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REGIONAL PROTECTION OF HUMAN RIGHTS

Dinah Shelton

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CHAPTER I

INTRODUCTION

The international protection of human rights developed as a distinct and fundamental branch of international law relatively recently, although a limited set of legal norms designed to protect individuals against mistreatment has been in existence since the beginnings of the Law of Nations. Even a cursory review of legal systems for the protection of human rights demonstrates the rapid expansion of this field since the end of World War II. During this period, nearly all global and regional organizations have adopted human rights standards and addressed human rights violations by member states. As a consequence, no state today can claim that its treatment of those within its jurisdiction is a matter solely of domestic concern.

This chapter takes a brief look at the history of human rights law, then examines the development of regional organizations and the role that promotion and protection of human rights play in them. It examines in particular the question of what human rights obligations states assume upon joining the regional bodies. To begin, the following reading outlines some key developments in human rights law at the global and regional levels.

Dinah Shelton, *The Promise of Regional Human Rights Systems in THE FUTURE OF HUMAN RIGHTS* (B. Weston & S. Marks, eds., Transnational Press, 2000) (revised and updated, some footnotes omitted).

... [R]egional systems are a product of the global concern with human rights that emerged at the end of the Second World War. Given the widespread movement for human rights, it should not be surprising that regional organizations being created or reformed after the War should have added human rights to their agendas. All of them drew inspiration from the human rights provisions of the United Nations Charter and the Universal Declaration of Human Rights.

... [Different] historical and political factors encouraged each region to focus on human rights issues. The Americas had a tradition of regional approaches to international issues, including human rights, growing out of regional solidarity developed during the movements for independence. Pan American Conferences had taken action on several human rights matters well before the creation of the United Nations. In addition, as early as 1907 some states in the region created the Central American Court of Justice. The court had jurisdiction over cases of "denial of justice" between a government and a national of another state, if the cases were of an international character or concerned alleged violations of a treaty or convention. This history of concern led the Organization of American States to refer to human rights in its Charter and to adopt the Inter-American Declaration on the Rights and Duties of Man about seven months before the United Nations approved the Universal Declaration of Human Rights.

Europe had been the theater of the greatest atrocities of the Second World War and felt compelled to press for international human rights guarantees as part of European reconstruction. Faith in western European traditions of democracy, the rule of law and individual rights inspired belief that a regional system could be successful in avoiding future conflict and in stemming post-war revolutionary impulses supported by the Soviet Union.

Somewhat later, African states emerged from colonization as self-determination became a recognized part of the human rights agenda; continued struggles for national cohesion as well as human rights abuses in South Africa encouraged regional action in Africa. The United Nations had also abandoned its earlier opposition to the creation of regional human rights system and actively supported the creation of a system in Africa. . . .

A[nother] impulse to regionalism came from frustration at the long-stalled efforts of the United Nations to conclude a human rights treaty to complete the international bill of rights. Indeed, it took nearly two decades to finalize and adopt the two UN Covenants. During the process, it became clear that the compliance mechanisms at the global level would not be strong and any judicial procedures to enforce human rights would have to be on the regional level. As a result, beginning with Europe, regional systems focused on the creation of procedures of redress, establishing control machinery to supervise the implementation and enforcement of the guaranteed rights. The functioning European and Inter-American courts are one of the great contributions to human rights by regional systems. The June 8, 1998

protocol to the African Charter, creating a court in the African system, . . . add[s] to the regional protections.

Thus, regional systems have elements of uniformity and diversity in their origins. All of them began as the global human rights system was developing and they were inspired by the agreed universal norms. At the same time, each region had its own issues and concerns. As the systems have evolved, the universal framework within which they began and their own interactions have exercised a strong influence. . . . Each uses the jurisprudence of the other systems and amends or strengthens its procedures in reference to the experience of the others.