Comparative Study of Three International Human Rights Systems and their Enforcement Mechanisms

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I. INTRODUCTION

Human rights law is affected by great compliance and enforcement problems, similar to the ones affecting public international law as a whole.[1] This is due to the states' reluctance to "impose upon themselves binding human rights obligations, and even more so to agree to create institutions with power to oversee compliance with such obligations."[2] Right now, Human rights law, and international law in general, are being enforced through a treaty system.[3] While there is no 'international police' to make sure states comply with the law, the states take it upon themselves to follow the treaties they have signed. This is hardly a fool-proof system. But it has evolved over the years with the aid of different types of compliance mechanisms. One such mechanism is international human rights courts. This essay will compare three human rights courts: the United Nations Human Rights Committee, the European Court of Human Rights, and Inter-American Court of Human Rights. Their creation, purpose, enforcement mechanisms and effectiveness will be analyzed. Finally, this comparative study will be put into perspective with the aid of the theory of cultural relativism and the analysis of some of the current issues and possible solutions of human rights law today.

II. UNITED NATIONS HUMAN RIGHTS COMMITTEE

With the creation of the United Nations, many conventions and treaties were signed by the member states. In 1966, the Commission on Human Rights and the General Assembly adopted the *International Covenant on Civil and Political Rights (ICCPR).*[4] The *ICCPR* provided "a petition system through which states parties to the *ICCPR* may lodge complaints of non-compliance by other parties."[5] An

[1] Hugh M. Kindred, *International Law, Chiefly as Interpreted and Applied in Canada*, 7th ed. (Toronto: Emond Montgomery, 2006), at 905.[*Kindred*]
[2] *Ibid*.
[3] *Ibid*.
[4] (December 16, 1966), 999 U.N.T.S. 171. [*ICCPR*] The *ICCPR* is part of the *International Bill of Human Rights*, together with the *Universal Declaration of Human Rights* and the *International Covenant on Economic, Social and Cultural Rights*. This essay will not address the *ICESCR* since, unlike the *ICCPR*, it does not have a petition system. John H. Currie, *Public International Law*, 2d ed. (Toronto: Irwin Law, 2008) at 429. [*Currie*]
[5] *Currie*, at 421.

Optional Protocol, added later, enlarged the powers of the *ICCPR* and made it possible for individuals to complain.[6] Today the main forum for verifying compliance to the *ICCPR* is the Human Rights Committee, "composed of eighteen members, elected by states parties from among their nationals who are human rights experts."[7] The Committee's main role is one of receiving and commenting on reports, "periodically submitted by states parties, detailing steps taken by those states to give effect to the rights set out in the *ICCPR*."[8] Although, this is a great evolution towards solving the problem of compliance, the Committee's opinions on performance and their recommendations for the future are not binding on the member states.[9] Currie, in his book *Public International Law* states that, although it is not binding, this " reporting system provides for a form of political accountability."[10] Nevertheless, political accountability is not enough and there have been further problems with the states' "uneven compliance with their reporting obligations." [11]

Another weakness of the Human Rights Committee is that even the petition system is not accepted by all members. "States must expressly opt-in to the *ICCPR's* petition procedure,"[12] and thus recognize the Committee's advisory authority over them, as much as that can be. Even if the majority of the states would agree to this, the possibility of withdrawing at any time remains. Therefore, the Committee's jurisdiction is not universal, and its enforcement powers are shaky at best.

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[6] *Ibid*.
[7] *Currie*, at 426.
[8] *Currie*, at 427.
[9] *International Covenant on Civil and Political Rights*, 19 December 1966, 999 U.N.T.S. 171, arts. 9-14, Can. T.S. 1976 No. 47, 6 I.L.M. 368 (entered into force 23 March 1976) [*ICCPR*] Article 40. See also UN Office of the High Commissioner for Human Rights, UN Institute for Training and Research, & UN Staff College, *Manual on Human Rights Reporting Under Six Major International Human Rights Instruments* (Geneva: United Nations, 1997); S. Farrior, "International Reporting Procedures" in H. Hannum, ed., *Guide to International Human Rights Practice*, 4th ed.(Ardsley, NY: Transnational, 2004) at 189.
[10] *Supra* note 8.
[11] *Ibid*.
[12] *Ibid*.

Finally, due to mainly political reasons, the states are reluctant to use the petition procedure against another state.[13] However, with the aid of the *Optional Protocol* individuals may also bring complaints. Yet, this is very difficult to do and even harder to enforce by the Committee since less members have ratified the *Optional Protocol* compared to the number who ratified the *ICCPR*. Currie states that this signals "the reluctance of many states to go beyond formal recognition of international human rights norms."[14] Even if the *Optional Protocol* was ratified in cases of individual petitions, like *Ahani v Canada (Attorney General)*[15], the Committee gives only its 'views' regarding the human rights matter. These views are not binding and there is no mechanism of enforcement available against the state. Currie mentions that since these views are publicized, they may serve as encouragement for compliance and as future deterrent.[16] But as I mentioned above, this is a very weak form of enforcement, similar to the one used by the Inter-American Court of Human Rights. [17]

In conclusion, the very words used to name the institution discussed above and its legal remedies, show the reluctance of the states to bind themselves into complying with human rights law. Unlike the European Union the UN has only a Human Rights *Committee*, not a '*court'* which can issue general comments. And within the petition system itself, it provides *opinions* for states and *views* for individuals, not *judgments*. There are no binding *decisions*, such as you would find in a domestic court of justice, and publicity together with some political pressures are not enough to ensure compliance. While the *ICCPR* enforcement system has evolved through the creation of the Human Rights Committee, it is still in its infancy.

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[13] The International Court of Justice has dealt with some cases regarding Human Rights but only gave an advisory opinion. M.N. Shaw, *International Law*, 5th ed. (Cambridge: Cambridge University Press, 2003) at 252–53. [*Shaw*]These include *Rights of Minorities in Upper Silesia (Minority Schools), Advisory Opinion* (1928), P.C.I.J. (Ser. A) No. 15; *Treatment of Polish Nationals and Other Persons of Polish Origin or Speech in the Danzig Territory, Advisory Opinion* (1932), P.C.I.J. (Ser. A/B) No. 44; *Minority Schools in Albania, Advisory Opinion* (1935), P.C.I.J. (Ser. A/B) No. 64.
[14] *Currie*, at 428. The *Optional Protocol* has 110 parties while *ICCPR* has 160 parties.
[15] (2002), 58 O.R. (3d) 107 at para. 32 (C.A.).
[16] *Supra* note 14.
[17] *Currie*, at 435.

i. Enforcement through Jurisprudence in Domestic Courts – Canadian Example

Chief Justice McLachlin used the *Reports*[18] issued by the UN Human Rights Committee in the decision for the case *Canadian Foundation for Children, Youth, and the Law v. A.G. Canada*. [19] She stated that "in the process of monitoring compliance with the *International Covenant on Civil and Political Rights*, however, the Human Rights Committee of the United Nations has expressed the view that corporal punishment of children in schools engages Article 7's prohibition of degrading treatment or punishment:" [20] Furthermore, McLachlin C.J. made reference to Article 3 of the *European Convention on Human Rights*[21], which forbids inhuman and degrading treatment. McLachlin C.J. stated that the European Court of Human Rights interpreted this article as including the parental treatment of a child. She used the European Court of Human Rights' decision in *A. v. United Kingdom*[22] as precedent in the SCC decision[23]. McLachlin C.J. approved of the court's "focus on the prospective effect of the corrective force upon the child, as required by s. 43 [of the Criminal Code]", which was the issue in the SCC case. This shows that the SCC will look to International and Regional Human Rights Courts for precedent and for interpretation, especially when it pertains to treaties to which Canada is a party,[24] like the *United Nations Convention on the Rights of the Child*[25] and the *International Covenant on Civil and Political Rights*[26].

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[18] *Report of the Human Rights Committee*, vol. I, UN GAOR, Fiftieth Session, Supp. No. 40 (A/50)/40) (1995), at paras. 426 and 434; *Report of the Human Rights Committee*, vol. I, UN GAOR, Fifty-fourth Session, Supp. No. 40 (A/54/40) (1999), at para. 358; *Report of the Human Rights Committee*, vol. I, UN GAOR, Fifty-fifth Session, Supp. No. 40 (A/55/40) (2000), at paras. 306 and 429.
[19] [2004] 1 S.C.R. 76 at para 33. [*Canadian Foundation*]
[20] *Ibid*.
[21] 213 U.N.T.S. 221.
[22] Eur. Court H.R. [1998], *Reports of Judgments and Decisions* 1998-VI, at 2699.
[23] *Canadian Foundation* at para 34.
[24] While Canada cannot become a party to the *European Convention* it is permanent observer at the Council of Europe as of May 1996. *Kindred* at 856.
[25] GA res. 44/25, annex, 44 UN GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989); 1577 UNTS 3; 28 ILM 1456 (1989).
[26] Can. T.S. 1976 No. 47.

III. EUROPEAN HUMAN RIGHTS COURT

The Council of Europe and the European Union started out with a human rights justice system similar to the one the UN has today. It initially had a Commission, which received complaints and would give non-binding opinions.[27] However, seeing the inefficiency and slowness of the UN system, Europe "was the first to commit its members to certain internationally legally binding human rights norms,"[28] through the abolishment of the European Commission and the creation of the European Court of Human Rights.[29] This Court has "full jurisdiction to adjudicate upon complaints lodged by states or individuals." [30] Thus, the Court's jurisdiction is compulsory for all states, the individuals have direct access to the Court, and its decisions are final and binding on the states in question.[31] Currie defines the European Court of Human Rights "as a supranational constitutional court with jurisdiction over issues of basic human rights and freedoms as set out in the *European Convention[on Human Rights]*." [32]

i. The Enforcement Mechanism

The European regional system of enforcement of human rights law is much more evolved than the UN system or the Inter-American system. "The European Court of Human Rights is currently the only supranational human rights tribunal in the world that permits individuals to make direct claims against member states. In contrast to the Inter-American Court, the jurisdiction of the European Court is compulsory for all ECHR states parties."[33] In addition to the final judgments being binding, there are interim measures that are available to the European Court. While it is not stated specifically in the

[27] *Currie*, at 433.
[28] *Ibid*.
[29] See *ECHR* Protocol No. 11 (1994) ETS No. 155, which replaced the European Commission and Court of Human Rights with the new European Court of Human Rights. When it existed, the European Commission of Human Rights received inter-state and individual petitions.
[30] *Supra* note 27.
[31] *European Convention for the Protection of Human Rights and Fundamental Freedoms*, ETS 5, Article 46. [*European Convention*]
[32] *Currie*, at 433-434; and *European Convention*, Article 1.
[33] Freeman, Mark; Gibran van Ert, *International Human Rights Law. Essentials of Canadian Law* (Irwin Law Inc, 2004), at 438. [*Freeman*]

European Convention, Rule 39 of the Rules of the Court,[34] gives the European Court the power to order interim measures. This power has been confirmed by the Court in cases like *Cruz Varas v. Sweden,*[35]*Conka v. Belgium,*[36] *and Mamatkulov and Abdurasulovic v. Turkey,* concluding that "any state party to the Convention to which interim measures have been indicated in order to avoid irreparable harm being caused to the victim of an alleged violation *must* comply with those measures and refrain from any act or omission that will undermine the authority and effectiveness of the final judgment."[37][emphasis added]

Furthermore, the European Court is permanent while the Inter-American Court is only part-time. [38] Its decisions have great influence on European states,[39] as seen in the great changes to the legislation of many of the states parties. Cases like, *Dudgeon v UK,*[40] *Malone v UK,* [41] and *Silver v UK,*[42] where the European court found a violation of Article 8 of the European Convention, have gone on to decriminalize homosexual activity in Northern Ireland, update the legislation regarding phone tapping, and put limits on State interference with prisoners' correspondence, respectively.[43] Not only have the European Court decisions changed legislation but they are being used as precedents in Irish case law to give one example.[44] The European Court shows an "almost revolutionary assertion of judicial power."[45]

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[34] ECHR, *Rules of the Court*, (July, 2009), online: <http://www.echr.coe.int/NR/rdonlyres/D1EB31A8-4194-436E-987E-65AC8864BE4F/0/RulesOfCourt.pdf>.
[35] (1991), vol. 201, E.C.H.R. (Series A).
[36] No. 51564/99 , [2001], I, E.C.H.R.
[37] No. 46827/99 ; 46951/99, [2003], E.C.H.R. at paras. 107-10.
[38] *Supra* note 33.
[39] R. Blackburn, ed., *The European Convention on Human Rights: The Impact of the European Convention on Human Rights on Human Rights in the Legal and Political Systems of Member States* (London: Mansell, 1996).
[40] Judgment of 22 October 1981, Series A.45; (1982) 14 EHRR 149.
[41] (1985) 7 EHRR 14.
[42] Judgment of 25 March 1983, Series A.61; (1975) 5 EHRR 347; and *Golder v UK*, Judgment of 21 February 1975, Series A.18; (1979–80) 1 EHRR 524.
[43] Angela Hegarty, *Human Rights, A: An Agenda for the 21st Century* (Taylor & Francis, 2003), at 51. [*Hegarty*]
[44] *Airey v Ireland*, Judgment of 9 October 1979, Series A.32; (1979–80) 2 EHRR 305; and *Johnston v Ireland*, Judgment of 18 December 1986, Series A.112; (1987) 9 EHRR 203.
[45] Gearty, CA, 'The ECHR and the protection of civil liberties: an overview' [1993] CLJ 91.

Nevertheless, Currie has stated that "the human rights protections of the *European Convention* and its various protocols are largely limited to civil and political rights, corresponding roughly to the protections of the *ICCPR*, and do not extend to the economic, social, and cultural rights recognized in the *ICESCR*."[46] While, this is true, it does not detract from the fact that the European system is the most evolved right now, since none of the other systems in the world deal with the *ICESCR* rights either. Instead they have greater problems of enforcing the civil and political human rights than the European Court.

The European enforcement system is the most evolved because, while it does not have a "formal mechanism for enforcement of its decisions, (…) the record of compliance with its judgments has been exemplary."[47] This is largely due to the fact that there are repercussions in place in case of non-compliance. If there is a decision of the European Court that is not being followed, then the matter goes to the Committee of Ministers within six months.[48] "The Parliamentary Assembly assists with the enforcement of judgments via its Assembly Monitoring Committee, which may adopt adverse resolutions and remove a state delegation's credentials." [49] When they signed the *European* Convention all states agreed to abide by the same rules and suffer the same consequences. It is a contract and true to contract law definition it is a meeting of the minds.

ii. Cultural Affinity

This meeting of the minds is the foundation of the Council of Europe and of the European Union. "One of the political bases of the ECHR, as inscribed in its Preamble, was that 'European countries … are like-minded and have a common heritage of political tradition, ideals, freedoms, and the rule of

[46] *Currie*, at 434.
[47] *Freeman*, at 440; and R. Blackburn & J. Polakiewicz, *Fundamental Rights in Europe: The European Convention on Human Rights and its Member States, 1950–2000* (Oxford: Oxford University Press, 2001).
[48] *Freeman*, at 441.
[49] *Ibid.*

law.'"[50] This may be why the European Union Court of Human Rights has had more success at enforcement than the UN Human Rights Committee. However, it has been argued that the European Court has started having similar problems of enforcement like the UN due to the enlargement of the Council of Europe.[51] The Council has responded to this threat on the European Court's capability by adopting Protocol 14 in June 2004, "amending the ECHR to give the Court more power to effectively and rapidly deal with applications."[52] Protocol 14 give a single judge the authority to declare an application inadmissible, thus speeding the process.[53] Furthermore, there is a Committee of Ministers, which is responsible for the execution of court decisions.[54] "This is a political body, the executive organ of the Council of Europe,[55] and consists of the Foreign Ministers, or their deputies,[56] of all the member states."[57] This Committee of Ministers has created a Steering Committee for Human Rights to propose changes, which are then quickly applied by the Committee of Ministers.[58] Thus, the European system is not only doing all that it can to ensure enforcement but it is taking quick action towards that goal.

iii. Enforcement through Economics

Another big difference between European human rights and the other systems is that "in recent years, [the states'] reasons for joining the Council of Europe and ratifying ECHR have moved from the

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[50] *Kindred* at 862.
[51] *Supra* note 48.
[52] See Council of Europe, *Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Amending the Control System of the Convention,* (2004) 62 Human Rights Information Bulletin 63 and *Explanatory Report,* at 66. Online: Human Rights Information Bulletin <http://www.coe.int/T/E/Human_rights/hribe.asp#TopOfPage>.
[53] *Kindred* at 863.
[54] *European Convention,* Article 46(2). See also Council of Europe, Committee of Ministers, *Rules*, (10 January 2001), online: <http://cm.coe.int/intro/e-rules46.htm>.
[55] Council of Europe, ETS No. 001, *Statute of the Council of Europe*, (1949), Article 13, online: <http://conventions.coe.int>. [*Statute of the Council of Europe*]
[56] *Statute of the Council of Europe,* Article 14.
[57] *Shaw,* at 332.
[58] Council of Europe, Committee of Ministers, *Declaration on Guaranteeing the long-term effectiveness of the European Court of Human Rights,* adopted at 112th session (15 May 2003). The Declaration calls for an amending protocol to the *European Convention* and other relevant human rights instruments to implement the recommended reforms. The Steering Committee's final report was adopted on 4 April 2003, and is registered as CM doc. 2003/55. *Supra* note 48.

ideological plane to an economic one."[59] The majority of the new European Union members (mostly Eastern European countries) are expected to join first the Council of Europe and then to ratify the *European Convention*, before they are considered for membership into the European Union. In fact, "no country has joined the EU without first joining the Council of Europe."[60] While the merits of such a policy may be critiqued, its effect is one of uniformity and cohesiveness. It ensures that all the EU member states are not only parties to the same human rights conventions but have ratified them in their own countries. It can be argued that from the outset, the compliance with human rights is being enforced. Member states have to comply with the human rights or face the economic consequences, such as not being admitted into the EU or the stopping of funding. While this seems like a good and efficient solution to the compliance problems, Angela Hegarty concludes in her book *Human Rights, A: An Agenda for the 21st Century* that "the use of economic pressure to secure human rights improvements remains very limited,"[61] and that it does not replace the human rights supervising institutions as well as their courts of justice. Hegarty proposes the strategy of economic pressure as a supplement, that can be applied all over the world where there are breaches of human rights. Hagerty, however, is talking about negative economic enforcement, in the form of embargos, while the EU's strategy is one of positive economic incentives to ensure compliance with human rights.

IV. INTER-AMERICAN COURT OF HUMAN RIGHTS

The Inter-American system was established under the *American Declaration of the Rights and Duties of Man*[62], the *Charter of the Organization of American States*[63] and the *American Convention on*

[59] *Kindred* at 861.
[60] Council of Europe, *Did You Know?*, online: <http://www.coe.int>.
[61] *Hegarty*, at 197.
[62] O.A.S. Res. XXX, OEA/Ser.L.V/II. 82 doc. 6 rev. 1 at 17 (1992). [*American Declaration*]
[63] 30 April 1948, OAS T.S. 1C and 61, [1990] Can. T.S. No. 23 (entered into force 13 December 1951), as amended by *Protocol of Buenos Aires* (1967), *Protocol of Cartagena de Indias* (1985), *Protocol of Washington* (1992), and *Protocol of Managua* (1993).[*OAS*]

Human Rights.[64] The "OAS created the Inter-American Commission on Human Rights in 1959, initially to promote awareness and respect for human rights and make recommendations to states, a task expanded to the consideration of individual communications alleging violations of human rights by OAS member states after 1965."[65] Although it is a regional system, it is much more similar in its operation and enforcement to the UN Human Rights Commission than to the European Court of Human Rights. [66] Since 1979, there are two bodies who deal with the promotion and protection of human rights, the aforementioned Commission and the Inter-American Court of Human Rights.[67] The Inter-American Court of Human Rights receives petitions from both states and the Commission itself, and then issues advisory opinions. The main difference between the Inter-American Court and the European Court is that the former does not receive petitions from individuals. It is the Inter-American Commission, who receives individual petitions, but similarly to the UN Committee, its opinions are not binding on states and it has no way in which to enforce them. [68]

It can be argued that the Inter-American Human Rights Institutions are more similar to the UN system rather than the European one because of the greater cultural and ideological variety of its members. Like the UN, it is made up of states with very different backgrounds, sizes, political ideologies and a history of breaches of human rights and of independent action. [69] Examples are the ideological differences between the United States of America and Cuba, or the size difference between Brazil and its small neighbouring state Suriname. Furthermore, many of the states have a history of political and economical instability, and of breaches of human rights. Last but certainly not least, while it is a regional organization, the OAS spans two continents: North and South America. In comparison, the

[64] 22 November 1969, OAS T.S. No. 36 (entered into force 18 July 1978).
[65] *Kindred*, at 865.
[66] *Supra* note 17.
[67] *Freeman*, at 426 and 434.
[68] *Supra* note 17.
[69] Organization of American States, online: OAS Member States <http://www.oas.org/en/states/member_states.asp>. [*OAS Website*]

European Union was initially formed by a tiny group of like-minded states who had a similar amount of power or leverage in their small area of Europe.

i. The Problem of the State versus State Complaint Mechanism

The Inter-American Court of Human Rights faces similar problems to the UN Commission.[70] If the whole compliance system is based on state reporting, then it has failed completely in its enforcement duties due to the political considerations that tie the hands of states. Just like in the UN, to date, no state has submitted a petition to the Court against another state.[71] This problem is further aggravated when comparing the large number of individual petitions to the Inter-American Commission with the relatively few judgments of the Inter-American Court, all submitted to it by the Commission itself.[72] However, a solution to this problem is developing in the form of active NGOs who are able to bring petitions to the Commission, and then in turn the Commission may submit them to the Inter- American Court. While this is a long and cumbersome system, it has proven its significance through the Court's judgments on the 'Honduran Disappearance Cases'.[73] "These were the first international judgments dealing with forced disappearance and led to groundbreaking rulings on the nature of state obligations. [74] Since then, the [Inter- American] Court has rendered major judgments on issues such as *habeus corpu*s guarantees in states of emergency,[75] the death penalty,[76] and the abduction, torture, and murder

[70] *Freeman*, at 439.
[71] *Freeman*, at 434- 35.
[72] As of 1 January 2003, the Court had rendered ninety-seven judgments concerning thirty-eight separate contentious cases, seventeen advisory opinions, and more than one hundred orders for provisional measures. See *OAS Website.*
[73] The cases are: a) the *Velásquez Rodríguez Case*, including (i) *Preliminary Objections* (1987) I/A Court HR Series C no. 1, (ii)*Judgment* (1988) I/A Court HR Series C no. 4, (iii) *Compensatory Damages* (1989) I/A Court HR Series C no. 7, and (iv) *Interpretation of the Compensatory Damages Judgment* (1990) I/A Court HR Series C no. 9; b) the *Godínez Cruz Case*, including (i) *Preliminary Objections* (1987) I/A Court HR Series C no. 3, (ii) *Judgment* (1989) I/A Court HR Series C no. 5, (iii) *Compensatory Damages* (1989), I/A Court HR Series C no. 8, and (iv) *Interpretation of the Compensatory Damages Judgment* (1990) I/A Court HR Series C no. 10; and c) the *Fairén Garbi and Solís Corrales Case*, including (i) *Preliminary Objections* (1987) I/A Court HR Series C no. 2, and (ii) *Judgment* (1989) I/A Court HR Series C no. 6.
[74] *Freeman*, at 436-437.
[75] *Advisory Opinion OC-9/87* (1987) I/A Court HR Series A no. 9. The opinion was requested by the Inter-American Commission on Human Rights.
[76] *Advisory Opinion OC-3/83* (1983) I/A Court HR Series A no. 3.

of street children by police officers.[77] While the jurisprudence of the Court is somewhat underdeveloped in comparison to that of the European Court of Human Rights, it has greater expertise in human rights matters that have arisen more frequently in OAS member states than in Europe, such as forced disappearances and amnesty laws." [78] The European Court has mostly dealt with cases that involved articles 5, the right to liberty and security of the person, and 6 , the right to a fair hearing, of the *European Convention.*[79] The Inter-American Court has furthermore "developed a much richer jurisprudence of remedies. Today, as democratic practices consolidate throughout the Americas, the Court's docket is starting to focus on less extreme types of violations ranging from wrongful dismissal of judges to film censorship."[80] Nevertheless, although it has a wider range of experience the Inter-American Court is still plagued by a lack of enforcement of its decisions.

V. CULTURAL RELATIVISM

"Cultural relativism has come to replace arguments based on state sovereignty as the greatest challenge to human rights."[81] This has been argued in the recently as stemming from the differences in beliefs between Western and Eastern countries, which have surfaced as Western countries criticize Eastern countries for not upholding human rights. This criticism has led Eastern countries to uphold the theory of cultural relativism, which argues that "international human rights norms are a Western construct imposed on the rest of the world."[82] This debate is strengthened by the difficulty in reconciling collective rights, which are more valued in Eastern countries, with individual rights, which are more valued in Western countries.[83] An army newspaper article, broadcast on the Voice of Vietnam Radio in

[77] *"The Street Children Case" (Villagrán Morales et al. v. Guatemala)*, including (i) *Preliminary Objections* (1997), I/A Court HR Series C no. 32, (ii) *Judgment* (1999), I/A Court HR Series C no. 63, and (iii) *Reparations* (2001), I/A Court HR Series C no. 77.
[78] *Supra* note 74.
[79] *Freeman*, at 440.
[80] *Supra* note 74.
[81] *Kindred*, at 886.
[82] *Kindred*, at 886.
[83] *Kindred*, at 888; and *Supra* note 5.

1995 stated that "human rights cannot be separated from historical, geographical and cultural conditions and the development of different countries and peoples."[84] However, at the same time the Vietnamese article admits that there are some basic, fundamental human rights that are universal. Nevertheless, due to these cultural and ideological differences the enforcement as well as the simple agreement on common human rights is very hard to accomplish. In order for a human rights court's decisions to be binding all member states must agree, a thing that is much harder to do within a global forum such as the United Nations, rather than a regional one, such as the European Union or the OAS.

VI. CURRENT ISSUES and POSSIBLE SOLUTIONS

While human rights law has been evolving through the universal recognition of human rights, all three systems discussed in this essay still have a lot of room for improvement in the area of enforcement,[85] starting from when the states sign on to the treaties all the way to compliance with the court's decisions. "Among the more prominent areas of controversy are the permissibility of reservations to universal or regional human rights treaty regimes; the customary status of human rights norms; whether the concept of universal human rights norms entails universal interpretation and application of these norms, or whether there is room for interpretations and applications sensitive to contextual factors such as local cultural traditions; and whether and how to strengthen enforcement mechanisms by granting individuals, the ostensible beneficiaries of human rights, the necessary standing to ensure compliance."[86]

States still have the choice of 'opting-in' to complying with human rights court's decisions even when they have signed the convention that created that court. This seems shocking when human rights have

[84] *Kindred*, at 887.
[85] There is also great room for improvement in the area of recognition of economic, social and cultural rights. These rights do not even have committees or courts set up, similar to the ones talked about in this essay, which deal with petitions from states and individuals regarding civil and political rights. See *Currie*, at 445. This essay did not address this issue because it focuses on enforcement, and since there are no courts there can be no formal, legal enforcement to talk about.
[86] *Currie*, at 437.

been declared as universal.[87] However, "this peculiarity flows from the sovereign nature of the state as the principal subject of international law."[88] Therefore, the issue of enforcement will be solved only when the sovereign nature of states will be reconciled with the universal and individual nature of human rights.[89] This can only be done through the willingness of states themselves to "further dilute their hold on the privileges of sovereignty and to subject themselves to legal processes designed to give substance to the lofty principles they have espoused in the *Universal Declaration*, the covenants, and other human rights instruments."[90]

Solutions have ben proposed, which argue that human rights violations should be seen affecting everyone, not only individuals, or specific states, but the entire international community. "In this way, a claim against an offending state could potentially be brought by any state on the basis that its interests (as part of the broader interests of the international community) have been affected by the alleged violation."[91] This opens the opportunity for any state to be involved and take a stance since human rights concerns all humans. Hegarty argues that this is in accordance to human rights law because "each Contracting State is viewed as both the lawful subject of the Convention and, by implication, its principal guardian."[92] While, this utopian solution is good in theory, the reality as well as the potential repercussions may not be. First, as stated before, the political considerations would make this solution be rarely used by states.

And second, if a state does complain or report on another state in the future, by applying the same ideological obligation, that state would also have to help the other state abide by human rights law,

[87] World Conference on Human Rights, *Vienna Declaration and Programme of Action*, UN doc. A/CONF. 157/23 (1993) at para. 5.
[88] *Currie*, at 441.
[89] Thomas Buergenthal, "InternationalHuman Rights Law and Institutions: Accomplishments and Prospects" (1988) 63 *Washington Law Review* 1–19; and Jayawickrama, Nihal, *Judicial Application of Human Rights Law, The: National, Regional and International Jurisprudence* (Cambridge University Press, 2002), at 155.
[90] *Currie*, at 444.
[91] *Currie*, at 442.
[92] *Hegarty*, at 42.

through monetary or educational means. It is unlikely that states will become such strict adherents to Hegarty's theory, and that they will become the subjects as well as positive active guardians of human rights.

VII. CONCLUSION

The lack of effective enforcement mechanisms has been one of the major weaknesses held against human rights law in the past. With all its shortcomings,[93] the European enforcement system can be used as a template in the future to strengthen the manner in which we enforce international law. The European Court of Human Rights is the most effective one of the three that have been discussed in this essay and arguably "of all supranational human rights systems."[94]

The three main challenges posed to human rights law enforcement are the reconciliation of state "sovereignty with ever-growing pressures to relinquish aspects thereof for the greater, common good,"[95] the cultural relativism that is present in global systems as well as, to a certain extent, in regional ones, and finally the political willingness of states to hold other states accountable. As Jo M. Pasqualucci said in the book *The Practice and Procedure of the Inter-American Court of Human Rights*, "Compliance and non-compliance by states with their international obligations depends less on the formal status of a judgment and its abstract enforceability. Much more important is its impact as a force capable of legitimating governmental conduct and the perception of governments about the political cost of non-compliance."[96]

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[93] Steven Greer, *European Convention on Human Rights, The: Achievements, Problems and Prospects* (Cambridge University Press, 2006), at 316-326.
[94] *Freeman*, at 437.
[95] *Currie*, at 446.
[96] Jo M. Pasqualucci, *Practice and Procedure of the Inter-American Court of Human Rights, The* (Cambridge University Press, 2003) at 326; and Thomas Buergenthal, The Inter-American System for the Protection of Human Rights, in *Human Rights in International Law: Legal and Policy Issues*, (TheodoreMeron ed., 1984), at 439, 470.