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**ACCESS OF INDIVIDUALS
TO INTERNATIONAL TRIBUNALS
AND INTERNATIONAL HUMAN RIGHTS
COMPLAINTS PROCEDURES**

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I. INTRODUCTION

International law for a long period, practically till the end of the Second World War, treated States as exclusive subjects of international law. Human beings were not only deprived of any possibility to act in the international sphere but were under the exclusive sway of national States¹. Relations between State and its citizens were treated as belonging to domestic

¹ See A. Cassese, "Individuals" in *International Law: Achievements and Prospects*. M. Bedjaoui ed., Paris/Dordrecht/Boston/London, UNESCO/Martinus Nijhoff Publishers, 1991, p. 114; G. Sperduti, "L'individu et le droit international", *RCADI*, 1950, Vol II; F. von du Heydte, "L'individu et les tribunaux internationaux", *RCADI*, 1962, Vol. III.

jurisdiction fully regulated by States. The possibility of defence against illicit acts of States did not exist. In a case of violation of norms of international law and legitimate interests of individuals by a third country, only national State had the right to safeguard them by the exercise of diplomatic protection.

It is worth noting that the first precedent when individuals received access to international tribunals was created by the Central-American Court of Justice established by the Washington Convention of 20 December 1907 by the Central American States. This Court which existed from 1907 to 1917 received four individual claims which were recognized as inadmissible because they did not exhaust all domestic remedies.

After the First World War, new developments may be noted as representatives of minorities received the right of petition to the League of Nations concerning the violation of instruments establishing the system of minority protection. Another example of the right to present complaints was created by the International Labour Organisation which decided to confer on associations of workers and employers the right to claim non-compliance with ILO Conventions by Member States.

A radical change took place after the Second World War with the development of international human rights law. Individuals received access to complaint procedures established by regional and universal human rights instruments. Human rights are now considered as not belonging to domestic jurisdiction of States and individuals are now recognized as subjects of international law with actual and potential access to international justice.

II. ACCESS OF INDIVIDUALS TO INTERNATIONAL TRIBUNALS

1. THE INTERNATIONAL COURT OF JUSTICE AND THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

The Statute of the International Court of Justice (1945) takes a traditional position and does not foresee the possibility of access to it by individuals. As stated by Article 34, para. 1, "Only States may be parties in cases before the Court". The Court may request of public international organizations information relevant to cases before it, and receive such information presented by such organizations on their own initiative. Thus situations concerning individuals which may constitute a breach of an international obligation can be presented only by States in accordance with the principle of diplomatic protection. Advisory opinions, as stated in Article 65 of the Statute, may be given at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations.

Similarly the Statute of the International Tribunal for the Law of the Sea (1982), in Article 20, provides that the Tribunal shall be opened to States Parties and entities other than

States Parties in any case expressly provided for in Part XI² or in any case submitted pursuant to any other agreement conferring jurisdiction on the Tribunal which is accepted by all the parties to that case. The term "entities other than States Parties" obviously does not refer to individuals.

2. THE ACCESS OF INDIVIDUALS TO HUMAN RIGHTS TRIBUNALS

2.1 Inter-American Court of Human Rights and the Inter-American Commission on Human Rights

The American Convention on Human Rights "Pact of San José", adopted thirty years ago on 22 November 1969³ at San José, Costa Rica, in Article 61, provides that "1. Only the States Parties and the Commission shall have the right to submit a case to the Court". Thus direct access to the Court is not foreseen for individuals.

However, the Convention in Part VII states that the Inter-American Commission on Human Rights composed of seven members of high moral character and recognized competence in the field of human rights shall take action on petitions and other communications pursuant to its authority. As foreseen by Article 44, "Any person or group of persons, or any non-governmental entity legally recognized in one or more Member States of the Organization, may lodge petitions with the Commission containing denunciations or complaints of violation of this Convention by a State party".

A petition presented in accordance with Article 44 should fulfil a number of requirements: that the remedies under domestic law have been pursued and exhausted, that the subject of the petition is not pending in another international proceeding for settlement and that the petition contains the name, nationality, profession, domicile and signature of the person or persons or of the legal representative of the entity lodging the petition. The Commission shall consider inadmissible any petition if the requirements for its admissibility are not met, if it does not state facts that tend to establish a violation of the rights guaranteed by the Convention; if the petition is manifestly groundless or obviously out of order or it is substantially same as one previously studied by the Commission or by another international organization.

When a petition is considered admissible, the Commission requests information from the government of the State indicated as being responsible for the alleged violations and should

2 Part XI of the United Nations Convention on the Law of the Sea refers to the International Seabed Authority and its organs.

3 See text in *Human Rights. A Compilation of International Instruments*, Vol. II, Regional Instruments. New York, United Nations, 1997, pp. 14-36.

present to it the pertinent portion of the petition. After receiving this information, the Commission ascertains whether the grounds for the petition still exist. The Commission may conduct an investigation with the prior consent of the State in whose territory a violation has allegedly been committed.

The Commission shall place itself at the disposal of the parties concerned with a view to reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in the Convention. If a friendly settlement is reached, the Commission draws up a report which is transmitted to the petitioner and to the States Parties to the Convention and to the Secretary-General of the Organization of American States for publication. If a settlement is not reached, the Commission draws up a report setting forth the facts and stating its conclusions. The Commission makes recommendations and prescribes a period within which the State is to take measures to remedy the situation examined.

In accordance with Article 51, the matter may be submitted by the Commission or by the State concerned to the Court. Thus individuals, indirectly through their petition, may finally have access to the Inter-American Court⁴.

2.2 European Court of Human Rights

In accordance with Article 34 of Protocol N° 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms⁵, restructuring the central machinery established thereby: "The Court may receive applications from any person, non-governmental organizations or groups of individuals claiming to be victims of a violation of one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto".

The matter may be dealt with by the Court after all domestic remedies have been exhausted. Individual applications will be inadmissible if they are anonymous or substantially the same as a matter that has already been examined by the Court or already been submitted to another procedure of international investigation or settlement and contains no relevant new

4 See: T. Buergenthal, "The Inter-American Court of Human Rights and the OAS", *Human Rights Law Journal*, 1986, Vol. 7; A.A. Caçado Trindade, "El sistema interamericano de protección de los derechos humanos (1948-1995): Evolución, estado actual y perspectiva", in *Derecho internacional y derechos humanos/Droit international et droits de l'homme*, La Haye/San José, IIDH/Académie de droit international de la Haye, 1996, pp. 47-95; R. Nieto Navia, *La Corte Interamericana de Derechos Humanos: Su jurisprudencia como mecanismo de avance en la protección de los derechos humanos y sus limitaciones*, San José, IIDH, 1991; M.D. Vargas, "Individual access to the Inter-American Court of Human Rights", *New York University Journal of International Law and Policy*, 1984, Vol. 16, pp. 601-617.

5 See text *Council of Europe, European Treaties*, ETS, N° 155. The web-site of the Council of Europe. <http://www.coe.fr/eng/legaltext/treaties.htm>.

information. Any individual application submitted under Article 34 may be declared inadmissible when the Court considers it incompatible with the provisions of the Convention or the Protocols thereto, manifestly ill-founded or an abuse of the right of application. If the Court declares the application admissible, it pursues the examination of the case together with the representative of the parties and may undertake an investigation. At any stage of the proceedings of the application, the Court may decide to strike an application out of its list of cases when the applicant does not intend to pursue his application, the matter has been received or for any other reason it is no longer justified to continue the examination of the application. As in the case of petitions presented to the Inter-American Commission, the Court may place itself at the disposal of the parties concerned with a view to securing a friendly settlement.

The rules of the Court which entered into force on 1 November 1998 contain a number of provisions concerning procedures to be followed by the Court in dealing with individual applications. In particular, Rules 49, 52-57 and 59⁶.

In general, one may say that those provisions assure fully the access of individuals and groups of individuals to the European Court of Human Rights. The European model may be qualified as the most advanced.

3. INTERNATIONAL CRIMINAL TRIBUNALS

In the 1990s, an important step was taken towards the enforcement of international law and, in particular, international humanitarian law and the punishment of violations by the establishment of international criminal tribunals. The **International Criminal Tribunal for the Former Yugoslavia (ICTY)** established in 1993 by the Security Council⁷ has the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991. Its Statute lists as crimes which are within the jurisdiction of the Tribunal: grave breaches of the Geneva Conventions of 1949, violations of the laws of or customs of war; genocide and crimes against humanity. A person responsible for these crimes bears criminal responsibility. It is worth noting that the Statute underlines that the official position of any accused person, whether as Head of State or Government or as a responsible governmental official, shall not relieve such a person of criminal responsibility nor mitigate punishment.

6 The procedure followed by the European Court of Human Rights was presented at the conference in a detailed and comprehensive way by Dr. A. Drzemczewski.

7 According to the text of the statute adopted by the Security Council (see <http://www.un.org/icty/basic/statut/statute.htm>). Judges were sworn in November 1993 and the first proceedings started in 1994. The seat of the ICTY is in The Hague.

The International Tribunal consists of the Chamber, comprising three Trial Chambers and an Appeals Chamber. The Prosecutor and a Registry services both the Chambers and the Prosecutor. The Chambers comprise eleven independent judges elected by the General Assembly from a list submitted by the Security Council.

The Prosecutor is appointed by the Security Council on the nomination of the Secretary-General and initiates investigations *ex officio* or on the basis of information obtained from any source, particularly from governments, United Nations organs, intergovernmental and non-governmental organizations. Upon the determination that a *prima facie* case exists, the Prosecutor prepares an indictment containing a concise statement of the facts and the crime or crimes of which the accused is charged under the Statute. The Statute does not give *expressis verbis* the right to victim(s) or witness(es) to present the case directly to the Trial Chamber. However, as it states that the Prosecutor may obtain information, this means that individuals may also present information which may lead to an indictment.

An identical solution was also adopted for the **International Criminal Tribunal for Rwanda (ICTR)**, established by the Security Council in November 1994. In accordance with the Statute⁸, the ICTR has the power to prosecute persons responsible for genocide, crimes against humanity and serious violations of Article 3 common to the Geneva Conventions and Additional Protocol II. The territorial jurisdiction of the International Tribunal extends to the territory of Rwanda as well as to the territory of the neighboring States in the case of violations of humanitarian law committed by Rwandan citizens between 1 January 1994 and 31 December 1994. Both International Tribunals share the same Appeals Chamber and have the same Chief Prosecutor. Like the ICTY, the ICTR applies the principle of *non bis in idem*. The penalty imposed by the Trial Chamber is limited to imprisonment.

On 17 July 1998, the **United Nations Diplomatic Conference on the Establishment of an International Criminal Court (ICC)** adopted its Statute⁹. This represents a historical breakthrough in the struggle for the enforcement of international human rights and humanitarian law. No doubt the establishment of the International Criminal Court is an important element against the commitment of the most serious crimes of concern to the international community as a whole. The Statute will enter into force after ratification by 60 States. As of 1999, the Statute has been ratified by only 4 States.

In accordance with Article 5 of the Statute, the Court has jurisdiction with respect to the crime of genocide, crimes against humanity, war crimes and the crime of aggression committed after the entry into force of the Statute. The cases before the Tribunal may be initiated by

8 For the text of the Statute, see <http://www.ictt.org/statute.htm>. The seat of the ICTR is in Arusha, Tanzania.

9 For the text of the Statute, see http://www.un.org/law/icc/statute/99_corr/5.htm. The seat of the Court will be in The Hague.

a State Party which may refer to the Prosecutor a situation in which one or more crimes within the jurisdiction of the Court appear to be committed; by the Security Council acting under Chapter VII of the Charter of the United Nations; and by the Prosecutor who may initiate investigations *proprio motu* on the basis of information on crimes within the jurisdiction of the Court.

The Prosecutor analyses the seriousness of the information received. For this purpose, he or she may seek additional information from States, organs of the United Nations, intergovernmental or non-governmental organizations, or other reliable sources that he or she may deem appropriate, and may receive written or oral testimony at the seat of the Court. Thus individuals recognized as reliable sources may present information which may lead to the presentation by the Prosecutor to the Pre-Trial Chamber of a request to authorize an investigation. The Statute gives victims the right to make representations to the Pre-Trial Chamber which will decide whether it is a reliable basis to proceed with an investigation. The Court then determines whether a case is admissible or not. The admissibility of a case or the jurisdiction of the Court may be challenged by the accused or by a person for whom a warrant of arrest or a summons to appear has been issued, by a State which has jurisdiction over a case on the grounds that it is investigating or prosecuting the case has investigated or prosecuted it, and by a State from which acceptance of jurisdiction is required. The Court will be composed of 18 judges elected by the Assembly of States Parties and will comprise (a) a President (b) an Appeals Division, a Trial Division and a Pre-Trial Division, (c) the Office of the Prosecutor and (d) the Registry. The trial takes place before the Trial Chamber. A sentence of imprisonment shall be served in a State designated by the Court from a list of States which have indicated to the Court their willingness to accept sentenced persons.

III. UNITED NATIONS COMPLAINTS PROCEDURES

1. PROCEDURE 1503 FOR DEALING WITH COMMUNICATIONS RELATING TO VIOLATIONS OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

The Economic and Social Council, by its resolution 1503 (XLVII) of 27 May 1970, authorized the Sub-Commission on Prevention of Discrimination and Protection of Minorities to appoint a Working Group consisting of not more than five of its members, to consider all communications which appear to reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms¹⁰. The resolution provides that the Sub-Commission

¹⁰ This recommendation was preceded by the decision of the Economic and Social Council of 1959 that a confidential list of communications to the United Nations complaining of human rights violations should be distributed to the Commission on Human Rights and the Sub-Commission, Communications Procedures. UNHCHR website <http://www.unhchr.ch/html/menu6/2/fs7.htm>.

should consider in private meetings the communications brought to it by the decision of a majority of the members of the Working Group and to determine whether to refer to the Commission on Human Rights particular situations which appear to reveal a consistent pattern of gross and reliably attested violations of human rights requiring consideration by the Commission. It further requests the Commission on Human Rights to determine whether the situation requires a thorough study and a report to the Council, whether it may be a subject of an investigation by an *ad hoc* committee to be appointed by the Commission with the express consent of the State concerned.

In accordance with the resolution 1503, the Sub-Commission has drawn up rules of procedure to decide what communication may be accepted for examination. To be admissible it cannot run counter to the principles of the United Nations Charter or show political motivation, it should (also taking into account the replies of the Government concerned) reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms.

It may come from individuals or groups who claim to be victims of human rights violations, or have direct, reliable knowledge of violations. As a rule, communications containing obscene language or insulting remarks are inadmissible. The domestic remedies must have been exhausted unless it can be shown convincingly that solutions at the national level would be ineffective or would be extended over an unreasonable length of time. All actions taken under the 1503 procedure remain confidential unless the Commission reports thereon to the Economic and Social Council. Each year a Working Group of the Sub-Commission screens thousands of complaints received from individuals and groups alleging the systematic and gross violations of human rights. The list of States examined under the 1503 procedure by the Commission on Human Rights (as of 1999) contains 75 of them¹¹. On this list there are 15 American States¹².

2. COMPLAINTS PROCEDURES ESTABLISHED BY THE UNITED NATIONS HUMAN RIGHTS TREATIES

2.1 International Covenant on Civil and Political Rights and its Optional Protocol

In accordance with the Optional Protocol to the International Covenant of Civil and Political Rights¹³, States Parties recognized the competence of the Human Rights

11 United Nations Human Rights Debate. See <http://www.unhchr.ch/html/menu218/slot1./htm>

12 Antigua, Barbuda, Argentina, Bolivia, Brazil, Chile, El Salvador, Grenada, Guatemala, Haiti, Honduras, Paraguay, Peru, United States of America and Uruguay.

13 See text in *Human Rights. A Compilation of International Instruments*, Vol. I (First Part), Universal Instruments, New York/Geneva, United Nations, 1984, p. 41

Committee¹⁴, to receive and consider communications from individuals who claim to be victims of a violation by the State Party of any rights set forth in the International Covenant of Civil and Political Rights.

To be admissible the communication should be presented in written form after exhausting all available domestic remedies. It cannot be anonymous, or incompatible with the provisions of the Covenant.

A communication recognized admissible is considered by the Committee and its Working Group on communications which asks the State concerned to explain or clarify the problem and to indicate whether anything has been done to settle it. It may also ask the alleged victim for additional information. The findings of the Committee are always made public and reproduced in the Committee's annual report to the General Assembly.

The Optional Protocol was binding for 95 States¹⁵ in 1999. Up till 1996, 728 communications received from individuals were examined by the Committee which had concluded its work on 239 of them of which, in 181 cases, the violations of the Covenant had been stated¹⁶.

2.2 International Convention on the Elimination of All Forms of Racial Discrimination

The International Convention on the Elimination of all Forms of Racial Discrimination established (Article 14) a procedure which allows individuals or groups of individuals who claim to be victims of violation of any rights set forth in this Convention to present a complaint to the Committee on the Elimination of Racial Discrimination. The Committee consisting of 18 experts serving in a personal capacity is a body created for the monitoring of the implementation of the Convention. The communication may be presented only in the case where the State concerned is a party to the Convention and has declared that it recognizes the competence of the Committee to receive such complaints. In 1996, this declaration was made by 23 States¹⁷. A State which makes such a declaration may establish or indicate a body within its national legal order which shall be competent to receive and consider petitions from individuals and groups of individuals who claim to be victims of racial discrimination and who have exhausted other local remedies.

14 The Human Rights Committee composed of 18 independent experts is established in accordance with Part IV of the Covenant to monitor its implementation.

15 See *Human Rights, Major International Instruments. Status as of 31 May 1999*, prepared by J. Symonides and V. Volodin, Paris, UNESCO, 1999.

16 United Nations Human Rights web-site, <http://www.unhchr.ch/html/menu2/8/over.htm/>

17 The procedure came into operation in 1982 when 10 States declared that they accepted the Committee's competence to receive individual communications.

The Committee brings confidentially communications to the attention of the State Party alleged to be violating any provisions of the Convention. The identity of the petitioner(s) is not revealed without his or their express consent. The Committee considers communications in the light of all information made available to it by the State concerned and by the petitioner. After consideration of the communication, the Committee presents its suggestions and recommendations to the State concerned and to the petitioner.

2.3 Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

The Convention against Torture provides, in Article 22, that a State Party to the Convention may declare that it recognizes the competence of the Committee against Torture¹⁸ to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party to the provisions of the Convention.

To be recognized as admissible, a communication cannot be anonymous or incompatible with the provisions of the Convention, constitute an abuse of the right to submit communications and have been examined or be under examination under procedures of international investigation or settlement. All available domestic remedies must also have been exhausted.

Once declared admissible, the communication is considered by the Committee. In the light of all information available to it by individuals and by the State concerned, the Committee formulates its views thereon, which are transmitted to the author of the communication and the State concerned which is also invited by the Committee to inform it of the action it takes in conformity with the Committee's views.

IV. UNESCO'S COMMUNICATION PROCEDURE

In 1978 the Executive Board of UNESCO by its decision 104 EX/3.3 (4) instituted a special procedure for the examination of cases and questions submitted to UNESCO concerning the exercise of human rights in its sphere of competence. In the exercise of its competence, UNESCO is called upon to examine cases concerning violations of human rights which are individual and specific questions of massive, systematic or flagrant violations of human rights and fundamental freedoms which result either from a policy contrary to human rights applied *de jure* or *de facto* by a State or from an accumulation of individual cases forming a consistent pattern.

¹⁸ The Committee against Torture established in accordance with Article 17 of the Convention comprises 10 experts of high moral standing and recognized competence in the field of human rights. It is a monitoring body considering reports of States Parties on the measures undertaken for the implementation of the Convention.

To be considered admissible, a communication has to meet ten conditions set up in paragraph 14 of the decision 104 EX/3.3. Thus, it must not be anonymous, must originate from a person or a group of persons who can be reasonably presumed to be victims, or a person or group of persons or organization having reliable knowledge of an alleged violation of human rights falling within UNESCO's fields of competence. It must be compatible with the principles of the Organization, the Charter of the United Nations and other instruments in the field of human rights. Communications which are manifestly ill-founded, offensive, based exclusively on information disseminated through mass media, presented beyond a reasonable time-limit and which have not exhausted available domestic remedies shall not be considered.

The Executive Board decision did not specify which human rights fall within UNESCO's fields of competence. In practice, it has been accepted that the following belong to this category:

- the right to education;
- the right to share in scientific advancement and enjoy its benefits;
- the right to participate freely in cultural life;
- the right to information, including freedom of opinion and expression.

These rights may imply the exercise of others, in particular:

- the right to freedom of thought, conscience and religion;
- the right to seek, receive and impart information and ideas through any media and regardless of frontiers;
- the right to protection of the moral and material interests resulting from any scientific, literary or artistic production;
- the right to freedom of assembly and association for the purposes of activities connected with education, science, culture and information.

The specific characteristics of UNESCO's procedure. The procedure laid down in 104 EX/Decision 3.3 of the Executive Board of UNESCO has specific characteristics in comparison with similar procedures in other organizations of the United Nations System. (5) In accordance with 104 EX/Decision 3.3, a complaint may be directed at any Member State, for the very reason that it is a member of UNESCO. The right to present communications does not result from any specific human rights instruments adopted by the Organization.

The Committee's competence to examine individual communications concerning alleged violations of human rights in UNESCO's fields of competence has been gradually recognized by practically all UNESCO's Member States, and an increasing number of the governments concerned by the communications send representatives to the Committee and co-operate with it although they are under no legal obligation to do so. While the other procedures seem most often to take a conflictual and accusatory form, the UNESCO procedure -although it is largely similar- has from the very beginning been deliberately applied exclusively with a view

to seeking a solution with the State concerned. The desire shown by the Committee to take its decisions solely by consensus is no doubt a reflection of the same concern. However, what is perhaps the overriding characteristic of the UNESCO procedure is the emphasis, or indeed the insistence, on its strictly confidential nature, even after cases have been settled.

Decisions aimed at the amelioration of the communications procedure. The UNESCO Executive Board, at its 154th session (1998), invited the Director-General to seek views and comments of Member States concerning the examination of the methods of work of the Committee on Conventions and Recommendations.

In order to draw up proposals for improving the communications procedure and the working methods of the Committee which would lead to an improvement in the situation of alleged victims of human rights violations, a working group comprising six members was created¹⁹. The working group examined 21 proposals in the light of 104 EX/Decision 3.3. Taking into account the working group's recommendations, the Committee on Conventions and Recommendations agreed on five points²⁰ concerning the communications procedures:

- As to the admissibility of communications, the Committee stressed that the recognition of a communication's admissibility does not imply any condemnation of the government concerned. In order to speed up decisions concerning the admissibility of communications, only the governments concerned are requested to make their position known within a time limit of three months from the transmission of the communication by the Secretariat.
- When a communication submitted to the Committee is being examined or has already been examined by another body in the United Nations system, the Secretariat will check with this other body whether there is any unnecessary duplication or incompatibility. If there is any doubt, the Secretariat will submit the question to the Committee.
- When the government concerned fails to co-operate, the Committee may in its report to the Executive Board, draw the Board's attention to such a case and suggest a debate in the Executive Board in private meeting.
- Confronted with the fact that the very existence of the Committee and the communication procedure are not very well known, the Committee underlined the need to continue efforts by the Secretariat and the Member States to make the procedure better known.

19 The working group comprised members representing six electoral groups. Belgium; Russian Federation; Brazil; India; Senegal and Libyan Arab Jamahiriya.

20 Report of the Committee on Conventions and Recommendations, 156EX/52, Paris, 7 June 1999.

- On the question of the publication of its annual report, the Committee did not adopt any general rule but decided that it will decide under what circumstances each of its annual reports may be made public.

Decisions taken by the Committee and notes by the Executive Board do not change the basic principles on which the communications procedure is based but, nonetheless, may improve its effectiveness and the speed with which alleged violations of cultural rights are dealt with.

The procedure 104EX/3.3, though not too often utilized, can be qualified as effective. From 478 communications which, from 1978 to 1999, were examined by the Committee on Conventions and Recommendations, more than half - 289 - were settled. In 170 cases, victims of violations of human rights (individuals or groups) were liberated, 55 permissions to leave or enter a State concerned were obtained, 14 authorizations were given to publications or emissions of programmes previously forbidden and, in 7 cases, changes in discriminatory laws concerning education of ethnic and religious minorities were achieved.

V. CONCLUDING REMARKS

What is the prospect for the access of individuals to international justice in the 21st century? Will it be enlarged and reinforced? The answer to this question cannot but be positive. The progressive strengthening of the positions of individuals in international law, the recognition of the subjectivity of human beings will probably lead in the future to the opening of the International Court of Justice to individuals.

One may also predict the establishment of new human rights tribunals. In fact, the **Additional Protocol to the African Charter on Human and Peoples' Rights**, establishing an African Court on Human and Peoples' Rights, was adopted in June 1998 by the Heads of State and Government of the Organization of African Unity²¹. The jurisdiction of the Court shall extend to all cases and disputes submitted to it concerning the interpretation and application of the Charter, the Additional Protocol and any other African human rights convention. The Court may also, at the request of a Member State of the OAU, any of its organs, or any African organization recognized by the OAU, provide an opinion on any legal matter related to the Charter or to any African human rights instrument. As foreseen in Article 5, cases may be submitted to the Court: (a) by the Commission; (b) the State Party which has lodged a complaint to the Commission; (c) the State Party against which the complaint has been lodged at the Commission. The Statute provides further that the Court may, on exceptional grounds, allow individuals, non-governmental organizations and groups of individuals to bring cases before the Court which will submit to each regular session of the Assembly a report on the work. The

21 For the text see <http://www.lumn.edu/humanrts/africa/draft-addit-protocol.html>.

report shall specify, in particular, the cases in which the State has not complied with the Court's judgements. The Court shall consist of eleven judges, nationals of the Member States of the OAU, elected by the Assembly in an individual capacity from among jurists of high moral character and of recognized practical, judicial or academic competence and experience in the field of human and peoples' rights. The Protocol shall come into force one month after eleven instruments of ratification or adherence have been deposited. In May 1999, it was ratified by 2 States. What is the prospect for the establishment of human rights tribunals in other regions or subregions? No doubt there is a need for a regional system for the promotion and protection of human rights in Asia and the Pacific region. The absence of such a regional system may be explained by the lack of homogeneity among the countries of the region and strong cultural, religious and ideological diversity. The World Conference on Human Rights (Vienna, 1993) reiterated the need to establish regional and subregional arrangements for the promotion and protection, of human rights where they do not already exist. Similarly, the General Assembly and the Commission on Human Rights adopted a series of resolutions in which they affirm the value of regional arrangements for human rights in the Asia and Pacific region. It seems that the positive experience of regional systems for America, Europe and Africa, the pressure of United Nations, international public opinion, non-governmental organizations and civil society will lead to the establishment sooner or later of such systems for Asia and the Pacific.

The 21st century will also witness further broadening and strengthening of the right of individuals to present complaints concerning alleged States' violations of their rights. In this context, it is worth noting that the General Assembly in October 1999 already adopted the **Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women**²².

As foreseen by Article 1, a State Party to the Protocol recognizes the competence of the Committee on the Elimination of Discrimination against Women to receive and consider communications which may be submitted by or on behalf of individuals or groups of individuals, under the jurisdiction of a State Party, claiming to be victims of a violation of any rights set forth in the International Convention on the Elimination of All Forms of Discrimination against Women (1979). Communications shall not be anonymous, should be presented after the exhausting of all available domestic remedies and should concern a State Party to the Protocol. The Committee should consider communications received under the Protocol in the light of all information made available to it by or on behalf of individuals or groups of individuals and by the State Party concerned. Communications shall be examined at closed meetings. After examining a communication, the Committee shall transmit its views on the communication, together with its recommendations, if any, to the parties concerned. The State Party is obliged to submit to the Committee a written response, including information on any actions taken in the light of the view and recommendations of the Committee. The Protocol shall enter into force three months after the date of the deposit with the Secretary-General of the tenth instrument of ratification or accession.

22 Resolution of the General Assembly 54/4 of 15 October 1999.

The Committee for Economic, Social and Cultural Rights decided to present to the United Nations Conference on Human Rights in Vienna (June 1993) a document suggesting the need to reflect on the possibility to elaborate and adopt an **Optional Protocol to the International Covenant on Economic, Social and Cultural Rights** which would allow individuals to present petitions concerning alleged violations of their economic, social and cultural rights. Such procedures should be entirely facultative and generally recognized limitations concerning the admissibility of individual communications should be approved. Among arguments for the adoption of this procedure, one can list the following:

- (a) the very principle of indivisibility of human rights leads to a logical conclusion that both categories of human rights, civil and political as well as economic, social and cultural, should have the same guarantees;
- (b) the acceptance of this quasi-judicial procedure will automatically upgrade economic, social and cultural rights;
- (c) the adoption of the right to petition on an international level will encourage governments to introduce more effective internal ways and means of recourse;
- (d) the adoption of such a protocol will force both individuals and governments to interpret and exercise the Covenant in a more precise way.

In the Vienna Declaration and Programme of Action (Part III, paragraph 75) the World Conference on Human Rights encouraged «... the Commission on Human Rights, in co-operation with the Committee on Economic, Social and Cultural Rights, to continue the examination of optional protocols to the International Covenant on Economic, Social and Cultural Rights». Although the reference is to protocols (in the plural) the only specific proposal before the Conference related to an optional communications procedure. The Commission on Human Rights in its resolution 1994/120, took note of the steps taken by the Committee for the drafting of an optional protocol granting the report of individuals or groups to submit communications.

The Committee on Economic, Social and Cultural Rights, at its 15th session in 1996, concluded its consideration of a draft Optional Protocol. The report of the Committee²³ was submitted for consideration by the Commission on Human Rights at its 53rd session in 1997.

The establishment of an effective system of international protection of economic, social and cultural rights based on the right of individuals to submit complaints can no doubt be recognized as a challenge for the 21st century. An important step in this direction has already been

23 Doc. E/CN.4/1997/105.

by the institution of the UNESCO procedure for individual complaints (1978) and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights adopted in El Salvador on 17 November 1988. The Protocol of San Salvador provides, in its Article 19, para. 6, that any violation of trade union rights or the right to education attributable to a State Party to the Protocol may give rise, through the participation of the Inter-American Commission on Human Rights, to the application of the system of individual petitions established by the American Convention on Human Rights. The Protocol entered into force on 16 November 1999.