

LOCATING AN INDIVIDUAL RIGHT OF INTERNATIONAL PETITION FOR STATES' HUMAN RIGHTS VIOLATIONS

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ABSTRACT

To date, States have controlled whether and when to allow individuals to present human rights complaints against them before regional and United Nations courts and oversight bodies. The unequal geographic coverage of regional human rights regimes and the requirement of affirmative State consent to all UN, and some regional, treaty-based individual complaint procedures has created persistent gaps in the availability of redress at the international level. Left largely unexamined is whether these gaps are consistent with international law, and specifically, its recognition of a right to petition international bodies concerning States' alleged human rights violations.

When a State violates its international human rights obligations with respect to an individual, and fails to remedy the violation, is the individual entitled to international recourse? If a State withdraws its acceptance of an existing human rights complaint procedure, does it do so in contravention of an individual right to access that procedure? As the international infrastructure continues to expand and evolve, to what extent have individual petitions become an indispensable and legally required element of human rights protection?

This article examines the contours and possible sources of an individual right of international petition for States' human rights violations, focusing on customary international law, State acceptance, and oversight bodies' inherent powers. It finds significant support for the existence of a legal right of individuals to have access to an international complaint procedure for the resolution of their human rights claims against States.

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INTRODUCTION

Does international law recognize an individual right of petition at the international level for States' violations of their human rights obligations? Though reference is commonly made to an individual "right" to submit human rights complaints to regional and United Nations ("UN") oversight mechanisms, the legal status and scope of this privilege remains unclear. To the extent that such a right exists, is it rooted in—and delimited by—the respective human rights instruments, general international law, or the inherent powers of these mechanisms themselves? Does it give rise to any corresponding obligations on the part of international organizations ("IOs") or States to make such petition procedures available (including in situations where they do not already exist or have not been accepted by a State) and, moreover, to ensure their proper functioning?

While scholarship to date has addressed the practical availability and accessibility of human rights complaint proceedings created under the auspices of IOs, the literature largely overlooks any obligations to ensure such availability and accessibility. Left virtually unaddressed is the question of whether individuals are legally entitled to petition IOs or treaty organs regarding States' violations of the human rights treaties whose implementation they oversee. Although there was once significant scholarly interest in the then-theoretical notion of an individual, international right to petition IOs on human rights matters, in the decades since UN and regional human rights complaint procedures began to proliferate, discussion of the underlying legal questions concerning their status has stagnated. This Article seeks to revive this conversation in the important context of several interrelated trends, including: growing individual use of human rights complaint procedures, State withdrawals from and attacks on these mechanisms, inadequate funding (which has sometimes caused near paralysis of the mechanisms' work), and increased stringency in the procedural requirements and their implementation.

Through doctrinal research, this article examines the scope and source of an individual right of international petition concerning States' violations of human rights. This article begins with an overview of the notion of a right of petition in international law (Part II.A), and how this idea is reflected in the human rights complaint procedures that exist today (Part II.B) but is circumscribed in practice by varying jurisdictional and admissibility requirements (Part II.C). With that background, Part III then explores distinct theories of the source of an individual right of petition

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concerning States' human rights violations, examining whether this right can be derived from customary international law, a State's acceptance of a complaint procedure, or existing human rights bodies' inherent powers. The Conclusion raises questions for further study, including with respect to the competing rights and duties of States and IOs that may impact the creation or administration of petition processes.

CREATION AND SCOPE OF INDIVIDUAL COMPLAINT PROCEEDINGS

The Notion of a Right of Petition in the International Framework

As Judge Antônio Cançado Trindade has explained, the notion of a “right to petition” (*pétition vœu*) concerns the public's ability to bring popular concerns to the attention of authorities and is conceptually distinct from the “right of petition” (*pétition plainte*), meaning the right to present a complaint of a rights violation to a body competent to resolve the complaint and determine reparation.¹ It was the right to petition—in the sense of bringing authorities' attention to a matter of public concern—that, for example, American civil rights activists advocated for in the United Nations' early days.² In the same moment, it was the right of petition that Hersch Lauterpacht, among others, so passionately advocated be included in the developing international human rights instruments.³ However, these two concepts have not always been distinct and one is often viewed as borne from, or contained within, the other.⁴ For example, in his 1950 study of the right of petition, the UN's first Secretary-General, Trygve Halvdan Lie, described the “right of petition” as “the right to address the authorities with complaints, grievances,

¹ ANTÔNIO AUGUSTO CANÇADO TRINDADE, *The Exercise of the Right of Access to International Justice: The Right of International Individual Petition*, in *THE ACCESS OF INDIVIDUALS TO INTERNATIONAL JUSTICE* 17 (2011).

² RAYFORD W. LOGAN, *The Charter of the United Nations and its Provisions for Human Rights and the Rights of Minorities and Decisions Already Taken under this Charter*, in *AN APPEAL TO THE WORLD!* 91-92 (National Association for the Advancement of Colored People 1947) (“[S]pokesmen for minorities should have the opportunity to present to the General Assembly petitions on behalf of those minorities in order to assure that the attention of the Security Council will be directed promptly to such threats to international peace and security.[. . .] We urge that these petitions on behalf of minorities anywhere be receivable by the General Assembly because all Members of the United Nations have the right to speak in the General Assembly”).

³ See, e.g., Rotem Giladi, *Lauterpacht in Jerusalem: Individual Petition and the Politics of Jewish Representation*, in *JEWS, SOVEREIGNTY, AND INTERNATIONAL LAW: IDEOLOGY AND AMBIVALENCE IN EARLY ISRAELI LEGAL DIPLOMACY* (2021).

⁴ In this regard, with respect to the American context, see Carol Rice Andrews, *A Right of Access to Court Under the Petition Clause of the First Amendment: Defining the Right*, 60 OHIO ST. L.J. 557 (1999).

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requests or proposals on all matters or problems,” which in some legal systems “has to a very large extent been transformed by statute or by common law into well-defined legal remedies” without impairing “the ancient institution of the [broader] right of petition...for extraordinary circumstances, where the normal procedural remedies are either not available or have been exhausted.”⁵ With respect to the international dimension, the Secretary-General emphasized that the “right to communicate with international conferences and organizations, although of more recent origin [than its domestic corollary], is nevertheless older than is usually assumed [and was] exercised long before the establishment of the League of Nations” but took various forms, ranging from mere acceptance of correspondence to initiation of legal proceedings.⁶ In this regard, Article XXIV of the American Declaration of the Rights and Duties of Man, adopted in 1948, recognizes a right that is neither clearly “to” or “of” petition, stating: “Every person has the right to submit respectful petitions to any competent authority, for reasons of either general or private interest, and the right to obtain a prompt decision thereon.”⁷

However, it appears that as human rights treaties and oversight mechanisms began to take shape, it was the right *of* petition—in the sense of individual or group access to a legal determination of State responsibility for rights violations—that came to the fore, while the notion of a more general right to petition lost comparative relevance. In considering whether and how the United Nations should accept individual petitions relating to the Universal Declaration of Human Rights, supporting States advocated recognizing this right “based on the assumption that such petitions will be more than a simple source of information and will therefore be the initial step of setting in motion some form of international machinery of fact finding, conciliation or adjudication.”⁸ In other words, though the petition process may not always be judicial in nature, it is meant to settle disputes—not merely identify them. Thus, while the current international human rights framework includes various “complaint” procedures, some of which involve adjudication and many of which do not, the right of petition can

⁵ Comm’n on Hum. Rts., *The Right of Petition: Report by the Secretary-General*, at 8–9, U.N. Doc. E/CN.4/419 (Apr. 11, 1950).

⁶ *Id.* ¶ 11.

⁷ American Declaration of the Rights and Duties of Man, O.A.S. Res. XXX, adopted by the Ninth International Conference of American States (1948).

⁸ Comm’n on Hum. Rts., *The Right of Petition: Report by the Secretary-General*, *supra* note 6, at 31.

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be understood to include any such procedure that is aimed at dispute settlement.

Today, international bodies accept such submissions under various names, including: petitions, communications, complaints, and applications. For example, in response to a State's contention that an individual's letter to the Committee against Torture "could not be considered to be a complaint" within the meaning of the treaty because it lacked a sufficiently explicit legal claim, the Committee noted "that while the complainant does not specifically mention article 3 of the Convention in her initial submission, she has made clear that she should not be returned to Belarus because she faces a risk of further instances of rape by militia authorities upon return. Considering that she was not represented by counsel and in the light of the seriousness of the allegation, the Committee recalls that it has been its constant practice to treat similar communications as complaints within the meaning of article 22 of the Convention."⁹ This explanation underscores that—in form and function—the individual communications procedure provides a right "of" petition, regardless of nomenclature. In this sense, P.R. Gandhi points to States' interchangeable use of the words "petition" and "communication," both intended to refer to an individual complaint, based on the *travaux préparatoires* of the Optional Protocol to the ICCPR.¹⁰

An ever-growing number of international bodies receive complaints presented by individuals or groups, against States, concerning alleged violations of their human rights.¹¹ Primarily, such proceedings exist before the three regional human rights courts (of Africa, the Americas, and Europe), as well as the quasi-judicial human rights mechanisms, namely the UN human rights treaty bodies, the African and Inter-American human rights commissions, and the European Committee of Social Rights. This article focuses specifically on: the European Court of Human Rights ("ECtHR"), the Inter-American Commission and Court of Human Rights ("IACHR"), the African Commission and Court on Human and Peoples' Rights ("AfCHPR"), the African Committee of

⁹ V.L. v. Switzerland, CAT/C/37/D/262/2005, ¶¶ 4.1, 8.1 (Comm. Against Torture Nov. 20, 2006).

¹⁰ P.R. GHANDI, THE OPERATION OF THE INDIVIDUAL COMMUNICATION PROCEDURE, IN THE HUMAN RIGHTS COMMITTEE AND THE RIGHT OF INDIVIDUAL COMMUNICATION: LAW AND PRACTICE 48 (1998).

¹¹ On the various forms of international petition procedures and their differences, generally, see PIETRO SARDARO, *The Right of Individual Petition to the European Court*, in PROTOCOL NO. 14 AND THE REFORM OF THE EUROPEAN COURT OF HUMAN RIGHTS (Paul Lemmens & Wouter Vandenhoe eds., 2005).

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Experts on the Rights and Welfare of the Child (“ACERWC”), and the eight UN human rights treaty bodies with operational individual complaint procedures.¹² Although not the focus of this article, relevant bodies also include those that are not necessarily “human rights” tribunals, such as the regional courts of justice that receive individual complaints, among them the Court of Justice of the Economic Community of West African States (“ECOWAS”).¹³ In line with their differing composition and authority, human rights bodies’ outputs concerning these submissions may take the form of judgments, decisions, views, or reports; so long as the procedure resolves the legal or factual allegations, it embodies the right *of* petition. As such, the complaint procedures of the regional human rights courts, commissions, and committees, and of the UN human rights treaty bodies fall within this category.

In contrast, the other channels for bringing a situation to the attention of an international body give life to the idea of a right *to* petition. Various bodies and processes accept complaints alleging systemic or widespread abuses, without resolving States’ legal responsibility for any related rights violations. These include independent monitoring bodies (such as most UN special procedures and the Council of Europe Group of Experts on Action against Violence against Women and Domestic Violence (“GREVIO”), which may initiate a dialogue with the State or engage in other oversight in response to information received; the UN Human Rights Council’s confidential procedure focused on gross violations, which can lead to the creation of a monitoring mechanism or provision of technical assistance. For example and the inquiry, early warning, or urgent action procedures undertaken by UN human rights treaty bodies. Relatedly, many international courts and oversight bodies may issue interim measures, which are designed to prevent irreparable harm to rights or the subject matter of a complaint, rather than determine State responsibility for realized or imminent harms. While some of these procedures follow similar steps and adhere to similar rules as those seen in individual complaint proceedings, they are not intended to resolve a

¹² These are the: Human Rights Committee; Committee on Economic, Social and Cultural Rights; Committee against Torture; Committee on the Elimination of Racial Discrimination; Committee on the Elimination of Discrimination against Women; Committee on the Rights of the Child; Committee on the Rights of Persons with Disabilities; and the Committee on Enforced Disappearances.

¹³ Supplementary Protocol A/SP.1/01/05 Amending the Preamble and Articles 1, 2, 9 and 30 of Protocol A/P.1/7/91 relating to the Community Court of Justice and Article 4 Paragraph 1 of the English Version of the Said Protocol, arts. 3(5), 4(d), Jan. 16, 2005.

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factual or legal dispute, such as through a written decision. Rather, these channels primarily serve to prompt international bodies to respond to a situation in accordance with their diverse (non-adjudicatory) powers.

Current Availability of Individual Human Right Complaint Procedures

The availability of relevant complaint processes has varied across legal systems and through time. Throughout the modern history of international law, individuals have had access to certain international complaint proceedings, particularly as aliens bringing claims against foreign States, in substantive areas beyond the realm of human rights law and prior to the existence of the human rights complaint mechanisms of today.¹⁴ With the advent of international human rights systems, the number and accessibility of such complaint procedures have multiplied and formalized.

In establishing the first individual human rights complaint process in 1950, the Member States of the Council of Europe provided a blueprint that others have followed in modified form.¹⁵ In its original design, the European Convention on Human Rights limited individual access to: (1) the (former) European Commission on Human Rights, and (2) with respect only to those High Contracting Parties that accepted the individual complaint process.¹⁶ Direct individual applications to the European Court of Human Rights and compulsory acceptance of the Court's jurisdiction over them would only become features of the

¹⁴ See generally FRANCESCO FRANCIONI, *The Rights of Access to Justice under Customary International Law*, in ACCESS TO JUSTICE AS A HUMAN RIGHT (2007); Donald P. Parson, *The Individual Right of Petition: A Study of Methods Used by International Organizations to Utilize the Individual as a Source of Information on the Violations of Human Rights*, 13 WAYNE L. REV. 678 (1967).

¹⁵ See, e.g., Alexandra R. Harrington, *Don't Mind the Gap: The Rise of Individual Complaint Mechanisms within International Human Rights Treaties*, 22 DUKE J. COMP. & INT'L L. 153 (2012); Carla Dantas, *Right of Petition by Individuals within the Global Human Rights Protection System*, 9 SUR INT'L J. ON HUM. RTS. 187 (2012); Astrid Kjeldgaard-Pedersen, *The Evolution of the Right of Individuals to Seize the European Court of Human Rights*, 12 J. HIST. INT'L L. 267 (2010); ANTÔNIO AUGUSTO CANÇADO TRINDADE, *THE ACCESS OF INDIVIDUALS TO INTERNATIONAL JUSTICE* (2011); CANÇADO TRINDADE, *supra* note 2, at 17–49.

¹⁶ Convention for the Protection of Human Rights and Fundamental Freedoms, art. 25, Nov. 4, 1950, 213 U.N.T.S. 221 (“The Commission may receive petitions...from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in this Convention, provided that the High Contracting Party against which the complaint has been lodged has declared that it recognises the competence of the Commission to receive such petitions.”).

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European human rights system in 1998, with the entry into force of Protocol 11.¹⁷

Currently, the other regional human rights mechanisms and UN treaty bodies reflect elements of the ECtHR's original "tiered judicialization."¹⁸ Though every core UN human rights treaty is overseen by a dedicated committee with competence to decide individual complaints, each State party has discretion over whether to recognize that competence.¹⁹ While the Inter-American Commission and African Commission are, by default, directly accessible to individual complainants with respect to any State party to the Charter of the Organization of American States or the African Charter on Human and Peoples' Rights, respectively,²⁰ access to the regional courts is circumscribed. The Inter-American Court of Human Rights only receives cases referred to it by the Commission or States that have accepted its jurisdiction.²¹ The African Court can receive cases referred by the Commission or States, or directly submitted by States or African intergovernmental organizations,²² but is only open to individuals and nongovernmental organizations when the respondent State has declared its consent to adjudication of such complaints.²³ Similarly, the European Committee of Social Rights may only receive collective complaints from specific organizations, when the relevant State has authorized the complaint procedure, and with respect to those provisions of the European Social Charter that the State has accepted.²⁴ The UN Working Group on Arbitrary Detention, uniquely, has competence to receive

¹⁷ Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, restructuring the control machinery established thereby, Nov. 1, 1998, E.T.S. No. 155.

¹⁸ Alexandra Huneeus & Mikael Rask Madsen, *Between Universalism and Regional Law and Politics: A Comparative History of the American, European, and African Human Rights Systems*, 16 INT'L J. CONST. L. 136 (2018).

¹⁹ See, e.g., G.A. Res. 2200A (XXI), art. 1 (Dec. 16, 1966); G.A. Res. 39/46, art. 22 (Dec. 10, 1984).

²⁰ O.A.S. G.A. Res. 447 (IX-O/79), Statute of the Inter-American Commission on Human Rights, arts. 19, 20 (Oct. 1979); Inter-Am. Comm'n H.R. Rules of Procedure, art. 23. See also Dinah Shelton, *The Rules and the Reality of Petition Procedures in the Inter-American Human Rights System*, 5 NOTRE DAME J. INT'L & COMP. L. 1 (2015); JO M. PASQUALUCCI, THE PRACTICE AND PROCEDURE OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS 83 (2012).

²¹ American Convention on Human Rights, art. 61, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123.

²² Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, art. 5, Jan. 25, 2004.

²³ *Id.* arts. 5(3), 34(6).

²⁴ Additional Protocol to the European Social Charter Providing for a System of Collective Complaints, arts. 1–4, Nov. 9, 1995, E.T.S. No. 158.

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complaints and render opinions concerning alleged individual instances of arbitrary detention in any UN Member State.²⁵

Standing and Harm

Human rights mechanisms' founding instruments and rules set different requirements for who can make use of a complaint procedure. Some allow complaints to be submitted only by individual victims (or their authorized representatives),²⁶ while others also accept complaints by groups, NGOs, and people.²⁷

With respect to victimhood, the UN human rights treaty bodies, Inter-American Commission, and European Court of Human Rights require that the complaint concern a State's possible international responsibility for the violation of human rights *in a particular instance*, rather than with,—for example,—the abstract compatibility of a piece of national legislation with international standards.²⁸ Going further, the ECtHR is only open to victims who can demonstrate a “significant disadvantage” as a result of an alleged rights violation, unless the Court determines that respect for human rights requires examination of the

²⁵ See, e.g., Hum. Rts. Council Res. 51/8, ¶ 8, U.N. Doc. A/HRC/RES/51/8 (Oct. 6, 2022) (encouraging all States “[t]o give due consideration to the opinions and appeals of the Working Group”).

²⁶ This is true of the UN human rights treaty bodies. See, e.g., Hum. Rts. Comm., *Rules of Procedure of the Human Rights Committee*, Rule 91, U.N. Doc. CCPR/C/3/Rev.12 (Jan. 4, 2021) (“Communications may be submitted by or on behalf of one or several individuals, whose names should be provided. Where a communication is submitted on behalf of one or several individuals, this shall be with their consent, unless the author(s) can justify acting on their behalf without such consent.”).

²⁷ The principal regional human rights bodies allow complaints to be presented by individuals, groups, or NGOs. Inter-American Commission on Human Rights, *Rules of Procedure* (2013), art. 23 (“Any person or group of persons or nongovernmental entity legally recognized in one or more of the Member States of the OAS may submit petitions to the Commission, on their behalf or on behalf of third persons...”); European Court of Human Rights, *Rules of Court* (15 September 2025), Rule 36 (“Persons, non-governmental organisations or groups of individuals may initially present applications under Article 34 of the Convention themselves or through a representatives”); African Court on Human and Peoples’ Rights, *Rules of Court* (2020), Rule 39.1.f (“...the following are entitled to submit cases to the Court...[.] [a]n individual or a Non-Governmental Organization which has Observer Status before the Commission”); African Commission on Human and Peoples’ Rights, *Rules of Procedure* (2020), Rule 115.2.a (requiring each complaint to contain the “name, nationality and signature of the person or persons filing it; or in cases where the complainant is a non-governmental entity, the name and signature of its legal representative(s)”). The European Committee of Social Rights is distinct in only permitting complaints by authorized organizations. See Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (ETS No. 158), art. 1.

²⁸ See, e.g., ICCPR OP-1, art. 1 (establishing the competence of the Human Rights Committee to consider communications from individuals “who claim to be victims of a violation”).

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application or that the matter has “not been duly considered by a domestic tribunal.”²⁹

In contrast, the African Charter requires neither the identification of, nor the allegation of harm to, individual victims, in keeping with its acceptance of *actio popularis*.³⁰ This means that the AfCHPR and the African Commission on Human and Peoples’ Rights (“ACHPR”) do not limit standing to victims and do not require evidence of harm to a particular individual or defined group.³¹ The AfCHPR has, for its part, decided facial challenges to national legislation, without any allegation of specific harms caused by the law’s application.³² Nonetheless, most decisions issued by the African bodies address alleged violations of the rights of particular individuals or groups with identifiable members.³³ Indeed, the ACHPR’s Rules of Procedure require complainants to provide “[a]n account of the act or situation complained of, specifying the place, date and nature of the alleged violations” and “the name of the victim, in a case where he or she is not the Complainant.”³⁴ Similarly, the European Committee of Social Rights is only open to complaints of a collective nature, challenging national law or practice in general.

Docket Management

In addition to requirements related to standing and victimhood (and other admissibility criteria), human rights bodies regulate individual access to complaint proceedings through the use of caseload management

²⁹ ECHR, art. 35(3)(b) (as amended by Protocol 14).

³⁰ See Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights v. Nigeria, Comm. 155/96 (Afr. Comm’n H.P.R. Oct. 27, 2001); Spilg et al. v. Botswana, Comm. 277/2003 (Afr. Comm’n H.P.R. Oct. 12, 2013).

³¹ See, e.g., Association pour le Progrès et la Défense des Droits des Femmes Maliennes and Institute for Human Rights and Development in Africa v. Mali, App. No. 046/2016 (Afr. Ct. H.P.R. May 11, 2018); Open Society Justice Initiative v. Côte d’Ivoire, Comm. 318/06 (Afr. Comm’n H.P.R. Feb. 28, 2015).

³² *Association pour le Progrès et la Défense des Droits des Femmes Maliennes*, App. No. 046/2016.

³³ *Social and Economic Rights Action Center*, Comm. 155/96; *Spilg*, Comm. 277/2003.

³⁴ ACHPR Rules of Procedure, Rule 93(2). See also Centre of the Independence of Judges and Lawyers v. Algeria, Comms. 104/94–109/94 & 126/94, ¶ 6 (Afr. Comm’n H.P.R. Apr. 27, 1994). The AfCHPR Rules of Procedure do not contain similar provisions, perhaps due to the multiple methods of referral or submission of cases to the Court and States’ limited acceptance of direct individual and NGO access, thus far. Its application form, however, directs applicants to provide details of a specific violation, stating, “The Applicant(s)/victim(s) should explain what happened to him/ her/ them that made him/her/them file the application before this Court” by “specify[ing] the place, the date (chronologically), and the circumstances in which the alleged violations occurred.” See AfCHPR, Notice of Application, <https://www.african-court.org/afchpr/wp-content/uploads/2025/05/En-001-FORM-FOR-APPLICATION-CONTENTIOUS-PROCEEDINGS.docx> [<https://perma.cc/NN4N-3DHJ>].

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tools. This means that, even if a complaint would be otherwise admissible, it may not be decided individually or at all if it is similar to prior complaints. For example, in 2011, the ECtHR implemented a procedure³⁵ allowing it to adjourn consideration of applications arising from “a structural or systemic problem or other similar dysfunction” by adopting a pilot judgment aimed at resolving that overarching noncompliance. The African Court has also set out a pilot judgment procedure in its new rules,³⁶ but has not yet used it.

Alternatively, a complaint may be decided out of turn (meaning, not in the order of receipt) due to the application of other priority criteria. For example, the IACHR applies its “per saltum” procedure to prioritize consideration of a petition when, *inter alia*, “the passage of time would deprive the petition of its effectiveness,” the victims are in detention, or the petition raises structural violations.³⁷

While procedures exist for individuals—or groups—to complain of human rights violations before some UN and regional bodies, gaps and variations persist. No complaint procedure is available with respect to human rights treaties such as the Arab Charter of Human Rights, the Protocol of San Salvador³⁸, and the Istanbul Convention³⁹. States retain discretion not to authorize complaints against them under some human rights treaty regimes. Accordingly, the availability of a complaint procedure depends on State acquiescence (whether through participation in an IO like the Organization of American States, ratification of a treaty like the African Charter on Human and Peoples’ Rights or European Convention on Human Rights, or optional acceptance of a complaint procedure such as those of the UN treaty bodies or European Committee of Social Rights), and is neither universally available nor promised. Finally, access to complaint procedures that do exist is circumscribed by jurisdictional and admissibility requirements and regulated by docket management tactics. This unequal access to complaint procedures underscores the ambiguity around whether, and in what circumstances, the creation or acceptance of such procedures is legally required.

³⁵ ECHR Rules of Court, Rule 61.

³⁶ AfCHPR Rules of Court, Rule 66.

³⁷ IACHR Rules of Procedure, art. 29(2).

³⁸ Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, Nov. 17, 1988, O.A.S.T.S. No. 69.

³⁹ Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, May 11, 2011, C.E.T.S. No. 210.

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IDENTIFYING THE SOURCE OF A RIGHT OF AN INTERNATIONAL PETITION

No international legal instrument includes—among its substantive provisions—an unequivocal individual right to petition an international human rights body concerning violations of their rights. Only the American Declaration of the Rights and Duties of Man⁴⁰ and European Union Charter of Fundamental Rights⁴¹ contain an enumerated right to petition authorities, but this is not specific to an international complaint procedure. Similarly, most human rights treaties guarantee a right to due process, judicial protection, or a remedy—but these provisions do not speak to international processes specifically. Many human rights instruments refer to either an international mechanism’s authority or jurisdiction to receive petitions⁴² (which is, of course, distinct from clearly stating an individual right to present them) or prohibit States and individuals from interfering with,⁴³ or abusing,⁴⁴ a petition process respectively. Human rights bodies themselves have said very little about whether, and to what extent, individuals are entitled to have access to their complaint proceedings, and scholarship is similarly limited. As such, determining whether such a right exists requires, or allows, us to explore several possibilities. Can it be found in customary international law? Can we locate this right on the basis of a State’s acceptance of an existing complaint procedure? Do human rights bodies have an inherent power to receive and decide individual complaints against States?

Right of International Petition as an Autonomous, Customary Human Right

If individuals have a customary right to access an international procedure to resolve their human rights complaints against States, this would provide the broadest base of support for requiring the existence, maintenance, and acceptance of such procedures by States. I am not the first to grapple with whether, or to what extent, customary international law recognizes an autonomous right of individual petition at the

⁴⁰ American Declaration of the Rights and Duties of Man, art. XXIV, Right of petition (“Every person has the right to submit respectful petitions to any competent authority, for reasons of either general or private interest, and the right to obtain a prompt decision thereon.”).

⁴¹ Charter of Fundamental Rights of the European Union art. 44, 2012 O.J. C 326/391 (“Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to petition the European Parliament”).

⁴² See, e.g., ICCPR OP-1, art. 1.

⁴³ See, e.g., ECHR, art. 34 (“The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.”).

⁴⁴ See, e.g., ICCPR OP-1, art. 3; ECHR, art. 35(3)(a) (requiring inadmissibility if a petition represents an abuse of the “right” of application or submission).

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international level—in the sense of access to a grievance procedure.⁴⁵ This notion wears different names in different contexts and may also be conceptualized as a right of access to justice⁴⁶ or access to court, or as forming part of a right to a remedy or reparation for human rights violations. To date, scholars have disagreed on whether individuals possess a right of international petition with respect to violations of their human rights by a State, as a matter of custom.

Those who conclude that no customary right of international petition exists point, in large part, to both the requirement of State consent to dispute settlement procedures, as a matter of international law, and its absence in practice. As Francesco Francioni wrote in 2007, “access to justice is generally recognized as a human right in the context of domestic law and...every state is under an obligation to fulfil such right by making available a system of effective remedies to all persons subject to its jurisdiction and under its control. But does this also entail a right of access to justice in international proceedings? The answer to this question appears to be negative if it is addressed from the point of view of customary international law.”⁴⁷ Francioni based his conclusion on institutional limitations, specifically the absence of “a structural transformation of the international legal order as to make it possible for individuals to claim a right of access to international remedial mechanisms on the basis of customary norms of international law. No global institutions exist to guarantee access to justice to individuals from all parts of the world.”⁴⁸ As such, Francioni distinguished the treaty-based regimes that have created individual complaint mechanisms, when

⁴⁵ See, e.g., Vera Shikelman, *Access to Justice in the United Nations Human Rights Committee*, 39 MICH. J. INT’L L. 453 (2018); FRANCIONI, *supra* note 15. This is distinct from the question of whether the right of access to a court or access to justice, at the domestic level, forms part of general international law or is even a *jus cogens* norm. On that, international courts agree that the core of the right is protected but disagree as to its status. See generally Carlo Focarelli, *Denial of Justice*, in MAX PLANCK ENCYCLOPEDIAS INT’L L., Part 1 (Refusal of Access to Justice and Refusal of Courts to Decide) (last updated Dec. 2020). It is also distinct from access to justice in claims against international organizations themselves, which is similarly a topic of ongoing debate and development. See, e.g., STIAN ØBY JOHANSEN, THE HUMAN RIGHTS ACCOUNTABILITY MECHANISMS OF INTERNATIONAL ORGANIZATIONS 90–113 (2020).

⁴⁶ See, e.g., FRANCIONI, *supra* note 15.

⁴⁷ FRANCIONI, *supra* note 15 at 41. As Anne Peters argues, “the principle of procedural remedy (in the sense of legal protection) does not clearly constitute an individual claim for access to a judicial or other effective review body, but rather *prima facie* an obligation directed at States to implement the human rights treaties in question” through national, not international, bodies. Peters locates a similar obligation with respect to customary norms, as well. See PETERS, *Direct Effect of Norms Establishing Individual Rights and Duties*, *infra* note 66.

⁴⁸ FRANCIONI, *supra* note 15 at 41.

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accepted by States.⁴⁹ He summarized the “orthodox positivist” view that a “right [of access to justice in international law] is contingent upon the consent of the state against which the claim is directed, since no *a priori* compulsory dispute settlement mechanism is conceivable in a legal order based on sovereignty.”⁵⁰ While acknowledging advances in legal recognition of individual international legal personhood, he argued that “it would be wrong to jump to the conclusion that international law has already undergone a structural transformation so as to be a universal law or global law today, where individuals can claim access to justice and especially to international remedies as a matter of right and in all circumstances.”⁵¹

Some subsequent scholarship has similarly declined to find a customary right of international petition for human rights violations, albeit with noticeably more equivocation. Despite identifying more support for an emerging customary norm, Pierre Schmitt, in 2017, conceded “that the [customary] right of access to justice in international proceedings is still in a development process.”⁵² Writing in 2018, Vera Shikhelman also relied on Francioni’s assessment to posit that “there is probably no customary international right of individuals to access international institutions,” although treaties increasingly provide such procedures.⁵³

I find four flaws in the conclusion drawn by Francioni and others, or in the least, how it has held up over time. First, Francioni’s analysis confuses the practical availability of access to a complaint proceeding with the right to complain.⁵⁴ Whether States have actually put in place the conditions necessary for the enjoyment of an individual right of petition at the international level is not dispositive of their obligation to do so, under either customary international law or treaty commitments.⁵⁵

⁴⁹ *Id.* at 42.

⁵⁰ *Id.* at 5.

⁵¹ *Id.* at 8.

⁵² PIERRE SCHMITT, ACCESS TO JUSTICE AND INTERNATIONAL ORGANIZATIONS 103 (2017).

⁵³ Shikhelman, *supra* note 46, at 453.

⁵⁴ See P.K. Menon, *The International Personality of Individuals in International Law: A Broadening of the Traditional Doctrine*, 1 J. TRANSNAT’L L. & POL’Y 151, 181–182 (1992) (quoting ANTONIO CASSESE, INTERNATIONAL LAW IN A DIVIDED WORLD 288 (1986)).

⁵⁵ Two corollaries here are the obligations to give domestic effect to international human rights obligations and to provide access to an effective remedy, in both treaty and customary law, which States often struggle or fail to do. See, e.g., THE IMPACT OF THE UNITED NATIONS HUMAN RIGHTS TREATIES ON THE DOMESTIC LEVEL: TWENTY YEARS ON (2nd. rev. ed.) (Christof Heyns, Frans Viljoen and Rachel Murray eds. 2024), https://www.chr.up.ac.za/images/publications/UN_Impact_Study_Reduced.pdf [<https://perma.cc/E77X-X5WH>].

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Moreover, States have only continued to expand access to justice at the international level, for example, through new UN treaty-based treaty body complaint procedures⁵⁶ and in the (State-approved⁵⁷) work of the UN Working Group on Arbitrary Detention, which accepts “complaints” against any UN Member State regardless of treaty ratification.

Second, as discussed in greater detail below, the notion of a right of international petition has long garnered support and may have crystallized into a customary norm in more recent years. For example, scholars have noted that “a trend can be observed worldwide toward recognizing the individual right to effective review by an independent body as an important characteristic of the international legal order.”⁵⁸

Third, Francioni’s conclusion presupposes that the legal right or obligation at issue is necessarily circumscribed by sovereignty (meaning, State consent), without examining whether any exception might exist.⁵⁹ For instance, even forceful confirmations⁶⁰ of sovereign immunity admit room for evolution of this area of the law,⁶¹ and debate continues as to whether customary international law permits an exception to immunity, or requires access to justice, in cases of grave human rights abuses or

⁵⁶ Since 2007, complaint procedures that entered into force include those for the International Covenant on Economic, Social and Cultural Rights (on May 5, 2013); the Convention on the Rights of the Child (on April 14, 2014); the Convention on the Rights of Persons with Disabilities (on May 3, 2008); and the International Convention for the Protection of All Persons from Enforced Disappearance (on December 23, 2010).

⁵⁷ See, e.g., Human Rights Council, Res. 51/8, U.N. Doc. A/HRC/RES/51/8 at 2 (Oct. 6, 2022) (encouraging all States “[t]o give due consideration to the opinions...of the Working Group” and noting “deep concern” reported reprisals against individuals whose cases the WGAD decided).

⁵⁸ ANNE PETERS, *The Individualized Enforcement of International Law*, in BEYOND HUMAN RIGHTS: THE LEGAL STATUS OF THE INDIVIDUAL IN INTERNATIONAL LAW 474, 494 (Jonathan Huston trans., 2016) (quoting Eberhard Schmidt-Aßmann & Timo Rademacher, *Rechtsschutzgarantien des internationalen Rechts*, 61 JAHRBUCH DES ÖFFENTLICHEN RECHTS DER GEGENWART 61 (2013) (translation by Anne Peters)).

⁵⁹ But see United Nations Convention on the Jurisdictional Immunities of States and Their Property, opened for signature Dec. 2, 2004, 44 I.L.M. 803 (recognizing sovereign immunity in foreign domestic courts, except for with respect to certain commercial, contractual, tort, and property claims); *Jurisdictional Immunities of the State* (Ger. v. It.: Greece intervening), Judgment, 2012 I.C.J. 99 (Feb. 3).

⁶⁰ *Jurisdictional Immunities of the State* (Ger. v. It.: Greece intervening), Judgment, 2012 I.C.J. 99 (Feb. 3).

⁶¹ See Sangeeta Shah, *Jurisdictional Immunities of the State: Germany v. Italy*, 12 HUM. RTS. L. REV. 555 (2012). See also Lucas Carlos Lima & Aziz Tuffi Saliba, *The Immunity Saga Reaches Latin America. The Changri-la Case*, EJIL: TALK! (Dec. 2, 2021), <https://www.ejiltalk.org/the-immunity-saga-reaches-latin-america-the-changri-la-case/> [https://perma.cc/J2CZ-WFRY] (detailing a Brazilian judicial decision to lift sovereign immunity for human rights violations).

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violations of *jus cogens* norms,⁶² especially where no other accountability process is available.⁶³ The mirror image of this argument identifies an obligation on the part of States to make remedies available, including at the international level, to individual victims of grave violations; for example, the International Law Commission has explained that general international law may require States to cooperate to “counteract the effects” of grave breaches of international law since such cooperation “is often the only way of providing an effective remedy.”⁶⁴ Fourth, the fact that access to international justice may not be unlimited or legally or practically available “in all circumstances” does not negate the possibility of a narrower right of international petition dependent on specific conditions, such as—for example—State ratification of a human rights treaty guaranteeing particular substantive rights.

In contrast to Francioni’s view, numerous international courts and legal experts alike have long urged legal recognition of a human right of petition, including at the international level. Some scholars have argued that human rights recognized in international treaties should, automatically, be “self-executing” or directly enforceable in domestic

⁶² See Diego Uribe Bustamante, *The Inter-American Court of Human Rights’ Expansion of Jus Cogens and the Missing Piece of the Puzzle: Aggravated State Responsibility*, CIL DIALOGUES: AN INT’L L. BLOG, <https://cil.nus.edu.sg/blogs/the-inter-american-court-of-human-rights-expansion-of-jus-cogens-and-the-missing-piece-of-the-puzzle-aggravated-state-responsibility/> [https://perma.cc/J7YA-A44N] (asserting that “the Inter-American System should first recognise individual standing to bring cases against a State party for serious breaches of peremptory norms based on *erga omnes partes* obligations”).

⁶³ See Thibault Moulin, *A (Sovereign) License to Kill? The Boundaries of Jurisdictional Immunities for State-Sponsored Crimes*, 38 EMORY INT’L L. REV. 405, 442–448 (2024); Ielyzaveta Badanova, *Jurisdictional Immunities v Grave Crimes: Reflections on New Developments from Ukraine*, EJIL: TALK! (Sept. 8, 2022), <https://www.ejiltalk.org/jurisdictional-immunities-v-grave-crimes-reflections-on-new-developments-from-ukraine/> [https://perma.cc/J5BC-RMZY] (explaining the Ukrainian Supreme Court’s decision to deny sovereign immunity to Russia where, *inter alia*, victims had no other avenue for seeking compensation).

⁶⁴ Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries, art. 41(3), U.N. Doc. A/56/10 (2001). See also G.A. Res. 60/147, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, ¶ 4 (Dec. 16, 2005) (“In cases of gross violations of international human rights law and serious violations of international humanitarian law constituting crimes under international law ...States should, in accordance with international law, cooperate with one another and assist international judicial organs competent in the investigation and prosecution of these violations”) and ¶ 14 (“An adequate, effective and prompt remedy for gross violations of international human rights law or serious violations of international humanitarian law should include all available and appropriate international processes in which a person may have legal standing and should be without prejudice to any other domestic remedies.”).

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courts through individual right of action.⁶⁵ Others have argued that any internationally protected right requires access to an international procedure for its protection. For example, Hersch Lauterpacht, in addition to proposing a UN body (and possible International Court of Human Rights) to receive complaints under his proposed International Bill of the Rights of Man,⁶⁶ argued for broad interpretation and effectuation of a right of petition, apart from any specific human rights instrument.⁶⁷ He contended that the UN Charter itself, by virtue of its reference to human rights, must be read to contain an implied right of petition “as the very minimum of the means of its implementation.”⁶⁸ Writing as President of the Special Tribunal for Lebanon (“STL”), Judge Antonio Cassese asserted, “[t]he right of access to justice (and the consequential right to be afforded judicial remedy for the protection of one’s rights) is part of international customary law, as evidenced by international instruments, as well as by case law and pronouncements of States and international tribunals” and “it is axiomatic that an international court...may not derogate from or fail to comply with such a general norm.”⁶⁹ In that decision, Judge Cassese recognized and moved to protect the individual’s right of access to justice before the STL itself, where the individual sought access to his own criminal file in the STL’s possession in order to pursue accountability for libel in Lebanese courts. In the European system, States have concluded that “[t]he situation whereby the individual is granted rights but not given the possibility to exploit fully the control machinery provided for enforcing them, could today be regarded as inconsistent with the spirit of the [European Convention on Human Rights], not to mention compatibility with domestic legal procedures in States Parties.”⁷⁰

Even in human rights systems where individual recourse to an international court remains optional, some jurists have posited that human rights treaty obligations *require* State acceptance of such a procedure.

⁶⁵ ANNE PETERS, *Direct Effect of Norms Establishing Individual Rights and Duties*, in BEYOND HUMAN RIGHTS: THE LEGAL STATUS OF THE INDIVIDUAL IN INTERNATIONAL LAW 495 (Jonathan Huston trans., 2016).

⁶⁶ *The International Bill of the Rights of Man: The Rapporteur’s Draft*, arts. 19–22, U.N. Doc. E/CN.4/89 (Jan. 1948). See also *id.* art. 8 (“There shall be full freedom of petition to the national authorities and to the United Nations.”).

⁶⁷ Parson, *supra* note 15, at 689 (quoting HERSCH LAUTERPACHT, INTERNATIONAL LAW AND HUMAN RIGHTS 244 (1950)).

⁶⁸ *Id.*

⁶⁹ In the Matter of El Sayed, Case No. CH/PRES/2010/01, Order Assigning Matter to Pre-Trial Judge, ¶¶ 20, 35 (Spec. Trib. Leb. 2010).

⁷⁰ SARDARO, *supra* note 12, at 48–49 (quoting Explanatory Report to Protocol No. 9, ¶ 12).

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Judge Cançado Trindade has argued, in judicial opinions and scholarship, that the individual right of petition mandates individual access to a judicial proceeding to complain of alleged violations of a human rights treaty by any State party. In his words, “individuals should have ‘the right of direct access [to the Court] independently of the acceptance of an optional clause’, such as that of Article 62 of the [American Convention on Human Rights], by the respective States. That is, in my understanding, both the right of individual petition and the jurisdiction of the IACtHR (in contentious matters) should be automatically mandatory for all the States Parties to the ACHR” because of the autonomous nature of the right of individual petition and its centrality to effective protection of treaty rights.⁷¹

With respect to States that have not yet done so, human rights bodies have urged acceptance of individual complaint procedures in order to guarantee access to justice for treaty violations.⁷² For example, the Inter-American Commission has written that “it is vital that the inter-American system is able to function as a subsidiary source of redress and protection for persons whose human rights have been violated. [. . .] ‘The IASHR must be strengthened so that all victims of human rights violations who cannot find justice in the domestic system are able to turn to the Commission as a subsidiary resource to have their rights properly addressed.’ [...] The refusal to accept the jurisdiction of the Inter-American Court only serves to exacerbate the barriers to access to justice that millions of people in the Hemisphere encounter.”⁷³

Similarly, three dissenting judges in the case of *Atabong Denis Atemnkeng v. African Union* agreed with the applicant’s assertion that Article 34(6) of the Protocol, which allows States *not* to accept the African Court’s jurisdiction over individual complaints, is incompatible with the Protocol itself and with the African Charter on Human and Peoples’ Rights. The judges argued that allowing States to foreclose

⁷¹ CANÇADO TRINDADE, *supra* note 2, at 40 (quoting Castillo Petruzzi and Others v. Peru, Preliminary Objections, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 41 (Sept. 4, 1998) (concurring opinion of Judge Cançado Trindade)).

⁷² See, e.g., Hum. Rts. Comm., Concluding Observations on the Second Periodic Report of Niger, ¶ 7, U.N. Doc. CCPR/C/NER/CO/2 (May 16, 2019); Comm. on the Rts. of the Child, Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Poland, ¶ 49, U.N. Doc. CRC/C/POL/CO/5-6 (Dec. 6, 2021); Hum. Rts. Comm., Concluding Observations on the Fifth Periodic Report of Trinidad and Tobago, ¶ 8, U.N. Doc. CCPR/C/TTO/CO/5 (Dec. 1, 2023); see also Afr. Comm’n H.P.R., Resolution on the Ratification of the Protocol to the African Charter on Human and Peoples’ Rights on the Establishment of an African Court on Human and Peoples’ Rights, ACHPR/Res.177(XLVIII) (Nov. 24, 2010).

⁷³ Inter-Am. Comm’n H.R., *Universalization of the Inter-American System of Human Rights*, OAS/Ser.L/V/II.152, ¶¶ 35–36 (2014).

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access to the Court “violates the fundamental right of the Peoples of Africa to ventilate their grievances in a Court established for that purpose.”⁷⁴ They wrote, “Member States must not only create institutions for the protection of human rights but they must ensure that the instruments used by the institutions meet international standards and do not derogate from the protective mandate, enshrined for the Peoples of Africa in the Charter.”⁷⁵ Moreover, they maintained, “[i]n ensuring access to Court, the Court is competent to set aside any impediment,” including by declaring Article 34(6) null and void.⁷⁶

It is no secret that this progressive view has not won the day, and Francioni is certainly correct that the “infrastructure” does not reflect a general right of individual petition at the international level. Indeed, the African Court has not only confirmed that—pursuant to its founding instruments—individual complaints may only be brought with respect to States parties that have expressly accepted that jurisdiction, it has allowed States to withdraw prior acceptance despite the absence of any provision on withdrawal in its Protocol.⁷⁷ More than one State has withdrawn from the jurisdiction of the Inter-American Court of Human Rights,⁷⁸ in addition to Russia’s withdrawal/expulsion from the European human rights system.⁷⁹ However, the fact that human rights *treaties* allow States not to authorize individual complaints does not require the conclusion that customary international law does not—or could not—recognize a right of access to complaint procedures.

Returning then to the law: is there evidence of a customary right of international petition? As outlined above, States have recognized, and enshrined, an individual right of judicial protection or effective remedy as a human right within their own jurisdictions in numerous human rights treaties. At the international level, States have created a petition or

⁷⁴ Atabong Denis Atemnkeng v. African Union, App. No. 014/2011, Judgment (Afr. Ct. H.P.R. Mar. 15, 2013).

⁷⁵ *Id.* (dissenting opinion of Justice Sophia A.B. Akuffo, Justice Bernard M. Ngoepe, and Justice Elsie N. Thompson).

⁷⁶ *Id.*

⁷⁷ See, e.g., Ingabire Victoire Umuhoza v. Rwanda, App. No. 003/2014, Ruling on Jurisdiction (Afr. Ct. H.P.R. June 3, 2016).

⁷⁸ See OAS, Multilateral Treaties, American Convention on Human Rights “Pact of San Jose, Costa Rica” (B-32), Signatories and Ratifications, https://www.oas.org/dil/treaties_b-32_american_convention_on_human_rights_sign.htm [https://perma.cc/ZZ9L-RUUK].

⁷⁹ See Sebastián Mantilla Blanco, *A Backdoor Exit from the European Convention on Human Rights: Russia, the Council of Europe and Article 58(3) ECHR*, Verfassungsblog (April 5, 2022), <https://verfassungsblog.de/a-backdoor-exit-from-the-european-convention-on-human-rights/> [https://perma.cc/ZS4P-ASW8].

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communication procedure for most—if not all—human rights treaties.⁸⁰ Even treaties that lack a dedicated complaint process may require States parties to ensure individual “access to applicable regional and international individual/collective complaint mechanisms,” as the Istanbul Convention does.⁸¹ Those complaint procedures that do exist mostly enjoy high levels of voluntary acceptance, or have been made obligatory by the drafting States. In this sense, every State but one (Morocco) has accepted or otherwise participates in the primary regional human rights complaint procedures of Africa, the Americas, and Europe.⁸² The individual complaints competence of the ACERWC and IACtHR, which are both optional, have been accepted by 51 (of 55) the African Union (“AU”) Member States and by 20 (of 35) of the Organization of American States (“OAS”) Member States, respectively.

In total, 163 States have accepted at least one UN human rights complaint procedure (or, 84% of UN Member States), while 135 States have also done so at the regional level. Among UNTBs, State acceptance of operational complaint procedures admittedly varies significantly—from about 18% to 68% of States parties to the relevant treaty.⁸³ Nonetheless, there is significance in the fact that States have created an individual complaint procedure for each of these treaties, and the majority of States have voluntarily accepted at least one such procedure.⁸⁴

⁸⁰ An exception here, for example, is the Arab Charter on Human Rights, which does not expressly empower the Arab Human Rights Committee to receive complaints.

⁸¹ Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence art. 21, May 11, 2011, C.E.T.S. No. 210 (“Parties shall ensure that victims have information on and access to applicable regional and international individual/collective complaints mechanisms. Parties shall promote the provision of sensitive and knowledgeable assistance to victims in presenting any such complaints.”).

⁸² That is, at least to the level of the regional human rights commission, for Africa and the Americas.

⁸³ With 31 of 173 States parties accepting the ICESCR’s complaint procedure, it appears to be at the low end, while 119 of 175 States parties to the ICCPR have accepted its complaint procedure.

⁸⁴ While each of the 193 UN Member States has ratified at least one core human rights treaty, 30 have not accepted any UN human rights treaty individual complaint procedure and are also not subject to an individual complaint procedure at the regional level, as of February 2024. *See generally Status of Ratification: Interactive Dashboard*, OHCHR, <https://indicators.ohchr.org/> [<https://perma.cc/8TLH-YM8P>]. These States are: Bahrain, Bhutan, Brunei Darussalam, China, Democratic People’s Republic of Korea, Fiji, India, Indonesia, Iran, Iraq, Israel, Japan, Jordan, Kiribati, Kuwait, Laos, Lebanon, Malaysia, Micronesia, Myanmar, Nauru, Niue, Oman, Pakistan, Papua New Guinea, Singapore, Tonga, Tuvalu, United Arab Emirates, and Vietnam. However, the United Nations Working Group on Arbitrary Detention, a unique special procedure, is empowered to decide individual complaints against any UN Member State and has decided complaints against at least 20 of those 30 States (namely, Bahrain, China, Democratic People’s Republic of Korea, India, Indonesia, Iran, Iraq, Israel, Japan, Jordan, Kuwait, Laos, Lebanon, Malaysia, Myanmar, Oman, Pakistan, Papua New Guinea, United Arab Emirates, and Vietnam). *See generally* United

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Moreover, States have expressly supported the idea of an international right of petition. On the day of its adoption of the Universal Declaration of Human Rights, the UN General Assembly decided not to create an individual petition procedure for its implementation but nonetheless resolved that “the right of petition is an essential human right” and directed further examination of this question in the elaboration of human rights treaties.⁸⁵ In his subsequent study of the right of petition, the UN Secretary-General stated, “The right of petition belongs to the same category as some of the other procedural rights set forth in the Universal Declaration of Human Rights, e.g., the right to a fair trial...or the right to an effective remedy... The right of petition is itself, like other essential human rights, capable of being implemented both on the national and international level.”⁸⁶ Those States in favor of creating an individual petition procedure as a means of implementing UN human rights instruments “were of the opinion that a Covenant, denying this basic human right would amount to an *ignis fatuus*,”⁸⁷ whereas the States that opposed did so not on legal grounds but based on purported fears that “abuse, chaos and political propaganda would ensue.”⁸⁸ Coupled with the examples of explicit support by States and international bodies for the existence of a human right of international petition, State practice in creating and accepting so many individual complaint procedures supports the argument in favor of a possible customary right.

Right of Petition Based on Acceptance of a Complaint Procedure

Taking a narrower view, does a State create an individual right of petition by accepting the competence of an international body to receive individual human rights complaints against it? Human rights bodies seem to believe so. Regardless of whether such a “right” appears in their

Nations Working Group on Arbitrary Detention - Opinion Search, <https://wgad-opinions.ohchr.org/Search/Search> [https://perma.cc/6A6K-8KJQ].

⁸⁵ G.A. Res. 217 (III), at 77 (Dec. 10, 1948) (quoted in J.W. Bruegel, *The Right to Petition an International Authority*, 2 INT’L & COMP. L.Q. 542, 542 (1953)). See also G.A. 3d Comm., Draft International Declaration of Human Rights, Amendment to the Article on Measures of Implementation, U.N. Doc. A/C.3/306 (Oct. 25, 1948) (E/800) (Cuba) (Cuba’s amendment, reading “Every person has the right, either individually or in association with others, to petition or to communicate with any competent authority, for reasons of either general or private interest, and the right to obtain prompt action thereon.”).

⁸⁶ Comm’n on Hum. Rts., *The Right of Petition: Report by the Secretary-General*, *supra* note 6, at 9.

⁸⁷ Bruegel, *supra* note 86, at 561.

⁸⁸ Comm’n on Hum. Rts., Report of the Tenth Session, ¶ 152 (Petitions from Individuals), U.N. Doc. E/2447 (Supp.) (1954), quoted in Bruegel, *supra* note 86, at 562.

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founding instruments, judicial and quasi-judicial human rights bodies in both the UN and regional systems have characterized the creation of an individual complaint proceeding as establishing an individual right to submit complaints for their consideration, when authorized by the relevant State,⁸⁹ and have found States internationally responsible for violating this right in some instances⁹⁰ For example, the ECtHR has unequivocally recognized its founding treaty as creating a right of petition by stating, in Article 34, that “[t]he Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be a victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto.”⁹¹ It has concluded that this language “confers upon an applicant a right of a procedural nature distinguishable from the substantive rights set out” in the Convention, but which must allow “individuals to complain of alleged infringements of it in Convention proceedings.”⁹²

In the Americas, the IACHR has characterized the ability of individuals to present complaints with respect to the United States (which has not ratified the American Convention on Human Rights) as inherent in the “right to petition in the inter-American human rights system.”⁹³ For its part, the IACtHR has stated that the “execution of [its] decisions and

⁸⁹ Juan de los Santos Giménez Marecos v. Paraguay, Petition 733-99, Inter-Am. Comm’n H.R., Report No. 161/11 (Nov. 2, 2011) (“The petitioner has a legitimate right to submit a petition to the Commission as provided in Article 44 of the American Convention.”); Öcalan v. Turkey, App. No. 46221/99, ¶¶ 197–202 (Eur. Ct. H.R. May 12, 2005) (noting that State action “hindering the effective exercise of his or her right” of application may constitute a violation of Article 34).

⁹⁰ See, e.g., Mamatkulov and Askarov v. Turkey, App. Nos. 46827/99 & 46951/99, ¶¶ 128–129 (Eur. Ct. H.R. Feb. 4, 2005) (finding Turkey in breach of its obligations under Article 34 because its failure to comply with interim measures hindered the effective exercise of the applicants’ right of application); Agiza v. Sweden, CAT/C/34/D/233/2003 ¶¶ 13.9–15 (Comm. Against Torture May 20, 2005) (“The Committee observes...that by making the declaration under article 22 of the Convention, the State party undertook to confer...the right to invoke the complaints’ jurisdiction of the Committee” and finding the State responsible for violating this right for failing to cooperate with the Committee “by neither disclosing to the Committee relevant information, nor presenting its concerns to the Committee for an appropriate procedural decision” regarding potential abuse of the process); Napoleon Beazley v. United States, Case 12.412, Inter-Am. Comm’n H.R., Report No. 101/03, ¶¶ 52–59 (Dec. 29, 2003) (reiterating that executing a petitioner in contravention of provisional measures “deprives condemned persons of their right to petition in the inter-American human rights system” and concluding that the State therefore violated its obligations under Article 1 of the American Convention in this instance).

⁹¹ See, e.g., Mamatkulov and Askarov, App. Nos. 46827/99 & 46951/99, ¶ 108.

⁹² Cruz Varas and Others v. Sweden, App. No. 15576/89, ¶ 99 (Eur. Ct. H.R. Mar. 20, 1991) (noting that current Article 34 “confers upon an applicant a right of a procedural nature distinguishable from the substantive rights set out” in the Convention, but which must allow “individuals to complain of alleged infringements of it in Convention proceedings”).

⁹³ See, e.g., Napoleon Beazley, Case 12.412, Report No. 101/03, ¶¶ 52–59.

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judgments should be considered an integral part of the right to access to justice, understood in its broadest sense, as also encompassing full compliance with the respective decision.”⁹⁴

This is connected to the idea of an individual’s right to a remedy for human rights treaty violations. Human rights bodies have condemned States’ failure to comply with a decision, judgment, or interim measures, or to participate in good faith because such actions impede access to their complaint procedures;⁹⁵ these statements clearly apply only to those States that have already accepted the complaint procedure.⁹⁶ Relatedly, the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law state, “An adequate, effective and prompt remedy for gross violations of international human rights law or serious violations of international humanitarian law should include all available and appropriate international processes in which a person may have legal standing and should be without prejudice to any other domestic remedies.”⁹⁷ The International Law Commission has similarly characterized complaint procedures as providing a “right of petition to a court or some other body for individuals affected” by violations of a human rights treaty.⁹⁸ In sum, international law now recognizes individuals as rights holders “with the abstract capacity to invoke international law” to hold a State responsible for abuses, and this is reflected in certain human rights treaty regimes in the “concrete right of access to international judicial remedies before the competent organs.”⁹⁹ Once such a remedy has been established and

⁹⁴ *Baena Ricardo v. Panama*, Inter-Am. Ct. H.R. (ser. C) No. 104 ¶ 82 (Nov. 28, 2003).

⁹⁵ See, e.g., Hum. Rts. Comm., Concluding Observations on the Fourth Periodic Report of Algeria, ¶ 8(b) at 2, ¶ 14 at 3, U.N. Doc. CCPR/C/DZA/CO/4 (Aug. 17, 2018) (noting that a law providing immunity for certain violations “infringes the right of all to have access, both domestically and at the international level, to an effective remedy against human rights violations”).

⁹⁶ See, e.g., Comm. on Econ., Soc. & Cultural Rts., Decision Adopted by the Committee under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, Concerning Communication No. 51/2018, ¶ 7.7, U.N. Doc. E/C.12/66/D/51/2018 (Oct. 11, 2019) (noting that the State’s failure to comply with interim measures “also deprives the Committee of the ability to provide an effective remedy to persons who claim to be victims of a violation of the Covenant”); *Baena Ricardo*, Inter-Am. Ct. H.R. (ser. C) No. 104, ¶¶ 72–83.

⁹⁷ G.A. Res. 60/147, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* ¶ 17 (Dec. 16, 2005).

⁹⁸ Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries, *supra* note 65, art. 33, ¶ 4 of the commentary.

⁹⁹ FRANCIONI, *supra* note 15, at 7.

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accepted by the relevant State, individuals have a right to present their complaints without inappropriate interference.

*A Right of Petition Derived from International Human Rights Bodies’
Inherent Powers*

A third possible source of a right of international petition derives from the inherent powers of human rights accountability mechanisms themselves. In order to assess what powers might be inherent to international human rights bodies, it is necessary to examine their purposes or functions. Some scholars have argued that the purpose of human rights treaties and their oversight mechanisms was, and is, not to dispense individual justice but rather to alert international organizations and their Member States to situations of significant non-compliance with treaty obligations, particularly those with the propensity to negatively impact international peace and security.¹⁰⁰ In this sense, some have contended that the “drafters envisaged the [European Convention on Human Rights] as an instrument that would be ‘an early warning system to sound the alarm in case Europe’s fledgling democracies began to backslide toward totalitarianism’” and its oversight system “as a safeguard of general [as opposed to individual] justice.”¹⁰¹ They assert that “the protection of individual human rights was not at the forefront of [State] concerns,” which “is not surprising as the individual right to petition was regarded as ‘a dream unlikely to ever be realized’ in the early 1950s.”¹⁰² This view would imply that any inherent power to administer an individual petition procedure would be, possibly, limited to receipt of information rather than adjudication of individual claims with a view to provision of redress.

Review of contemporary statements and opinions, however, calls into question this emphasis on the early warning function and its legal significance, including because the existence of a primary purpose does not negate the existence of other purposes, such as providing individual access to justice. Some States clearly *were* focused on ensuring individual access to justice, including as a necessary tool for treaty implementation,

¹⁰⁰ See discussion of these opposing views, with respect to the European Court of Human Rights, in SARDARO, *supra* note 12, at 52–59.

¹⁰¹ Janneke H. Gerards and Lize R. Glas, *Access to Justice in the European Convention on Human Rights System*, 35 NETH. Q. HUM. RTS. 1, 17–18 (2017) (quoting Laurence R. Helfer, *Redesigning the European Court of Human Rights: Embeddedness as a Deep Structural Principle of the European Human Rights Regime*, 19 EUR. J. INT’L L. 125, 129 (2008)).

¹⁰² *Id.* (quoting ED BATES, *THE EVOLUTION OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS – FROM ITS INCEPTION TO THE CREATION OF A PERMANENT COURT OF HUMAN RIGHTS* 9 (2010)).

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when creating human rights oversight bodies. Some States emphasized the centrality—even the “primordial importance”¹⁰³ of individual complaint processes to achieving the purposes and implementation of human rights treaties.¹⁰⁴ Although views certainly varied, the French delegate involved in the establishment of the European Court of Human Rights stated, “In domestic law the protection of rights depend[s] on the existence of the courts. The international position could not be different.”¹⁰⁵ Ireland’s representative opined that any “Convention on Human Rights which did not grant any right of redress to individuals was not worth the paper it was written on.”¹⁰⁶ While these positions do not reflect a consensus among States at the time, they do provide some support for the idea that complaint procedures have been viewed, at least by some States, as a vital part of the human rights infrastructure.

Moreover, a human rights body’s purpose is not necessarily static, and may evolve over time, including as its functions or mandates expand. Looking to the European human rights system, whether or not an individual right of international petition existed or motivated its creation in the 1950s, more than 70 years of legal developments and practice support the understanding that the complaint procedure is now its core

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Observaciones del Gobierno de Chile al Proyecto de Convención sobre Derechos Humanos, (Sept. 26, 1969), in CONFERENCIA ESPECIALIZADA INTERAMERICANA SOBRE DERECHOS HUMANOS, ACTAS Y DOCUMENTOS OAS/Ser.K/SVI/1.2 Doc. 7, at 43 (Nov. 7-22, 1969), <https://www.oas.org/es/cidh/docs/enlaces/Conferencia%20Interamericana.pdf> [<https://perma.cc/HL53-G59G>]

(“El artículo 33 contempla de manera absoluta el llamado ‘derecho individual de petición.’ Indudablemente que la inclusión de este derecho en una Convención de Derechos Humanos es cuestión de primordial importancia para su efectiva aplicación.”).

¹⁰⁴ Optional Protocol to the International Covenant on Civil and Political Rights, Preamble (“Considering that in order further to achieve the purposes of the International Covenant on Civil and Political Rights ... and the implementation of its provisions it would be appropriate to enable the Human Rights Committee ... to receive and consider, as provided in the present Protocol, communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant”); U.N. GAOR, 20th Sess., 3rd Comm., 1355th mtg., Agenda Item 58: Draft International Convention on the Elimination of All Forms of Racial Discrimination, ¶ 45 (citing the Netherlands’ view “that the right of individual petition was the most effective means of giving effect to human rights in general and the present Convention in particular”), ¶ 51 (referring to Argentina’s position that “full effect could not be given to the Convention unless individuals and groups of individuals could address communications to the committee”).

¹⁰⁵ COLLECTED EDITION OF THE “TRAVAUX PRÉPARATOIRES” OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS, Vol. I, at 114 (1975) (quoted in Kjeldgaard-Pedersen, *supra* note 16, at 276).

¹⁰⁶ Kjeldgaard-Pedersen, *supra* note 16, at 278 (quoting COLLECTED EDITION OF THE “TRAVAUX PRÉPARATOIRES” OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS, Vol. I, at 112 (1975)).

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purpose.¹⁰⁷ For example, Judge Cançado Trindade writes, “[i]n the course of the travaux préparatoires of Protocol n. 14 [to the European Convention on Human Rights, adopted in 2004], it was warned that the preservation of the individual right of petition to the ECtHR was necessary in order for individuals to obtain redress, this being linked to securing full access to justice; it was also recalled that the case-law of the ECtHR had carefully developed the right of individual petition over the past 40 years, and it lay at the heart of the mechanism of protection of the Convention, which contributed to transforming Public International Law itself.”¹⁰⁸ In the words of the ECtHR itself, “the Convention right to individual application...has over the years become of high importance and is now a key component of the machinery for protecting the rights and freedoms set out in the Convention.”¹⁰⁹ Indeed, in this century, “consensus seems to be that the [European] Court’s primary task is to provide direct access to substantive justice and that this is a goal in itself.”¹¹⁰ In terms of development of legal standards and treaty interpretations, the complaint procedures of the ECtHR and other regional and UN human rights bodies are arguably the most consequential and visible parts of their work.

Can it be argued that any body charged with protecting human rights has the inherent power to decide individual complaints? Some human rights mechanisms have themselves created individual complaint processes through their procedural rules and guidelines—without an express mandate to do so; others conceivably yet could. In particular, both the African Committee of Experts on the Rights and Welfare of the Child (“ACERWC”) and IACHR have given life—or, at least, flesh—to detailed petition systems on the basis of a general authority to receive “communications” that “relat[e] to” the African Charter on the Rights and Welfare of the Child¹¹¹ or to the American Declaration on the Rights and

¹⁰⁷ See, e.g., SARDARO, *supra* note 12, at 55 (contending that the view that the primary purpose of the ECtHR is to dispense individual justice “is clearly supported by the historical development of the Convention supervisory machinery and by the jurisprudence of the European Court”).

¹⁰⁸ CANÇADO TRINDADE, *supra* note 16, at 36 (citing J. Wadham & T. Said, *What Price the Right of Individual Petition: Report of the Evaluation Group to the Committee of Ministers on the European Court of Human Rights*, 2 EUR. HUM. RTS. L. REV. 169, 170–172 (2002)).

¹⁰⁹ Mamatkulov & Askarov v. Turkey, App. Nos. 46827/99 & 46951/99, ¶ 122 (Eur. Ct. H.R. Feb. 4, 2005), <https://hudoc.echr.coe.int/eng?i=001-68183> [<https://perma.cc/FD5U-Z4JK>].

¹¹⁰ Gerards & Glas, *supra* note 102, at 18.

¹¹¹ African Charter on the Rights and Welfare of the Child, art. 44 (1) (“The Community may receive communication, from any person, group or non-governmental organization recognized by the Organization of African Unity, by a Member State, or the United Nations relating to any matter covered by this Charter.”) Cf. ACERWC, *Revised Rules of Procedure* (2020) (“‘Communications’ shall be understood to be any complaint received by the Committee in accordance with Article

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Duties of Man,¹¹² respectively. While these provisions could be read to recognize only a right “to” petition (in the sense of simply bringing a matter to the attention of authorities), rather than a right “of” petition, both the ACERWC and IACHR have relied on them to create robust complaint proceedings. In fact, the IACHR applies the same procedural rules to “petitions” brought under the American Convention on Human Rights (which specifically authorizes and details an individual complaint procedure) as to “communications” submitted with respect to States that are not party to the Convention and whose only regional human rights obligations¹¹³ can be found in the American Declaration on the Rights and Duties of Man, despite its Statute’s significantly different explanation of the IACHR’s competencies under the two instruments.¹¹⁴ Similarly, when establishing the UN Committee on the Elimination of Racial Discrimination (the first UN human rights treaty body), States endowed it merely with a power to “receive and consider communications” (as distinct from “petitions” to national authorities) from individuals and to make “suggestions and recommendations” concerning them.¹¹⁵ The Convention on the Elimination of All Forms of Racial Discrimination makes no mention of admissibility criteria nor any other requirements (aside from a prohibition on anonymity) typical of complaint proceedings; nonetheless, on the basis of this limited authorization, the

44 of the African Charter”). See also ACERWC, *Revised Guidelines for the Consideration of Communications and Monitoring Implementation of Decisions by the African Committee of Experts on the Rights and Welfare of the Child* (detailing admissibility criteria and jurisdictional requirements, processing, hearings, provisional measures, friendly settlement proceedings, publication of decisions, and follow-up).

¹¹² Inter-Am. Comm’n H.R. Statute, art. 20 (authorizing the Inter-Am. Comm’n H.R. to “examine communications submitted to it and any other available information” with respect to OAS Member States not party to the American Convention on Human Rights, subject only to a requirement of prior exhaustion of domestic remedies). Cf. American Convention on Human Rights, art. 44 (authorizing any person, group, or NGO legally recognized in an OAS Member State to “lodge petitions with the Commission containing denunciations or complaints of violation of this Convention by a State Party, subject to the admissibility criteria detailed in subsequent articles); Inter-Am. Comm’n H.R. Statute art. 19 (authorizing the Inter-Am. Comm’n H.R. to “act on petitions” and request provisional measures from the Inter-Am. Ct. H.R. in pending cases with respect to States parties to the American Convention).

¹¹³ The Inter-Am. Comm’n H.R.’s position that the American Declaration on the Rights and Duties of Man reflects legal obligations on the part of OAS Member States is contested by some States, particularly the United States. See, e.g., José Trinidad Loza Ventura v. United States, Case 13.478, Inter-Am. Comm’n H.R., Report No. 454/21, ¶¶ 24, 58 (2021).

¹¹⁴ Rules of Procedures of the Inter-Am. Comm’n H.R., arts. 23–44, 52 (“The procedure applicable to petitions concerning Member States of the OAS that are not parties to the American Convention shall be that provided for in the general provisions including in...Articles 28 to 44 and 47 to 49 of these Rules of Procedure.”).

¹¹⁵ Convention on the Elimination of All Forms of Racial Discrimination, art. 14.

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Committee has established a formal complaint procedure in which it assesses the admissibility and merits of each communication of which it is seized, adopts an opinion in which it makes determinations of fact and law,¹¹⁶ and takes steps to follow up on implementation by the State.¹¹⁷ Arguably, the CERD, ACERWC, and IACHR are all exercising their inherent powers in creating these judicialized complaint proceedings.

Some support for this kind of inherent power can also be found in international bodies' evolving understanding of interim measures. It is largely accepted, today, that human rights bodies with operative individual complaint proceedings have the inherent power to issue interim measures, with which States must comply.¹¹⁸ The IACHR, and three UN human rights treaty bodies, have claimed an inherent power to issue interim measures without an express authorization to do so.¹¹⁹ These and other bodies have concluded that State failure to comply with interim measures undermines their purpose of effectively protecting human rights. For example, in its 2005 Grand Chamber judgment in *Mamatkulov*, the ECtHR took pains to depart from its 1991 decision in *Cruz Varas and Others v. Sweden*,¹²⁰ in which it had declined to find that the right of individual petition required States to comply with the former European Commission on Human Rights' interim measures.¹²¹ The Court noted that other "international courts and institutions have stressed the importance and purpose of interim measures" as "necessary to ensure the effectiveness of their decisions on the merits" and "guaranteeing the effective protection of human rights."¹²² This notion of effective protection, arguably, makes room for an argument that access to an

¹¹⁶ See, e.g., *A. Yilmaz-Dogan v. Netherlands*, Comm. No. 1/1984 (Comm. on the Elimination of Racial Discrimination Aug. 10, 1988), in United Nations, *Selected Decisions of the Committee on the Elimination of Racial Discrimination: Thirty-Sixth to Seventy-Fifth Sessions (August 1988–August 2011)*, Vol. I, at 3–7 (2012).

¹¹⁷ See, e.g., Rules of Procedure of the Committee on the Elimination of Racial Discrimination, Rules 80–95, U.N. Doc. CERD/C/35/Rev.3 (1986) (spelling out the requirements and procedure for the handling of individual communications).

¹¹⁸ Felipe González, *Urgent Measures in the Inter-American Human Rights System*, 7 SUR INT'L J. ON HUM. RTS. 51 (2010), <https://sur.conectas.org/en/urgent-measures-in-the-inter-american-human-rights-system/> [<https://perma.cc/29XW-LSJP>].

¹¹⁹ *Id.*

¹²⁰ *Cruz Varas and Others v. Sweden*, App. No. 15576/89, ¶ 99 (Eur. Ct. H.R. Mar. 20, 1991) (noting that current Article 34 "confers upon an applicant a right of a procedural nature distinguishable from the substantive rights set out" in the Convention, but which must allow "individuals to complain of alleged infringements of it in Convention proceedings").

¹²¹ *Mamatkulov and Askarov v. Turkey* [GC], App. Nos. 46827/99 & 46951/99, ¶¶ 108–127 (Eur. Ct. H.R. Feb. 4, 2005); *Id.* ¶¶ 121–125.

¹²² *Id.* ¶¶ 113–125.

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individual complaint procedure is necessary to give effect to States' human rights treaty obligations.

In this context, the International Law Commission's commentary merits mention: "a State's responsibility for the breach of an obligation under a treaty concerning the protection of human rights may exist towards all the other parties to the treaty, but the individuals concerned should be regarded as the ultimate beneficiaries and in that sense as the holders of the relevant rights."¹²³ That is, we must not lose sight of the fundamental fact that human rights treaties, and the bodies that oversee their implementation, exist to protect the rights of *individuals* and not merely to provide a framework for assessing State practices. As discussed in the preceding section, there is significant support for the idea that these rights holders are entitled to a process through which to complain of violations. Accordingly, it can be argued that human rights oversight bodies' purposes include determination of individuals' allegations of State party violations and that, therefore, their inherent powers must include the creation and management of individual complaint procedures.

CONCLUSION

In recent years, States have prompted a proliferation of individual human rights complaint procedures at the international level, and individuals are using these processes more than ever. At the same time, human rights bodies' resolution of complaints continues to be hampered by inadequate resources and periodic efforts by States to constrain or leave these bodies' jurisdiction. In this context, it becomes particularly important to understand whether, and to what extent, individuals have a *right* to access international complaint procedures with respect to States' alleged violations of their human rights. Such a right possibly exists under customary international law: as a consequence of State acceptance of existing procedures (within the confines of the relevant parameters), or as a permissible exercise of inherent powers. Immediately, however, fundamental questions arise. This article has not attempted to provide answer,s but instead identifies them here for further study and to acknowledge the practical and legal limitations at issue.

A number of questions remain with respect to how any individual right of international petition interacts with, or gives rise to, other rights and obligations of States and of IOs. Some human rights instruments

¹²³ Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries, *supra* note 65, art. 33, ¶ 4 of the commentary.

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specifically prohibit State interference with¹²⁴—and individual abuse of¹²⁵—the “right” of complaint.¹²⁶ Relatedly, States that accept individual complaint procedures in the regional or UN human rights systems are understood to have good faith obligations to comply with those procedures.¹²⁷ As the Committee against Torture has stated, once a State accepts an individual complaint procedure, it is obligated to cooperate in good faith and “give full effect to the procedure,” so as not to violate “the effective exercise of the right to complaint.”¹²⁸ The Inter-American Court of Human Rights has similarly stated that “the States Parties to the Convention should fully comply in good faith (*pacta sunt servanda*) to all of the provisions of the Convention, including those relative to the operation of the two supervisory organs; and, that in view of the Convention’s fundamental objective of guaranteeing the effective protection of human rights ... States Parties must not take any action that may frustrate the *restitutio in integrum* of the rights of the alleged victims.”¹²⁹ In this respect, the IACHR has characterized the right of individuals to present complaints as giving rise to State obligations of non-interference.¹³⁰

¹²⁴ ECHR, art. 34 (“The High Contracting Parties undertake not to hinder in any way the effective exercise of this right” of individual application); *Cf.* IACHR, Rules of Procedure, art. 23 (“Any person...may submit petitions to the Commission”); AfCHPR, Rules of Procedure, Rule 39(1) (“the following are entitled to submit cases to the Court...(f) An individual or a Non-Governmental Organization which has Observer Status before the Commission provided the requirements of Article 34(6) of the Protocol are met”).

¹²⁵ Optional Protocol to the International Covenant on Civil and Political Rights, art. 3 (“The Committee shall consider inadmissible any communication...which it considers to be an abuse of the right of submission”); ECHR, art. 35(3)(a).

¹²⁶ ECHR, art. 34 (“The Court may receive applications from any person, nongovernmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.”); *Miroļubovs and Others v. Latvia*, App. No. 798/05 (Eur. Ct. H.R. Sept. 15, 2009), <https://hudoc.echr.coe.int/eng?i=002-1348> [<https://perma.cc/XAF4-T4R6>] (domestic prosecution for disclosing confidential friendly settlement *could* violate art. 34, and ECtHR will give benefit of doubt to applicants, State must prove intent to disclose if it raises this issue); *Yepishin v. Russia*, App. No. 591/07, ¶¶ 71–77 (Eur. Ct. H.R. June 27, 2013) (prison authorities’ refusal to provide postage for applicant’s letters to the ECtHR did not constitute a violation of the State’s obligations under art. 34).

¹²⁷ *See, e.g., Nadeem Ahmad Dar v. Norway*, CAT/C/38/D/249/2004, ¶ 16.3 (Comm. Against Torture May 11, 2007).

¹²⁸ *Brada v. France*, CAT/C/34/D/195/2002, ¶ 13.4 (Comm. Against Torture May 17, 2005). *See also Pelit v. Azerbaijan*, CAT/C/38/D/281/2005, ¶ 102 (Comm. Against Torture May 1, 2007).

¹²⁹ *James et al. v. Trinidad and Tobago*, Provisional Measures, Order, Inter-Am. Ct. H.R., ¶ 7 (Aug. 29, 1998).

¹³⁰ *See, e.g., Napoleon Beazley v. United States*, Case 12.412, Inter-Am. Comm’n H.R., Report No. 101/03, ¶¶ 52–59 (Dec. 29, 2003) (reiterating that executing a petitioner in contravention of

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Member States may also have due diligence obligations to supervise the human rights impacts of international organizations to which they belong.¹³¹ And, when an IGO fails to make an adequate dispute settlement procedure available with respect to claims against it, some have argued that the State must.¹³² Understanding the scope of an individual right of international petition requires grappling with these concepts and what their application would mean in practical terms.

In the absence of a treaty-based complaint mechanism, could the substantive rights that can be vindicated through an international right of individual petition be limited to those that have become part of customary international law, or would a State's treaty obligations be relevant? To the extent that such a right might derive both from general international law *and* specific treaty texts, it is important to identify how these might diverge. For example, if the right of international petition can be found in customary international law, is it limited to alleged violations of rights that are also customary norms?¹³³ What about persistent objectors, including with respect to those 30 States that have never accepted an individual human rights complaint procedure?

provisional measures “deprives condemned persons of their right to petition in the inter-American human rights system” and concluding that the State therefore violated its obligations under Article 1 of the American Convention in this instance).

¹³¹ KRISTINA DAUGIRDAS, *Member States' Due Diligence Obligations to Supervise International Organisations*, in *DUE DILIGENCE IN THE INTERNATIONAL LEGAL ORDER* 63-64 (Heike Krieger, Anne Peters and Leonhard Kreuzer eds. 2020).

¹³² *M.L.D. v. Philippines*, CCPR/C/141/D/3581/2019, ¶¶ 8.6, 9.6 (Hum. Rts. Comm. July 18, 2024) (“Taking into account the jurisprudence of international judicial bodies, the Committee observes that while international organizations have an international legal personality and enjoy jurisdictional immunities, the host State party may still have jurisdiction under the Covenant if the international organization does not provide a reasonable alternative means of dispute resolution;” “Taking into account the jurisprudence of international judicial bodies, the Committee is of the opinion that where States establish international organizations in order to pursue or strengthen their cooperation in certain fields of activity, and where they transfer to those organizations certain competencies and accord them with immunities, there may be implications as to the protection of fundamental rights. It would therefore be incompatible with the object and purpose of the Covenant if States parties were thereby absolved of their obligations under the Covenant in relation to the field of activity covered by such transfer. The Committee recalls that the Covenant is intended to guarantee not theoretical or illusory rights, but rights that are practical and effective. This is also true for the rights of access to courts, in view of the prominent place held in all societies by the right to a fair trial, under article 14 of the Covenant.”).

¹³³ See, e.g., Martin Faix, *Victims' Right to Reparation under International Human Rights Law: Also against International Organizations?*, *CZECH Y.B. PUB. & PRIV. INT'L L.* 161, 175 (2015) (“if we admit the existence of customary international human rights norms, we must also admit the existence of a corresponding individual right to reparation, which then shares its origin with the primary right in general international law.”).

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Lastly, would new bodies need to be created, or would existing bodies find a way to expand their mandates? And what sort of procedure (judicial or quasi-judicial) would satisfy this right? Can limitations on human rights complaint mechanisms' jurisdiction *ratione temporis* and *ratione personae*, based on the specifics of State acceptance of a complaint procedure rather than the existence of a human rights obligation, be considered legitimate if individuals have a right to access to these procedures?

While having answers to these questions is not a prerequisite to identifying the possible existence and source(s) of an individual right of international petition for human rights abuses, it is necessary for any effort to coherently realize the right. As such, this Article takes a first step toward securing a shared understanding and, eventually, implementation of the legal basis and scope of individuals' right to present human rights complaints against States at the international level.