING OF COMMUNICATIONS/PETITIONS

In December 2000, a Petitions Team was established in the Office of the High Commissioner for Human Rights, responsible for processing communications to the UN expert committees. The team is the successor of the Communications Branch, which had been dismantled in 1997 in the wake of the restructuring of OHCHR.

Communications received by OHCHR may potentially be examined by one or more of the specialized committees. If a communication is addressed to a specific body, the individual has expressed his or her choice. If not, the Secretariat must determine into which procedure the communication should be channeled. Appropriate guidelines are now being drafted.

Not every communication is ripe for registration. Frequently, communications suffer from obvious flaws such as insufficient information, reference to the registration of the same matter under another procedure of international examination or settlement (a ground for inadmissibility), or evidence that the matter is sub judice in the domestic system (a ground for inadmissibility). Following registration, the communication is transmitted to the state party with a

request for observations on admissibility and merits. When such observations are received, they are forwarded to the author of the communication for comments, with a specified period within which he or she must respond.

In the practice of the Human Rights Committee, there was initially a two-phased procedure whereby the Committee would not look at the merits of a communication before it had taken a formal decision on admissibility. In 1997, the Human Rights Committee amended its rules of procedure to permit the joinder of examination of admissibility and merits, thus considerably expediting the processing of communications. Both the Committee Against Torture and the Committee on the Elimination of Racial Discrimination also join the examination of admissibility and merits, whenever appropriate.

The aim of the individual complaints procedure is to arrive at a reasoned judgment (View, Opinion) in which the Committee summarizes the relevant facts of the claim, states the applicable provisions of the treaty involved, makes a finding whether or not the treaty has been violated, and proceeds to make concrete recommendations with regard to an appropriate remedy. The remedies proposed by the committees may entail, for instance, (1) commutation of sentence, (2) release from imprisonment, (3) payment of compensation to the victim, (4) further investigation of a case (e.g., in cases of disappearances), (5) punishment of those responsible for the violation, and (6) amendment, abrogation, or enactment of legislation.

Pursuant to the follow-up procedure of the Human Rights Committee, the Secretariat sends notes verbales to the states concerning which the Committee has adopted Views determining that a violation of a provision of the Covenant has occurred. Thanks to this procedure, the Committee has been able to determine to what extent states parties are implementing its recommendations. It can also offer advisory services and technical assistance to help a state party with implementation or with drafting enabling legislation.

Although in many cases states parties do not complywith the Committee's recommendations, or comply only partly, there is an increasing level of compliance. Much remains to be done to develop a consciousness of "collective responsibility" among states parties to ensure that other states parties respect their obligations under the human rights treaties.

SPECIAL ISSUES

Caseload

Although the Human Rights Committee has only registered approximately one thousand cases in a period of twenty-four years of operation, this is only the tip of the iceberg, because thousands of "contact letters" received are never registered. As of today, communications may be received with respect to ninety-eight states parties to the Optional Protocol (OP). Pending communications concerning two states that denounced the OP Jamaica and Trinidad and Tobago) are still being examined. As more and more states become parties to the OP (there are 148 states parties to the CCPR) and as the OP procedure becomes better known, the number of communications submitted will necessarily grow.

Forty-four states have accepted the competence of the Committee Against Torture to examine communications pursuant to Article 22 of the Convention Against Torture. Thirty-four states have accepted the competence of the Committee on the Elimination of Racial Discrimination to examine communications pursuant to Article 14 of the Convention on the Elimination of All Forms of Racial Discrimination.

Time Element

Since the OP procedure does not require that the author be represented by counsel before the Committee, many communications are badly presented, and this requires the Secretariat to devote much more time in order to make them ready for processing. Whereas the European Court of Human Rights provides free legal aid in a number of cases, the UN committees do not have the financial means to appoint counsel to assist indigent authors.

In view of the principle "justice delayed is justice denied," it is in the interest of the OHCHR and the expert committees to examine communications and issue recommendations in an expeditious manner. Thus, from the moment of receipt of an individual communication by the Secretariat to the moment of adoption of a final decision on the merits, no more than a year and a half should elapse. At the beginning of the OP procedure in the period 1977-1985, when only a few cases were registered, the examination of communications took approximately a year for a decision on admissibility and an additional year for the adoption of Views. A few cases were decided more expeditiously (e.g., a year and a half through the adoption of Views in the Vuolanne v. Finland case). With the exponential growth in the number of states parties and the number of registered cases, a backlog started to grow. With the establishment of the Petitions Team, the OHCHR has increased resources to reduce progressively the time for decision-making, notwithstanding the ever-increasing number of petitions.

Languages

Petitions arrive not only in the six official UN languages, but in any of the languages spoken in UN member states. The Secretariat, however, only masters four UN languages and depends on the sorely tried UN translation services. In the Council of Europe, the Secretariat is competent for all languages of its states parties. The OHCHR Secretariat cannot offer comparable services for all languages spoken in the 189 states members of the United Nations.

Urgent Action

The expert committees make requests for "interim measures of protection," (e.g., to request a state party to refrain from expelling/extraditing a person or from carrying out a death sentence while the case is being examined by a committee (Rule 86 of the rules of procedure of the Human Rights Committee; Rule 108(9) of the rules of procedure of the Committee Against Torture)). This procedure has been largely successful and deserves to be strengthened. The urgent action of all treaty bodies should be made more uniform.

Written Procedure

Thus far, none of the treaty bodies conduct oral hearings, which would allow the parties to appear personally before the committees. Frequently, states parties and authors request the committees to permit their personally explaining their cases. In the European and American systems, there is the possibility of oral hearing, but this has considerable financial implications and frequently further delays the processing of a case. While Article 5(1) of the Optional Protocol provides for the consideration of "written information," it may be possible to amend the rules of procedure in order to allow for oral hearings.

Amicus Briefs

At present, none of the treaty bodies accepts the submission of "amicus briefs" or third-party submissions, although many NGOs, like Amnesty International and the Blaustein Institute, have offered to make such submissions. The submission of such third-party material would undoubtedly enhance the quality of the legal debate, but no procedure is yet in place to accept such submissions. Amendments to the rules of procedure could be envisaged.

USing Established Precedents to Expedite Procedure

In order to facilitate and expedite the processing of communications, the established jurisprudence of the committees should be used more effectively (e.g., to declare communications inadmissible) when all similar factual situations have led to decisions of inadmissibility. Appropriate summary procedures should be devised to treat cases in a manner consistent with precedent. Of course, flexibility must be maintained to ensure that individual cases are treated individually and that new issues are duly considered. An appropriate amendment to the rules of procedure will be necessary.

Database

Independent academic institutes such as the Netherlands Institute for Human Rights at the University of Utrecht (SIM) and the University of Minnesota have created case law digests for the jurisprudence of the Human Rights Committee. The OHCHR is now creating a database intended primarily for tracking cases (e.g., to generate reminders), but at this stage it is not equipped to facilitate a search of relevant jurisprudence.

Other Jurisprudence

The four UN committees with communications procedures are not in competition with each other or with the regional bodies with communications procedures. Each petitioning mechanism has its particular raison d'etre and plays a complementary role in the overall system for the protection of human rights. Therefore, an effort must be made to liaise more effectively with other bodies to facilitate cross-fertilization and avoid the embarrassment of normative conflict. At present, there is extremely little contact between the OHCHR Secretariat and the staff of other communications teams in the UN family, such as those in the International Labour Organization (ILO (the committee on freedom of association)) or the UN Educational, Scientific, and Cultural Organization (UNESCO) (the committee on conventions and recommendations), in other international bodies such as the Inter-Parliamentary Union, or in regional bodies such as the European Court of Human Rights, the Inter-American Commission and Court of Human Rights, and the African Commission on Human and Peoples' Rights. At present, the Secretariat of the Petitions Team lacks sufficient institutional links with these bodies. An effort must be made to liaise more efficiently and systematically, perhaps through the adoption of appropriate Memorandas of understanding (MOUs).

FollowUp

After a committee has made a decision on the merits, it is important to monitor whether the committee's recommendations are being followed. A unified follow-up procedure or "implementation unit" should be established, as exists in the Secretariat of the European Court of Human Rights.

In 1990, the Human Rights Committee was the first UN treaty body to establish a formal follow-up procedure and name a Special Rapporteur on Follow-Up of Views. This Rapporteur has the mandate to monitor compliance of states parties with the Views issued by the Human Rights Committee. He sends notes verbales to states parties, exhorts them to implement committee recommendations, and prepares an annual report on the state of implementation of Views. He may also conduct visits to states parties to emphasize the importance and, if possible, facilitate the implementation of the committee's Views.

The main obstacle to implementation is not the unwillingness of states parties to cooperate but the lack of a mechanism in domestic law to receive and implement decisions emanating from a foreign entity (i.e., from an international committee or commission). Only few states have enacted enabling legislation granting domestic force to international decisions. Ideally, an international committee or commission decision should have the same or higher status as a domestic court decision. It should be directly implementable by virtue of domestic law. Passing such legislation is not easy. Technical assistance and advisory services from the OHCHR would be particularly helpful in drafting model enabling legislation and helping the legislatures and competent ministries of states parties take the necessary domestic steps to make such enabling laws and procedures operational.

A method of monitoring state party compliance with committee recommendations would be to utilize the Article 40 procedure, which allows the Human Rights Committee to request a special report on any subject (e.g., compliance with a decision under the OP). Whereas this method has not yet been tested, it is probable that the examination of a special report under Article 40 of the CCPR, which would take place in public meeting, would give the committee recommendations under the OP considerably more punch.

Yet another method of monitoring state party compliance with OP decisions would be to make this an item on the agenda of the meetings of states parties to the CCPR, or to hold special meetings of states parties to the Optional Protocol.

CONCLUSION

UN standard setting has been followed by the establishment of monitoring mechanisms. Perhaps the most significant development has been the acceptance by states of the individual petitions procedures, which have granted the individual the right to call states to account, confirming the position of the individual as a bearer of rights and as a subject of international law. While the procedure holds much promise and the jurisprudence of the UN expert committees is making human rights enforcement more visible, states have not yet shown that they are ready to accept the jurisdiction of an international court of human rights.

FOOTNOTE

1 Anne F. Bayefsky, The UN Human Rights Treaty System: Universality at the Crossroads (Apr. 2001), at <http://www.yorku.ca/hrights>.

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