REGIONAL SYSTEMS OF HUMAN RIGHTS

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The human civilization has always had concern for human rights throughout history even though the powerful groups in every community sought to take benefit from using their position more than others.[i] The problem of human rights violations is pervasive all over the world. The manner and extent of such violations is varied across different parts of the world. Although a uniform international standard is desirable, its feasibility must be viewed with circumspection. Keeping in mind this debate, the paper seeks to study the effectiveness of a regional system as compared to an international system.

The international human rights regime consists of international as well as regional arrangements, both of which strive to promote respect for and protect human rights.[ii] The United Nations is just part of this broader regime along with several regional regimes such as the European system, the Inter-American system, the African System and the new Arab System that came into force recently.

While the international system is controlled primarily by the UN and its agencies which operate on a global level and strive to guarantee all people the same standard of human rights, the regional systems are controlled by institutions set up under treaties or conventions particular to that region and which seek to provide a standard of human rights particular to the region depending on the level of development and social and economic conditions.

The research paper is divided into three sections which seek to analyze the effectiveness of regional systems. Section I deals with the concept of a regional system of human rights in general and analyze arguments both in favor and against such a system. Section II studies the prominent regional systems of human rights[iii] over the world in order to gain an understanding of their functioning. Section III analyzes the impact of these regional systems in human rights protection and juxtaposes it with the situation under the international system and concludes that regional systems are a more effective means of ensuring standards of human rights.

THE CONCEPT OF REGIONAL SYSTEMS OF HUMAN RIGHTS

Human rights become real only when proper mechanisms exist for protection and enforcement. When domestic institutions fail to uphold the human rights of citizens and in some cases turn out to be the violators of these rights, it may be possible or necessary to seek redress beyond these institutions. In order to achieve an effective implementation and improvement in the exercise of human rights, it is important to understand the regional and international mechanisms that exist and the remedies they provide.

The UN sets up an elaborate system for the protection of human rights, and at the heart of it lies the Universal Declaration of Human Rights (hereinafter "UDHR") which set a common standard of achievement, which recognized the inherent dignity and the equal and inalienable rights of all people in all nations. This was a breakthrough in terms of human rights in the world framework as it laid down the standard of human rights that every country ought to try and achieve.

The most recent mechanism put in place by the UN is the Human Rights Council created in 2006 which seeks to review and improve the mechanisms of human rights monitoring.[iv] The regional systems

of human rights that have been set up are parallel to the larger framework established by the UN.[v]

The UN initially feared the growth of regional systems due to the problem of dissolution and the fear of losing its monopoly on certain issues, including human rights. Yet, the UN recognizes the value of regional systems, especially as they can be more effective at enforcing human rights in a cultural context acceptable to the states.

The debate between regional and international systems of human rights is irreconcilable to the extent that there exist valid arguments for both systems. In order to be able to better understand the debate, the paper shall now analyze the major regional systems of human rights in the next section.[vi]

MAJOR REGIONAL SYSTEMS OF HUMAN RIGHTS: A STUDY

There exist four prominent regional systems that govern human rights. These are the European system, the Inter American system, the African system and the Arab system. The paper shall now analyze each of these systems in order to gain an understanding of how they function within their spheres.

EUROPEAN SYSTEM OF HUMAN RIGHTS

The European continent suffered much devastation from the effects of World War II. To renew efforts of peacekeeping and cooperation with one another after the war ended, leaders throughout the region founded three organizations: the Council of Europe, the European Union (formerly the European Coal and Steel Community), and later, the Organization for Security and Cooperation in Europe (formerly the Conference on Security and Cooperation in Europe).[vii]

COUNCIL OF EUROPE

In 1949, the Treaty of London established the Council of Europe (hereinafter "COE") based on principles of pluralist democracy, human rights, and the rule of law. The COE is a regional intergovernmental organization whose main role is to strengthen democracy, human rights and the rule of law throughout its member states which comprises of 47 countries.[viii]

The European Convention for the Protection of Human Rights and Fundamental Freedoms is designed to protect individuals' fundamental rights and freedoms. This Convention contains the classical human rights guarantees, including the right to life,[ix] the right not to be subject to torture or to inhuman or degrading treatment or punishment,[x] the right to liberty and security of person (article 5), and the right to respect for private and family life, home and correspondence.[xi]

The COE was initially joined by ten members at its inception in 1949.[xii] The membership has now swelled to 47 states with an annual budget of 201 million pounds. The COE has made many efforts to promote human rights in Europe and has been a pioneer in the field and has set up many human rights treaties and bodies. Primary amongst these are the European Convention for the Protection of Human Rights and Fundamental Freedoms, commonly known as the European Convention on Human Rights (hereinafter "ECHR"), the European Court of Human Rights, and the European Commission on Human Rights.

The ECHR's preamble provides for "the maintenance and further realization of human rights and fundamental freedoms," which "are the foundation of justice and peace in the world and are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the human rights upon which they depend." The Convention gives individuals, as well as states, the right to petition for redressal of human rights violations. Although the European Convention initially created an independent Commission and Court, the drafters made the Court's jurisdiction optional. They also established, but again made optional, the world's

first individual petition procedure for human rights violations.[xiii]

ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE

The Organization for Security and Cooperation in Europe (hereinafter "OSCE") is the largest regional security institution in the world. The OSCE was formerly known as the Conference on Security and Cooperation in Europe (hereinafter "CSCE").[xiv]

The OSCE tends to focus on human rights issues primarily through diplomatic intervention for conflict-prevention and mediation. The OSCE also engages in developing regional democracy, linking it with human rights.[xv] The OSCE has a comparative advantage in conflict prevention because the Council of Europe is not a security organization and its mandate is limited. The OSCE has also taken action on some situations where the Council of Europe and the United Nations have been inactive, such as with regard to citizenship and language laws in Estonia and Latvia, and the language law in Slovakia. On the other hand, the complaints procedure of the European Convention has no parallel in the OSCE.

THE EUROPEAN UNION

The origins of the European Union (hereinafter "EU") lie in the treaty of Paris of 1952 establishing the European Coal and Steel Community and subsequently in the Treaties of Rome of 1957 creating the European Economic Community and the European Atomic Energy Community. The entry into force on 1 November, 1993 of the Treaty on Economic Union converted these communities into the EU.[xvi]

All EU members have ratified the Council of Europe's European Convention of Human Rights and accepted the jurisdiction of the European Court of Human Rights as a prerequisite for joining the EU. The member states have set up common institutions to which they delegate some of their sovereignty so

that decisions on specific matters of joint interest can be made democratically at the European level.[xvii]

Although the mandate of the organisation has been expanded by the Treaty on European Union (Treaty of Maastricht), and further amended by the Treaty of Amsterdam, the new Treaty for Europe which was signed in 1997 and came into force in 1999, the EU's main concern lies in the field of economic, monetary and political issues.

In sum, such a European system avoided the complexity of the United Nations system. The two primary organs – the European Commission of Human Rights and the European Court of Human Rights are the primary enforcement mechanisms in the European system. The entire European system of human rights can be said to be based on three main treaties: the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention), the European Social Charter, and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. So far, the European system is known as the best system due to its coordination amongst the various human rights bodies which make the human rights mechanism in Europe the most effective amongst all other regional systems which shall be discussed ahead in the research paper.

INTER-AMERICAN SYSTEM OF HUMAN RIGHTS

The inter-American human rights system for the protection of human rights has two distinct legal sources, giving rise to a dual institutional structure of protection.[xviii] The principal human rights tool is the American Convention on Human Rights. In addition, three regional inter-American conventions seek to broaden the scope of protected human rights- the Inter-American Convention to Prevent and Punish Torture, the Inter-American Convention on Forced Disappearance of Persons, and the Inter-American Convention for the Prevention, Punishment, and Eradication of Violence against Women.[xix] The American Declaration on the Rights and Duties of

Man also plays a significant role in the protection of human rights.

Although the institutional structure is superficially very similar and the normative provisions are in most respects very similar, the conditions under which the two systems developed were very different. Within the Council of Europe, military and other authoritarian governments have been rare and short lived; however they were more or less the norm in Latin America during the time when these human rights were evolving.[xx]

The Inter-American system of enforcement of human rights is comparable to the one in Europe as looked at earlier in the research paper. Also like the European Convention, the American Convention provides for two specialized enforcement mechanisms; the Inter-American Commission on Human Rights and an Inter American Court of Human Rights. Thus, even this system ensures proper co-ordination in implementing human rights but it is not as efficient as its European counterpart.

AFRICAN SYSTEM OF HUMAN RIGHTS

The primary charter on Human Rights in Africa is the African Charter on Human and People's Rights which entered into force in 1986. One of the most distinctive features of the African Charter on Human and People's Rights is its recognition of collective rights.[xxi] Another distinctive feature which is present only in this charter is the recognition of the right to development.[xxii]

The African Charter on Human and Peoples' Rights was ratified by an absolute majority of States after an attempt to raise concerns over the condition of Africa by certain Heads of State of the OAU and certain NGOs. The Charter contains a list of the prerogatives and obligations, and also of the organs for the protection and defence of those same values.

A noteworthy point to note in African Charter is the absence of a "minority clause" similar to that of Article 27[xxiii] of the ICCPR. However, it does contain a substantive section on "Peoples' rights".[xxiv] This section of rights deal with such third generation

rights such as right to equality among peoples,[xxv] the right to development,[xxvi] to national and international peace and security, and to a decent environment.[xxvii]

For the enforcement of human rights, Article 30 of the African Charter on Human and Peoples' Rights provides for the establishment of an African Commission on Human Rights within the OAU. The mandate of the Commission is to promote Human and Peoples' Rights. The Commission receives communications from a State, when one State believes that another State Party has violated the provisions of the Charter. The Commission can only deal with a matter submitted to it after making sure that all local remedies, if they exist, have been exhausted.[xxviii]

THE ARAB SYSTEM OF HUMAN RIGHTS

The Arab Charter on Human Rights was adopted by the Council of the League of Arab States on 22nd May, 2004. It came into force on 15 March 2008. The Charter provides for a number of traditional human rights including the right to liberty and security of persons, equality of persons before the law, protection of persons from torture, the right to own private property, freedom to practice religious observance and freedom of peaceful assembly and association.

However, the UN feels that the Arab Charter on Human Rights contains provisions that do not meet international norms and standards, including the application of the death penalty for children, the treatment of women and non-citizens and the equating of Zionism with racism.[xxix]

The Charter, despite being a welcome step towards protection of human rights in the Arab World has many lacunas such as the preamble itself equating Zionism with racism, the derogation from certain essential rights in emergencies, and the provision of the Charter by far is that which gives the domestic law and legislature of the member countries precedence over the norms in the Charter.

The lack of a complaints mechanism as established in each of the other regional systems is a major constraint on guaranteeing effective access to justice for victims, especially as most Arab countries have yet to sign up to the UN complaints systems.

However, keeping the fact that the Charter into force only very recently in March, 2008, there is still hope that the disastrous effects of the flaws in the Charter will be realized and it would be amended accordingly to iron out these flaws.

REGIONAL SYSTEMS OF HUMAN RIGHTS IN THE LARGER FRAMEWORK OF GLOBAL HUMAN RIGHTS PROTECTION

The analysis of the major regional systems of human rights highlights the strengths and weaknesses of these systems and facilitates a better comparison to be made as to its effectiveness as compared to the international system.

Regional systems have undeniably widened the ambit of human rights in several parts of the world where the international system had not been able to permeate due to varied reasons. The alleged negative aspect of a regional approach is that it isolates the area thereby moving away from an international system, possibly at the expense of universalism. Moving the issue outside of the UN not only removes human rights from the international arena, but also could cause problems for the UN when attempting to enforce a human right. Some also contend that regionalism is inward looking, rather than attempting to create an international system applicable to all.[xxx]

These arguments cannot however hold in light of the success of the regional systems such as the European and the American system. This clearly negates the arguments that a regional system thwarts the standards of human rights since it can be clearly seen that the European system covers the violation of human rights in a more comprehensive manner by way of a mandatory complaint mechanism.

Another example of a successful regional system is the Inter-American System. The idea in creating a human rights framework in this system was to focus on human rights and uphold the democratic system. The problem has been that the system has been subject to political developments and power struggles in the region. However, on the whole, the system has been more region specific and it can be safely said that it has been more successful in dealing with its internal problems particular to its region than an international body would have been.

Similar to the UN, the Inter-American System has a Commission, whose task is to investigate gross and systematic violations of human rights. In 1965, it also was instituted an individual complaints process but it turned out to be problematic and not as successful as it was in the European system. Also, the Court and the Commission in the Inter-American system have not yet attained the level of acceptance as their European counterparts.[xxxi]

Even though the regional system in America has not been as successful as the one in Europe, all systems of human rights have definitely brought human rights to the forefront in their respective regions which has led to greater awareness and consequently lesser violation of human rights in those areas.

Also, because there is greater mutuality among the states in the region, there also can be greater development and focus on human rights acceptable to the member states of the region. Therefore, even though regional systems seem to bifurcate the systems of human rights into regional mechanisms, the impact of such bifurcation is the integration of human rights across the world.

CONCLUSION

The paper has analyzed the concept of regional systems. In terms of effectiveness, the European system has been the most successful, whereas the Arab system the least. This may be attributed to the fact that the European system is the oldest and has

consequently evolved the most while the Arab system came into force very recently and its true success or failure cannot be judged in such a short period of time. On taking a holistic view of all the systems, it may be said that regional systems are an effective system of implementing and monitoring human rights.

However, what must be remembered is that the international and regional systems for the protection and promotion of human rights are not necessarily incompatible. On the contrary, they ought to be used wisely in a manner to effectively compliment each other. The two approaches ought to be reconciled on a functional basis, in which the normative content of all international instruments, both international and regional should be similar in principle and along the lines of the UDHR.

The global instrument should contain the minimum normative standard while the regional systems should modify it as per their conditions by way of either adding further rights or refining certain rights.

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ⁱ V.S.Mani, "Human Rights and the United Nations: A survey", *Journal of Indian Law Institute,* Vol. 40 (1998), P. 38

ⁱⁱ Philip Alston (ed.,) *The United Nations and Human Rights: A Critical Appraisal*, 1ˢᵗ ed., Oxford University Press, New York, 1996, P. 1

ⁱ ⁱ ⁱ These have been restricted to European, Inter-American, African and the Arab systems.

ⁱᵛ See *Fiftieth Anniversary of the Universal Declaration*, United Nations' Office of the High Commissioner for Human Rights, available at http://www.unhchr.ch/html/50th/50anniv.htm

ᵛ A region is a specific area that includes a number of states. As a result of their similarities, the states tend to join together to create a common human rights system. Such systems are called regional systems of human rights and the most popular regional systems are the European, the Inter-American, the African and most recently the Arab system of human rights.

See Joan Fitzpatrick, *Human Rights in Crisis*, University of Pennsylvania Press, 19 (1994), Pp. 178-209.

ᵛⁱ Henry Steiner and Philip Alston, *International Human Rights in Context*, 1ˢᵗ ed., 2000, Oxford University Press, Oxford, P. 784

ᵛⁱⁱ *The European Human Rights System*, Human Rights Education Associates, available at:
http://www.hrea.org/index.php?base_id=143

ᵛⁱⁱⁱ The COE established the European Convention on Human Rights and Fundamental Freedoms, which entered into force in 1953, and is the main European human rights convention. It deals with civil and political rights, and is in that sense similar to the International Covenant on Civil and Political Rights.

See *International Norms and Standards Relating to Disability*, United Nations, available at:
http://www.un.org/esa/socdev/enable/comp301.htm

ⁱˣ Article 2 reads: Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

ˣ Article 3 reads: No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

ˣⁱ Article 8 reads: Everyone has the right to respect for his private and family life, his home and his correspondence.

ˣⁱⁱ Belgium, Denmark, France, Ireland, Italy, Luxembourg, the Netherlands, Norway, Sweden, and the United Kingdom.

ˣⁱⁱⁱ Dinah Shelton, *The Boundaries of Human Rights Jurisdiction in Europe*, Duke J. Comp. & Int'l L., 13 (1995)

ˣⁱᵛ The CSCE was created by the Helsinki Final Act in 1975 and was renamed as the OSCE in 1994.

ˣᵛ *Supra* 13.

ˣᵛⁱ *Supra* 6, P. 790.

ˣᵛⁱⁱ *The European Human Rights System*, Human Rights Education Associates, available at:
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ˣᵛⁱⁱⁱ One has evolved directly from the Charter of the Organization of American States, while the other was created by the American Convention in Human Rights. The Inter American Commission on Human Rights is an organ of both the charter based regime and of the one derived from the American Convention on Human Rights (hereinafter "American Convention"), and at times both regimes are applicable to the same case, thereby strengthening the institutional pressures that can be put on governments charged with violation of human rights.

See Theodor Meron, *Human Rights in International Law: Legal and Policy Issues*, 1ˢᵗ ed., 1985, Clarendon Press, Oxford, P. 439.

ˣⁱˣ Víctor Rodríguez Rescia and Marc David Seitles, *The Development of The Inter-American Human Rights System: A Historical Perspective and a Modern-Day Critique*, Journal of Human Rights, 12 (2000), Pp. 593-633.

ˣˣ The problem with the so called "Inter American system" is that in reality it is only a Latin American system since neither the United States nor Canada has ratified the American Convention. Currently 26 nations have ratified the American Convention but all of them are South American countries, thereby not making the system truly Inter-American.

Supra 6.

ˣˣⁱ Rachel Murray, *Groups and the African Charter on Human and Peoples' Rights*, Human Rights Quarterly, 25 (2003), Pp. 213-236.

ˣˣⁱⁱ The human rights system in Africa is primarily under the African Union. The African Union is the regional organisation for Africa which was established in 2001 to replace the Organisation of African Unity. While the OAU focused on three main issues, namely- safeguarding African sovereignty, territorial integrity, and a commitment to

decolonisation and liberation struggle, the objectives of the AU incorporate specific reference to human rights principles as well as concepts such as democratic principles and good governance.

xxiii Article 27 of the ICCPR: In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

xxiv Articles 19 to 24 of the African Charter

xxv Article 19.

xxvi Article 21(1).

xxvii Article 24.

xxviii Article 49.

xxix One interesting fact to note in the Arab Charter is that even though it is based on the principles of Islamic Law, there is no provision for any duties as such, unlike in the African Charter, which has individual duties specifically mentioned in the Charter itself.

See *Arab rights charter deviates from international standards, says UN official*, The UN News Centre, available at: http://www.un.org/apps/news/story.asp?NewsID=25447&Cr=human&Cr1=rights.

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