THE ARAB, EUROPEAN, INTER-AMERICAN AND AFRICAN PERSPECTIVES ON UNDERSTANDING HUMAN RIGHTS: THE DEBATE BETWEEN 'UNIVERSALISM' AND 'CULTURAL RELATIVISM'

DECLAN O'SULLIVAN

The article begins with a description of how the term 'human rights' originated, and a consideration of how 'universal' it is possible for human rights to be, when comparing the differing views of human rights in existing cultural systems. There follows a discussion of the continual argument between the 'universal' approach towards human rights with the diametrically opposed perspective of 'cultural relativism.' There is a contrast between the African and Islamic priority of 'duties' within the community and the western approach of individualistic 'rights'. The second part of the article deals with the contemporary Arab, European, Inter-American and African UN Commissions on Human rights. The article concludes whether it is possible to establish a system which could intertwine both these two approaches, by using some level of compromise and mutual respect.

1. Introduction

This analysis will endeavour to enquire how far human rights are considered wholly 'universal', and how influential the opposing argument is, which claims they are defined within specific cultural contexts. Throughout the debate, possibilities and potentials for any compromise or accommodation between the two approaches presented by 'universal' human rights in the west and 'universal' human rights in Islam are considered and assessed. This topic was chosen as it is an essential area of some importance for the

understanding of, and success in, international relations in the present day – as the globe expands to form one large, accessible community.

Human rights is an issue that is never far from the media headlines, thus, it needs to be comprehended from the different cultural perspectives, together with their separate approaches towards protecting those rights. For this reason, the assessment maintains an analysis purely on the level of content of the relevant documents discussed and also entertains an assessment of the actual material behaviour of specific human rights abuses. It is manifestly clear that obscene human rights abuses occur within every continent – for example the 'disappearances' in Latin America, the despotic elite of Africa, and the widespread cases throughout Europe, of which some do and others do not reach the European Court – but the material used here constitutes a whole different area of research to cover both the theoretical arguments and compares them with the practical implementation of the documents, declarations and international agreements presented by the United Nations and the Middle East.

The philosophy behind each regional document on human rights, as understood in Islam, and how they compare with the U.N. Universal Declaration of Human Rights, is the main foundation of this article. As will be seen, the U.N. Declaration is not the only 'universal' Declaration pertaining to human rights; as also discussed are the Arab regional arrangements of implementing the U.N.'s documents, in their own culturally specific milieux.

This information presented here portrays the emergence of the concept of human rights from its earliest formulations in Greco-Roman thought to the contemporary conception. This presentation essentially charts the evolution of the concept from a western, liberal, individualistic perspective but – as a counter to this – it also offers evidence of some historical documents on human rights from other cultures, to prove the concept was, by no means, solely a western invention. The Chapter also discusses the cultural abstentions from the U.N. vote in 1948, to ratify the U.N.'s 'universal' Declaration. The implications of these abstentions have a very heavy bearing on the debate being concerned here.

It is also possible to present the essentially contesting approaches, comparing and contrasting their arguments. 'Universalism' and 'Cultural Relativism' are analysed in some detail, to expose the level

of complexities that are involved in trying to resolve this debate – concerning which of the two perspectives, if any, has the greater legitimacy as an approach towards the protection of human rights. A possible rapprochement between the two perspectives is offered towards the end of the article, but is itself critiqued as a possible western imposition. The theoretical background presented is elaborated on and analysed via the regional arrangement for human rights protection in existence, from European, Inter-American, African and Arab/Islamic perspectives.

The differing approaches are compared, to gain some idea of their similarities with each other, their inherent differences and their relationship with the U.N. Universal Declaration of Human Rights. This section of the article ends with a continued debate between the two opposing approaches of Universalism and Cultural Relativism.

Assessing the Arab Commission of Human Rights constitutes the comparison case-study of the debate and it offers a detailed analysis of Islam, with specific reference to its approach towards human rights protection.

The last section presents an overall picture of how these differing cultural approaches actually work together in reality, on a more international position. It describes, in detail, the common tenets of human rights protection that exist between all the disparate cultural perspectives – including Islam – and argues that certain minimum rights are upheld and respected by all cultures. However, beyond that compromise, it reiterates the vastly different approaches of implementation for the majority of rights, a situation which is heavily influenced by each subjective cultural setting. This section debates the apparently irresolvable nature of the paradigm clash, but offers some hope of rapprochement in its conclusion.

Finally, the Conclusion draws all the issues together and ties all the points raised and positions stated, into a coherent assessment of the impact which the debate between the concepts of Universalism and Cultural Relativism has, on the sensitive issue of 'human rights protection'.

2. Defining the Debate

Before beginning any discussion that concerns attitudes of contemporary approaches and perspectives towards human rights, it is essential to present the history of the area and how certain

prevailing ideas have evolved. Weston believes that the term 'human rights' is actually quite new, having gradually emerged into everyday usage since the end of Second World War and the establishment of the United Nations in 1945. He argues that it developed to replace the phrase 'natural rights' which had fallen into disfavour following the concept of natural law – to which it was closely linked – became an issue of some controversy. Beyond that, the later phrase 'the Rights of Man' was not deemed to be universally valid or to be understood to include the rights of women.[1]

The rise of the concept of 'human rights', the thinking and influence behind the major documents that exist today, has been widely detailed throughout human rights literature. The documents and statements are primarily based on a liberal, democratic, western perspective and interpretation of priorities and rights lists, which have evolved from a western tradition of human rights philosophy.[2] The interesting questions that have been raised, on reflection of these 'universal' documents are: 'How truly universal are they?' 'Are the priorities of rights protected, equally shared throughout the world's continents?' and 'Do the universal demands for, at least, a minimum level of protection for each individual, really transcend the disparate cultural perspectives towards human rights that are found in regional approaches to human rights legislation?'[3]

Weston postulates that, although there is a widespread acceptance of the principle of 'human rights' on the domestic and international levels, it does not necessarily follow that there is the same broad agreement about the very nature of these rights and their scope and, thus, their definition. He questions whether human rights are to be viewed as Divine, Legal or Moral entitlements.[4] There is a

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[1] B.Weston, 'Human Rights' in *Human Rights Quarterly*, Vol.6, No.3, August 1984, Baltimore, The Johns Hopkins University Press, pp.257-8. Also see O'Sullivan, Declan, 'The History of Human Rights across the Regions: Universalism vs Cultural Relativism,' in *The International Journal of Human Rights*, Vol. 2, No. 3., Autumn 1998, Frank Cass Publishers, London, p22.

[2] A. Robertson, *Human Rights in the World: An Introduction to the Study of the International Protection of Human Rights*, Manchester University Press, 1982, p3. Also see O'Sullivan, 'The History of Human Rights', *ibid.*, p23.

[3] O'Sullivan, 'The History of Human Rights', *ibid.*, p23.

[4] Weston, 'Human Rights', op. cit., p262

strong debate concerning whether they should be considered legitimate, or gain validity by intuition, custom, social theory, principles of distributive justice or as necessary pre-requisites for each person to find 'true happiness.' There is also a consistent disagreement about whether these rights are to be interpreted as wholly irrevocable or partially so, whether they should be based across a broad spectrum of issues or limited to a confined number and content.[5]

An interesting interpretation of the normative content of human rights was advanced by the French jurist Karel Vasak. In some form, being inspired by the normative themes of the French Revolution, Vasak categorised rights into three 'generations'. Those of the 'first generation' are civil and political rights (*liberté*), the second generation are economic, social and cultural rights (*egalité*), and the third generation – the most recent – represent solidarity rights (*fraternité*).[6] In Weston's description[7] the first generation of the civil and political rights derives from the seventeenth and eighteenth century reformist theories, associated with the English French and American revolutions. It is infused with the philosophy of liberal individualism and the economic and social doctrine of laissez-faire, conceiving of human rights as more negative ('freedoms from') than positive ('rights to'). It also favours the abstention, rather than the intervention of a government in the quest for human dignity and would cover, for example, Articles 2-21 of the United Nation's Universal Declaration of Human Rights (1948).

The second generation of social and cultural rights finds it origins primarily in the socialist tradition prevalent in early nineteenth century France and has been promoted through various revolutionary struggles and welfare movements ever since then. Weston argues that it was mainly a response to the abuses and misuses of capitalist development. Historically, it is diametrically opposite to the first generation of rights, emphasising 'rights to' over 'freedoms from'

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[5] *Ibid.*, p262-3

[6] Weston, *ibid.*, p264. Also see O'Sullivan, 'The History of Human Rights', op.cit, p23.

[7] For further commentaries on the 'three generations of human rights' also see Robertson, *Human Rights in the World*, op. cit., p.193-4; R. Vincent, *Human Rights in International Relations*, Cambridge University Press, 1986, p50; and L. Swindler, 'Historical Retrospect' in *Concilium*, No.2, 1990, London, SCM Press, p.19

and promoting state intervention for the purpose of assuring equitable participation in the production and distribution of the values it involves. In essence, it covers Articles 22-27 of the UN Universal Declaration.[8]

The third generation of the solidarity rights is not only based upon the two earlier generations but is a product – still in formulation – of the rise and decline of the nation-state in the second half of the twentieth century. Represented through Article 28 of the UN Universal Declaration, it reflects the emergence of developing countries' nationalism with the demand for global redistribution of power, wealth and other important values. These values include the right to political, economic, social and cultural self-determination; the right to economic and social development; the rights to participate in and benefit from shared 'earth-space' resources, scientific, technical and other information progress, and cultural traditions, sites and monuments. Weston argues that the third generation rights represent the broader collective rights such as the right to peace, a healthy and balanced environment and the right to humanitarian disaster relief. Assessing the interpretation of this evolution of human rights contents, Weston asserts that:

> *the history of the content of human rights also reflects humankind's recurring demands for continuity and stability.*[9]

3. Early Formulations

Robertson, among others,[10] describes the prevailing western tradition as a combined creation through intertwining Greek philosophy, Roman Law, the Judaeo-Christian tradition, the Humanism of the Reformation and the Age of Reason,[11] which ultimately left its legacy for the parliamentary democracies of present day western Europe.

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[8] O'Sullivan, 'The History of Human Rights', op. cit, p.24

[9] B.Weston, 'Human Rights' in *Human Rights Quarterly*, op. cit., pp.264-7

[10] W. Huber, 'Human Rights – A Concept and It's History' in A. Muller and N. Greinacher (eds.), *Concilium*, Vol.124, No.4, 1979, New York, Seabury Press, pp.3-6 and also see Swindler, 'Historical Retrospect', op. cit., p12-17 and Weston, *ibid.*, p258

Plato, Aristotle, the Stoics and others in Hellenistic civilisation developed 'natural law' which applied to all individuals, and the Greeks also developed the idea of democracy where individuals gained certain rights due to simply being born into that society. However, and extremely important caveat to note is that these rights were certainly not automatic or equalitarian, but respective to an individual's standing in the established hierarchy – which, from top-down, was set-up in the order of free adult males, women, then children and finally slaves.[12]

The Romans themselves established many important 'landmarks' in terms of their development of the law. The third century jurist Gaius, at the beginning of his work *Institutiones*, distinguished between civil law, which differed from and between nations, and the universal application of the *Commune omnium hominum ius* (Common Law of all Men).[13] Essentially, this established a basis for claiming a right simply on the grounds that an individual was a human being – because the foundation of everything is nature, which can be discovered by reason. Only humans, it was argued, have that capacity.[14] This line of thought was pervasive in Stoicism, the Greek school of philosophy founded by Zeno of Citium, a doctrine which held that a universal working force pervaded all of creation, and therefore all human conduct could be judged according to – thus, bringing it into harmony with – the law of nature. The often quoted classic example, drawn from Greek literature, to portray their beliefs, is from a play by Sophocles. It centres on Antigone's refusal to comply with King Creon's command that she may not bury Polynices, her dead brother – as he was considered a traitor, having fought against his own city.[15] Antigone defended her decision to pursue the burial on the grounds "that she had acted in accordance with the immutable laws of the gods."[16]

The formulation of the philosophy of the Stoics – applied directly to the issue of human rights – was manifested in the *Déclaration*

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[11] Robertson, *Human Rights in the World*, op. cit., p3.
[12] Swindler, 'Historical Retrospect', *ibid.*, p13.
[13] O'Sullivan, 'The History of Human Rights', op. cit, p.25
[14] Swindler, *ibid.*, p.13. Also see Huber, 'Human Rights – A Concept and It's History', p.4
[15] Vincent, op. cit., p.3
[16] Weston, 'Human Rights', op. cit., p.258. Also see O'Sullivan, op. cit, p.25

des droits de l'homme et du citoyen (French Declaration of the Rights of Man and the Citizen) on 27 August 1789. Swindler states that, derived from the Enlightenment's notion of human rights, this was the first universalised declaration of human rights.[17] Robertson points out that this was particularly so in the second article:

> *Le but de toute association politique est la conservation des droits naturels et imprescriptibles de l'homme. Ces droits sont la liberté, la propriété, la sûreté, et la résistance à l'oppression.*
>
> *The aim of all political association is the conversation of all the natural and inalienable rights of man. These rights are liberty, property, security and resistance to oppression.*[18]

This declaration states several rights which are now accepted as the civil and political rights of all individuals: the basic principle that all men are born free and remain so, equal in their rights; that everyone has equality before the law; freedom from arrest, except when in breach of the law; the initial presumption of innocence until proven otherwise; freedom of expression and the interpretation of freedom to do virtually anything which is not harmful to others.

4. The English Contribution

Well before this document appeared, another one, broadly fulfilling the same expectations and founded on a similar ethos, was produced in England and is commonly perceived to be the foundation of English liberties. In 1215, the *Magna Carta Libertatum* was sanctioned by King John, after pressure from English barons and the people.[19] The most fundamental right it preserved was that no punishment could be imposed without the due process of law. Swindler argues that this was based on human reason, which inevitably provided the foundation for the expansion of the whole area of the human

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[17] Swindler, op. cit., p.17. Also see P. Sieghart, *International Law of Human Rights*, Oxford, Clarendon Press, 1984, p.8

[18] Robertson, op. cit., p.4. Also see Article 2: *Déclaration des droits de l'homme et du citoyen* found on: http://pages.globetrotter.net/pcbcr/dr1789.html

[19] O'Sullivan, 'The History of Human Rights', op. cit, p.26

rights debate.[20] The *Magna Carta* also guaranteed to each individual the freedom from imprisonment or from dispossession of their property; freedom from persecution or exile, unless by the lawful judgement of their peers, or by the law of the land. In Article 40 it also provided for the right to a fair trial, with the words:

> *Nulli vendemus, nulli negabimus, aut differemus rectum aut justiciam.*
>
> *To no one will we sell, to no one will we refuse or delay right or justice.*[21]

The establishment of the *Magna Carta* then led to the emergence of the Habeas Corpus Acts and the Bill of Rights in 1689. This assumed the supremacy of Parliament, the right to free elections, freedom of speech, the right to bail, freedom from cruel and unusual punishments and the right to a fair trial by jury. Following these developments came the independence of the judiciary and the freedom of the press, together with the political theory from John Locke which provided a philosophical foundation on which to base all the practical decisions and arrangements made. Locke believed that the monarchy did not hold sovereignty, but that sovereignty was held by the people as a whole and the government served to secure the lives, property and well being of the governed.

Therefore:

> *Government is not their master, it is created by the people voluntarily and maintained by them to secure their own good.*[22]

The theory of reserved natural rights then, is the basis for the maintenance of fundamental liberties – belonging to each individual by nature – which are, therefore not surrendered to the community and as such cannot be limited or denied by the state.[23] This perspective and priority of rights differs quite markedly from other

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[20] Swindler, op. cit., p.15. Also see P. Sieghart, op. cit., p.6 and see Huber, op.cit., p5

[21] Robertson, op. cit., p.5. Also see O'Sullivan, op. cit, p.26 and refer to the *Magna Carta Libertatum*, found on: http://www.orbilat.com/Latin/Texts/06_Medieval period/Legal Documents/Magna Carta.html

[22] Robertson, *ibid.*, p.5. Also see O'Sullivan, ibid, p.26

[23] Weston, 'Human Rights', op. cit., p.259

cultural interpretations of human rights, which emphasise much less the individual and personal rights, preferring to reinforce their beliefs that the individual serves as a function of the community and has specific duties to that community. The Regional Human Rights Commissions – described and discussed in detail below – explain the differing priority systems of some cultures where an individual actually gains their identity from this very submergence into group or community – together with their duties to the others within it. The differing nature of human rights in these cultures brings into question the 'universality' and global acceptance of the 'universal' declarations on human rights. Initially, before assessing the Regional Human Rights Commissions, it is necessary to describe other contributions and the growth of further treaties and official documents.

5. The American Developments

The Western European philosophical position on human rights, as mentioned above, was eventually translated to North America through people such as Thomas Jefferson, who had studied Locke and Montesquieu. The was a great deal of emphasis on the Christian influence, in their belief that the nature of mankind was created by God in his own image – *Imago Dei*. Further, and widely documented, there was a deeply held belief in the doctrine of natural law, rooted in the essence that the laws of nature and the laws of God were above and beyond the positive law made an absolute edict by humans.[24] Thus, it was logical for Jefferson, in drafting the Declaration of Independence for the United States of America in 1776 (known as *The Declaration of Independence of the Thirteen Colonies*) that he should refer to the necessity for people to understand the separation between these two forms of Law:

> *When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a*

[24] Robertson, op. cit., p.4. Also see Huber, op.cit., p.4 and Swindler, op.cit., p.13

decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.[25]

There is wide ranging agreement that these western documents – especially the French and American Declarations – are worded in a similar vein, especially when claiming the rights of individuals as 'natural and alienable.' There is only a minor difference in the fundamental basis of these rights between the two documents: the American Declaration confirms life, liberty and the pursuit of happiness as an absolute priority and the French Declaration emphasises on liberty, property and security. The Declaration of Independence echoed Locke's opinions, by paraphrasing his ideas and his general genre of thought. Both these documents also provide support for a right to the 'resistance to oppression.'[26]

This close similarity is of little surprise and of no great coincidence, as the main objectives of both sides of the Atlantic were the same: to protect the citizen from arbitrary power and to establish the rule of law. There was a great progression of study from the philosophers of the earlier texts to the founders of the newer one, together with an interaction of thought amongst intellectuals involved in establishing the lists of rights. John Locke (1632-1704) himself was building on the philosophy of Hugo Grotius (1583-1645) and Samuel von Pufendorf, (1632-1694). French philosophers, such as Montesquieu (full name: Charles de Secondat – Baron de la Brède et de Montesquieu; 1689-1755) and Jean Jacques Rousseau (1712-1778), were studied by Americans, whereas fifty years previously Voltaire (born as Francois Marie Arouet, 1694–1778) produced his *Lettres Philosophiques* in 1734, after he had studied English constitutional organizations which has resulted from the peaceful revolution and the 'Act of Settlement.'

Added to this, the Marquis de Lafayette was also active on the drafting committee of the Constitutional Assembly, which had produced the French Declaration. Lafayette submitted to the committee his personal draft which was based on the Declaration of

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[25] Robertson, *ibid.*, p.6. Also refer to: *The Declaration of Independence of the Thirteen Colonies, July 4, 1776*, found on: http://www.law.indiana.edu/uslawdocs/declaration.html

[26] Robertson, *ibid.*, p.4. Also see Huber, op.cit., p5 and Swindler, op.cit., p.16.

Independence and the Virginia Bills of Rights. Jefferson was also in Paris in 1789, in the position of the American Minister to France, being the successor in this role to Benjamin Franklin.[27] Clearly then, in 1789 there were two extremely close positions on the protection of human rights, which provided the 'mainstream' reference point on this issue and the philosophical and historical 'backbone' on the thinking behind it. It could be perceived as logical, or even natural, that this mainstream was used as a 'touchstone' for greater elaboration on human rights development and protection, after the horrific experience of the Second World War. The corollary of this renewed interest in the area was the publication by the Human Rights Commission of the United Nations of the Universal Declaration of Human Rights in 1948.[28]

Robertson postulates that it was no real coincidence, given the above history, that the chairperson of the Declaration's drafting committee was an American, Eleanor Roosevelt and the two principle authors of the text were René Cassin who was French and John Humphrey who was Canadian. Added to this, it is argued that one of the most important documents submitted for consideration by the Commission was the draft offered by the British delegates.[29]

However, there were certain elements of the initial draft which were not acceptable to representatives from different cultures who made their own contribution or – indeed –their lack of contribution by presenting abstentions on specific Articles of the supposedly 'Universal' Declaration of Human Rights.

6. Cultural Abstentions on the U.N. 'Universal' Declaration of Human Rights

This Declaration, when initially created in 1948, was perceived as a very clear expression of the present day concept of what human rights specifically involved and how far the area had evolved. The very element of the differing cultures, which were also represented on the Committee, made their own contribution or, indeed, their lack of contribution in accepting the initial draft; and this become

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[27] Robertson, *ibid.*, p.7. Also see Swindler, op.cit., p.16-18 and Weston, op. cit., p.260

[28] O'Sullivan, op. cit., p.28

[29] Robertson, *ibid.*, p.7

equally apparent. The differing priorities within different cultures became very manifested with certain abstentions on specific individual Articles of the 'Universal' Declaration document.

However, although there was an overwhelming degree of acceptance by the member states of the United Nations at the time, with 48 'Yes' votes and no outright dissentient votes – there were some very significant abstentions.[30] They were very notable and of telling statements by the countries involved, as they suggested – even at that early stage – that obviously the Declaration was not as fully acceptable or definitively 'Universal' as it was – and is – promoted to be.

The abstentions from the vote of acceptance were from South Africa, Saudi Arabia and six members of the Communist bloc, which were Poland, Czechoslovakia, Yugoslavia, Byelorussian S.S.R., Ukrainian S.S.R. and the Soviet Union.[31] The main reasons for these abstentions were that the countries concerned felt that the 'universal' Declaration was not, either in part, or at all, compatible with the internal affairs of their own States. South Africa would have had great difficulty accommodating the principles of the text within its active policy of Apartheid, while Saudi Arabia considered the Declarations emphasis, which they claimed was based on a Western, liberal, individualistic perspective, that this openly clashed with the Muslim way of life within their country. Finally, obviously the Communist bloc would have had difficulty resolving the Declaration's approach with their Marxist perspective and perception on human rights.[32]

These abstentions are extremely important factors, which highlight the debate today concerning the specific values and legitimate concerns of those who believe that human rights are universal and – conversely – those who believe that human rights are culturally determined. Different cultures have decidedly different priority systems in terms of their lists of rights and what they consider to be important.

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[30] Robertson, *ibid.*, p.27. Also see Huber, op.cit., p.1 and O'Sullivan, 'The History of Human Rights,' op.cit., p28

[31] Sieghart, op. cit., p.24. Also see Donna Artz, 'The Application of Human Rights Law in Islamic States' in *Human Rights Quarterly*, Vol.12, No.2, May 1990, Baltimore, The John Hopkins University Press, p.216

[32] O'Sullivan, Declan, 'The History of Human Rights', op.cit., p28-29

However, despite the differing of opinions, the U.N. worked on consistently for eighteen years to formulate it into legally binding instruments, finally producing the Covenants which completed the major human rights documents of Western belief. These are commonly referred to, collectively, as 'The International Bill of Rights'[33] The Covenants which were produced are the 'International Covenant on Economic, Social and Cultural Rights', 'The International Covenant on Civil and Political Rights' and the 'Optional Protocol to the International Covenant on Civil and Political Rights.'

It is interesting to note, in the light of this debate, that these extra Covenants did not actually receive enough signatures of U.N. member states to allow them to become fully into effect, until ten years after they had been formulated.[34] The Western liberal perspective is basically concerned with protecting the individual's rights against other individuals, groups or the state. It emphasises each person as an entity having a personal list of inherent rights, by virtue of the fact that they are human. Other cultures, as mentioned above and will be elaborated on below, have greater emphasis on duties and certain commitments to the communities they are a part of.[35]

These ideas clash, quite obviously, against each other's values and what is considered a priority right, needing protection. Each culture has a specific tradition which emphasises importance in different areas. Thus, the issues to be assessed here are whether one culture is better than another in its formulation of protection of human rights controls; whether one culture has a moral right to impose its views on another and whether there is any possibility for a rapprochement between the idea of universal human rights and the cultural relativist approach towards them.

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[33] O'Sullivan, *ibid.*, p29. Also see Weston, op. cit., p.273 and also Huber, op.cit., p.1

[34] Huber, *ibid.*, p.1. Also see Swindler, op.cit., p.20 and Artz, op. cit., in footnote 57 on p217 which reads as: "International Covenant on Civil and Political Rights, adopted on 16 December, 1966, entered into force on 23 March, 1976" and in endnote 58: "International Covenant on Economic, Social and cultural Rights, adopted on 16 December, 1966, entered into force on 3 January, 1976."

[35] Robertson, A., *Human Rights in the World*', op.cit., p29

7. Historical Development of a Cultural Dimension

Robertson states that merely because the established mainstream of these human rights documents are all steeped in the tradition of Western European parliamentary democracy, it still – in no way – follows that they have or have had a complete monopoly on the subject. This situation is primarily the case, he argues, as this tradition is believed to have produced the most familiar formulations and dominant documents on human rights, while simultaneously instituting wide ranging and mainly effective systems to implement the preservation of each right listed – on both national and international levels.[36]

He expands this argument further, to prove that other cultures were just as interested in human rights as the liberal West and that their own sophisticated thought had produced documents to, at least, rival those produced by Western philosophy. More interesting to note, is that these documents also pre-dated the Western documents by several centuries. At the International Conference on Human Rights in Tehran, during the 'Human Rights Year' in 1968, the then Shah of Iran claimed that the true ancestor and thus, an inspiration for the documents which recognise the rights of humans was Cyrus the Great of Iran. Cyrus had promulgated human rights documents over two thousand years ago.[37] Robertson then enhances this argument by referring to the work of Christian Daubie, who has studied Cyrus and his attitudes towards his subjects. What has become a particularly marked point was the utter respect Cyrus had for the wide range of religious beliefs. Daubie maintains that the 'Charter of Cyrus' established the recognition and protection of what is now referred to as the rights to liberty, security, freedom of movement, the right to own property and certain economic and social rights.[38]

Added to Cyrus, the Middle East also has had other rulers who acknowledged the rights of peoples, in both documents and charters. In the work of Polys Madinas, there is detailed research on one

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[36] Robertson, A., *ibid.*, p.9. Also see Swindler, op. cit., p.12

[37] Robertson, *ibid.*, p.8. Also see O'Sullivan, 'The History of Human Rights', op.cit., p.30

[38] Robertson, *ibid.*, p.8. Also see O'Sullivan, *ibid.*, p.30

Pharaoh in ancient Egypt who gave instructions to his Viziers which stated that:

> *when a petitioner arrives from Upper or Lower Egypt..... .....make sure that all is done according to the law, that custom is observed and the right of each man respected.*[39]

Madinas offers another example of such an ancient charter, in the form of the 'Code of Hammourabi.' Within this code, the King of Babylon stated – in a reputed two thousand years before the life of Jesus – that his mission and vision was:

> *to make justice reign in the kingdom, to destroy the wicked and the violent, to prevent the strong from oppressing the weak,.....to enlighten the country and promote the good of the people.*[40]

It is manifestly clear then, that the issue of 'human rights' has been a global concern since the earliest records in history. Added to this, it has been a concern in different cultural contexts and each document reflects the cultural context it serves. The ensuing arguments here will endeavour to determine how far it is correct, or acceptable, for the Western liberal tradition of individual rights for everyone to over-ride the regional human rights declarations that are in existence now. They will also assess how far these regional priority systems can claim to have a legitimate right to exist as autonomous declarations and a credible regional alternative to the U.N. Declaration.

There will be a specific assessment of Islam as a politicised religion opposed to virtually all things Western. There is also a discussion concerning the ethical dilemma of whether the West has any right to impose itself on this ancient religion and legal system, encouraging it to conform to Western values. Conversely, the issue will be discussed concerning how far the rest of the world can remain distanced from – and watch what the West sees – as a system of institutionalised human rights abuses in the name of Islam without being justified with external interference.

Now, however, for an understanding of the relevant issues in the

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[39] Robertson, *Ibid.*, p.8. Also O'Sullivan, *ibid.*, p.30

[40] Robertson, *Ibid.*, p.8. Also O'Sullivan, *ibid.*, p.30

debate over these areas, it is essential to elaborate on and compare the arguments held by those who feel that human rights are unquestionably 'universal' against those who feel that human rights are evolved from the cultural context of localised areas and regions. Whether any compromise between these two opposing views can be achieved will be the object of the discussion – in the hope of establishing an agreeable position between them for constructive interaction and thus progress on this issue.

It is of interest and of some importance to note that this issue of cultural relativism, with differing perspectives of implementing the U.N. Universal Declaration of Human Rights has been pragmatically confronted upon, with the establishment of four Human Rights Commissions. The Commissions deal with the protection of human rights within the context of their own cultural priority systems and the differing prominence in their lists of rights that need absolute protection. These four Commissions cover the Arab, European, Inter-American and African cultural differences.[41]

8. Regionalism as a Possible Threat to Universalism.

As there exists the European, Inter-American, African and Arab Commissions on Human Rights for the protection and promotion of human rights in their own arrangements, this offers immediate and inevitable speculation as to whether they are likely to, at least, diminish the value of the human rights work of the U.N., perhaps even undermining its effectiveness.

Robertson muses that this very issue formed an interesting debate at the International Colloquy concerning the European Convention, organised by the University of Vienna and the Council of Europe in 1965. There was intense discourse from both perspectives, with delegates promoting both the establishment of regional arrangements as the best solution towards protecting human rights. This view was forwarded by Jean-Flavien Lalive while, simultaneously, a wholly centralised 'universal' approach was argued by advocates promoting that perspective, including Egon Schwelb of the United Nations Commission.[42]

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[41] O'Sullivan, Declan, 'The History of Human Rights', op.cit., p31

[42] Robertson, A., op. cit., p173. Also O'Sullivan, *ibid.*, p31

It is now necessary to outline the regional Commissions of Human Rights to offer examples of their mechanisms and strategies, before any analysis can begin to assess the differing preferences or any greater validity of either the universal approach or the cultural relativism of regional diversity in protecting human rights. To date, only the regions of Europe, Inter-Americans and Africa have actually developed any enforcement mechanisms within the framework of a human rights charter.[43] Therefore, discussion on contrasting and comparing the form, perspectives and various mechanisms of each regional approach will – necessarily – only include reference to the European, Inter-American and African Human Rights Commissions' procedures. However, before assessing such comparison and contrast, it will also be useful to initially discuss the approach that has been provided by the Arab Regional Commission on Human Rights, to assess the concept of 'human rights' as it is understood in Islam.

9. The Arab Regional Documents, Their Position and Approach to Human Rights

It is necessary to examine and compare the Islamic perspective on internal priorities and principles and how these compare and simultaneously differ with the United Nations Universal Declaration on Human Rights. Although Islam is stated to have an approach based on the *Qur'an* and *shari'a* legal system, further enquiry is necessary in order to establish the extent to which a common moral code is adhered to by Islamic countries. On a broader level, it is necessary to discuss how prevalent the indigenous cultural perspective is, in formulating regional human rights approaches.

The Arab Commission of Human Rights[44], founded by the Council

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[43] Weston, B., op. cit., p277

[44] The Arab Commission of Human Rights is comprised of the members of the League of Arab States, which are Jordan, Syria, Iraq, Saudi Arabia, Lebanon, Egypt and Yemen. Palestine was represented by a Palestinian Liberation Organisation (PLO) delegate. Boutros-Ghali, Boutros, 'The League of Arab States' in Vasak, K. [Ed.], *The International Dimensions of Human Rights*, 1982, Green Wood Press. Ltd., Westport, Connecticut, USA, p575 and p577. Also see Robertson, A., op.cit., p161 and O'Sullivan, Declan, 'The History of Human Rights', op.cit., p32 (and in footnote 37 on p.46)

of the League of Arab States in September 1968[45] has more an emphasis on promoting greater international interest in the Arab cause, than protection of the rights and problems of particular members of the League.[46] Boutros Boutros-Ghali describes the main themes it initially pursued as

> *the rights of combatants in the event of war or armed conflict in accordance with the provisions of the Geneva Conventions of 1949; the legitimacy of the struggle waged by the Palestinian Resistance and the protection of holy and archaeological sites, in accordance with the principles established by international law.*[47]

Despite this endeavour however, the Commission has produced several important regional documents in the area of human rights, including the 'The Draft Declaration for an Arab Charter of Human Rights' in 1971, the 'Declaration of the Rights of Arab Citizens' and the much more recent 'Draft Charter on Human and Peoples Rights in the Arab World,' approved in 1986. There has also been established a regional 'Commission on the Status of Arab Women.'[48]

The Arab League also acknowledges and accepts a certain universal function of human rights. Reporting to the U.N. Commission on Human Rights in 1967, concerning the value of establishing regional commissions, the League stated that:

> *(1) The field of human rights is a vital one for strengthening links among countries which belong to a regional area.*
> *(2) As for the procedure of establishing regional commissions on human rights and specifying their functions, the League of Arab States believes that the*

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[45] Boutros-Ghali, Boutros, *Ibid.*, p577 and Weston, B., op. cit., p277

[46] Boutros-Ghali, Boutros, *Ibid.*, p579

[47] *Ibid.*, p578-9. Also see Robertson, A., op. cit., p164-165 and O'Sullivan, Declan, 'The History of Human Rights', op.cit., p32

[48] Boutros-Ghali, Boutros, *ibid.*, p579-580. Also see Weston, B., op. cit., p277, and Robertson, A., *ibid.*, p164 and H. Espiell, 'The Organisation of American States (OAS)' in Vasak, K. [ed.], op. cit., p454

[49] Robertson, A., *Ibid.*, p163. Also see O'Sullivan, Declan, 'The History of Human Rights', op.cit., p32-33

> *proper foundations for setting up such regional commissions are the foundations on which a regional inter-governmental organisation is based. Thus, the regional commissions should be established within the framework of international or regional inter-governmental organisations.*[49]

This acceptance of some universalism in their approach to human rights is a point which Boutros-Ghali also observes. He argues that on comparing the U.N. Universal Declaration of Human Rights with the Draft Arab Charter, it is seen that the latter contains all the rights and freedoms proclaimed by the international community as being essential.

However, despite this, it is a document undeniably grounded in regional concerns, created by a Commission that is intent on raising the world's consciousness on Arab issues. Boutros-Ghali declares that "the few specific features presented by the Arab Draft consist in the more precise terms in which certain Articles are set forth, dictated by regional arrangements."[50] It is also widely documented that the main ethos of the Commission is, essentially, to use human rights as a platform for challenging Israel, specifically concerning the treatment of Arab citizens living in Arab territories – which have been usurped by the Israelis.[51]

A greater claim to the regional ethos – even cultural relativism – of the Arab perspective on human rights, can be made with reference to the Baghdad Symposium, in May 1979. Organised by the Union of Arab Jurists, it demanded the conclusion of an Arab Commission on Human Rights which would guarantee fundamental rights as they are understood in a specifically Islamic context. The Symposium also recommended the establishment of a non-governmental 'Permanent Committee for the Defense of Human Rights and Fundamental Freedoms in the Arab Homeland.'[52]

This committee would have the competence to receive complaints from individuals and groups of individuals regarding

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[50] Boutros-Ghali, op. cit., p579 and also O'Sullivan, *ibid.*, p33

[51] Boutros-Ghali, *Ibid.*, p577 and p579. Also see Weston, B., op. cit., p277, and Robertson, A., op. cit., p163. and also O'Sullivan, *ibid.*, p33

[52] Boutros-Ghali, B., *Ibid.*, p580. Also see Robertson, A., *ibid.*, p165 and O'Sullivan, *ibid.*, p33

violations of rights and freedoms. They would send fact-finding missions to investigate the alleged violations and prepare reports on their findings, which would to be presented to Arab public opinion, Arab governments and international bodies of relevant interest.

Summing up the nature of the Draft Arab Charter on Human Rights, Boutros-Ghali succinctly captures its essence when stating that

> *as a whole, the Draft reflects at once a concern for continuity with the past, a desire to achieve Arab unity and lastly, a call for justice in respect of the Arab populations living in the occupied territories. This threefold objective gives the Draft a specifically Arab regional character without, however, departing from the spirit of the Universal Declaration.*[53]

Added to this, in 1981, the Islamic Council publicly provided the Universal Islamic Declaration of Human Rights, which presents the entire new boundary to engage in discussion of Islam within the debate between cultural relativism and universalism.

10. Islam in the Debate Between Cultural Relativism and Universalism

Hollenbach states that: "In the view of most Muslims, both traditionalist and modernist, Islam itself, is the single strongest guarantee for the protection of human rights available."[54] Hollenbach continues, claiming that the *shari'a* preceded the United Nations by 1400 years in setting forth the true rights of the human person. This is a strong buttress for Muslims – and they would argue for everyone else – against accepting the U.N. Universal Declaration of Human Rights, of 1948, and is a clear reason for the Islamic intellectuals to have now produced their own set of 'universal'

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[53] Boutros-Ghali, B., *Ibid.*, p579. Also see O'Sullivan, *ibid.*, p33-34

[54] Hollenbach, D., 'Human Rights and Religious Faith in the Middle East: Reflections of a Christian Theologian' in *Human Rights Quarterly*, Vol. 4, No.1, Spring 1982, The Johns Hopkins University Press, Baltimore, USA, p104. Also see O'Sullivan, *ibid.*, p34

standards for global protection of human rights within the Universal Islamic Declaration of Human Rights (1981).[55]

In the 'Forward' section of the Universal Islamic Declaration, Salem Azzam, then Secretary General of the Islamic Council, reiterates the point that:

> *Islam gave to mankind an ideal code of human rights fourteen centuries ago. These rights aim at conferring honour and dignity on mankind and eliminating exploitation, oppression and injustice. Human rights in Islam are firmly rooted in the belief that God, and God alone, is the Law Giver and the Source of all human rights. Due to their Divine origin, no ruler, government, assembly or authority can curtail or violate in any way, the human rights conferred by God, nor can they be surrendered.*[56]

Salem Azzam also highlights the matter of human rights violations that occur in all countries, including those stated as being 'Islamic States':

> *It is unfortunate that human rights are being trampled upon with impunity in many countries of the world, including some Muslim countries. Such violations are a matter of serious concern and are arousing the conscience of more and more people around the world. The Universal Islamic Declaration of Human Rights is based on the Qur'an and Sunnah and has been compiled by eminent Muslim scholars, jurists and representatives of Islamic movements and thought.*[57]

This side of the argument which expands the view of cultural relativism must now be placed 'on-hold', and will only be referred to in this present discussion in a later section which concerns the existing regional Commissions on Human Rights with the UN framework.

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[55] O'Sullivan, *ibid.*, p34

[56] Salem Azzam, *Universal Islamic Declaration of Human Rights*, 1981, The Islamic Council, Paris, France, p1. Also see O'Sullivan, *ibid.*, p34

[57] Salem Azzam, ibid, p1 and also see O'Sullivan, *ibid.*, p34

11. The European Regional Human Rights Documents

Predictably, from a European perspective, closer and more deliberate ties are found between its documents and the UN Declaration. On 4 November 1950, the Council of Europe ratified the 'European Convention for the Protection of Human Rights and Fundamental Freedoms.' As of January 1982, the Convention had been ratified as binding by 20 members of the Council of Europe.[58]

The document incorporates the substantive provisions which are based on the International Covenant Civil and Political Rights. Together with its five protocols, this Convention – which actually did not enter into force until 3 September 1953 – is widely perceived to represent the most advanced and successful system in existence for the regional protection of human rights.[59] A complementary document, very similar to the later International Covenant on Economic, Social and Cultural Rights, is the European Social Charter of 1961. Weston argues that its provisions are implemented through an elaborate system of control, based on sending 'progress reports' to – and their appraisal by – various committees and organs of the Council of Europe.[60]

The European Convention was not merely the UN's Universal Declaration translated onto European level of implementation; it sought to guarantee rights, as well as to state them. The great innovation of this document, Vincent claims, was the establishment of the bureaucratic machinery which allows individuals to file complaints to the Commission, even against their own country's government.[61] The instruments created by the European Convention constitute the European Commission on Human Rights and the European Court of Human Rights. The Convention also uses the Committee of Ministers, which is a governmental organ of the

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[58] The 20 signatories are: Austria, Belgium, Cyprus, Denmark, Federal Republic of Germany, France, Greece, Iceland, Republic of Ireland, Italy, Luxembourg, Malta, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, United Kingdom and Turkey. See Sieghart, op. cit., p26 and p.482-90. Also see Weston, op. cit., p.82 and Espiell, op. cit., p.458-9. Also see O'Sullivan, p.35 (and in footnote 49 on p.46)

[59] Espiell, *ibid.*, p.454. Also see Weston, *ibid.*, p.277 and Vincent, op. cit., p.95

[60] Weston, *ibid.*, p.277. Also see Sieghart, op. cit., pp.27-8

[61] Vincent, op. cit., p.95

Council of Europe. The European Commission operates by being open to receive allegations from any state party, of a breach of the Convention by another state party. Further to this, it is open – provided legal competence to do so is recognised – to receive petitions from any person, group of individuals or non-governmental organisations (NGO's) claiming to be the victim of a violation of the Convention.[62]

With each case handled, the Commission has to ascertain the facts and to place itself at the disposal of each party to secure a "friendly settlement.....on the basis of respect for Human Rights."[63] When such a conclusion is not readily acceptable, or reached, the Commission is called upon to draw up a report declaring its opinion of whether the facts disclose a breach or not and then recommending appropriate action to the Committee of Ministers, including referral of the case to the European Court of Human Rights.[64] The Court's jurisdiction extends to cover cases which have been referred to it by

(1) a state party whose national is an alleged victim of a violation; also
(2) a state party against whom a complaint has been lodged, and
(3) any state party who may have referred the case to the Commission. The Court itself, however, does not have the sanction to receive any complaints from individuals, and beyond that Weston claims it may only receive state complaints if the defendant state has accepted its jurisdiction.[65]

In all cases, including those referred to it by the European Commission, the judgement of the Court is final. If any point is not, or cannot, be referred to the Court, then the Committee of Ministers of the Council of Europe make this final decision.[66] Thus, the European system is clearly a highly developed, very legalistic form of human rights protection, necessarily based on the western liberal, individualistic perspective and western lists of priorities.

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[62] O'Sullivan, p.35

[63] Sieghart, op. cit., p.27. Also see Weston, op. cit., p.278

[64] Robertson, op.cit., p.89

[65] Robertson, *ibid.*, pp.82-3. Also see Weston, op. cit., pp.278 and Espiell, op. cit., p.464 and also see Article 25 of the 'The European Convention'.

[66] Sieghart, op. cit., p.27

12. The Inter-American Regional Human Rights Documents

A fairly similar approach to the European perspective can be observed on the American continent. In 1948, concurrent with the establishment of the Organisation of American States (OAS), the Ninth Pan-American conference adopted the 'American Declaration on the Rights and Duties of Man.' Weston argues that this document is very similar to, but actually preceded – by seven months – the UN Universal Declaration of Human Rights. However, it is essential to note that the document sets out duties as well as rights of individual citizens. Some years later, in 1959, a meeting of the American Ministers for Foreign Affairs created, within the framework of the OAS, the Inter-American Commission on Human Rights. This has been increasingly involved in important investigative activities concerning human rights throughout the Americas.[67]

Later still, in November 1969, the Inter-American Specialised Conference on Human Rights, during their meeting at San José in Costa Rica, adopted the 'American Convention on Human Rights' – which is also known as the 'Pact of San José'.[68] This Convention provided, *inter alia*, itself to the existing Inter-American Commission on Human Rights as an organ for the Convention's implementation. It established the Inter-American Court of Human Rights, which convenes at San José.[69] Medina notes that, by March 1998, over 20 states had actually ratified the Convention.[70] Vincent maintains that

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[67] Weston, op. cit., pp.278. Also see C. Medina, 'The Inter-American Commission on Human Rights and the Inter-American Court of Human Rights: Reflections On a Joint Venture' in *Human Rights Quarterly*, Vol.12, No.4, November 1990, Baltimore, The John Hopkins University Press, p.440

[68] Robertson, op. cit., p.136. Also see O'Sullivan, op.cit., p36. Also see: "*American Convention on Human Rights* adopted by member states of the Organization of American States in San José, Costa Rica, on 22 November 1969. It entered into force on 18 July 1978", found on: http://www.cowac.org/amerrights.html

[69] Weston, op. cit., pp.278-9. Also see Sieghart, op. cit., p.28 and Espiell, op. cit., p.555-6

[70] The states having already ratified the Convention are: Argentina, Barbados, Bolivia, Chile, Colombia, Costa Rica, Dominican Republic, Equador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Peru, Surinam, United States of America, Uruguay and Venezuela. See Medina, op. cit., p439 and also see Sieghart, ibid, 491-3 and Robertson, op. cit., p136. Also see O'Sullivan, op.cit., p36 (and in footnote 60 on p.46)

the Convention – which actually did not come into effect until 18 July 1978[71] – mobilised some institutions broadly similar to the European ones, namely the Commission and the Court. Both were specifically designed for the regional guarantee of human rights.

It also provides for individual petitions. Thus, Vincent argues, it is actually a stronger guarantee than the European case, as this is written into the Convention without the additionally required condition of states having to recognise the Commission's competence in that regard.[72] Unlike the UN or European predecessors, the right of petition by individuals, groups and NGOs operates automatically. Under the UN system, the right of petition applies only when the state concerned has become a party of the Optional Protocol to the International Covenant on Civil and Political Rights. Under the European system, as described above, a special declaration by the state concerned is required.

Conversely, however, in contrast with the European system – but not the UN – inter-state complaints under the American Convention operate only among states that have expressly agreed to the procedure.[73] Further than this point, Weston pursues the argument linking the American Convention with 'universalism' and a western perspective by stating that:

> *both the substantive law and the procedural arrangements of the American Convention, which entered into force in 1978, are strongly influenced by the UN Covenants and the European Convention, and they were also drafted with the European Social Charter in mind.*[74]

Thus, it is clear that the great emphasis from the American continent is a system of the universalist and again, the western, liberal approach. It is – essentially – a regional arena for entertaining global aspirations, with the positive attempt and intent to implement them. In great contrast to this however, are the final regional arguments to discuss and assess – those of Africa.

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[71] Vincent, op. cit., p.95. Also see Robertson, *ibid.*, p136

[72] Vincent, *ibid.*, p.95-6. Also see Sieghart, op. cit., p.28-29

[73] Weston, op. cit., p.279. Also see Sieghart, *ibid.*, p.29

[74] Weston, *ibid.*, p.279. Also see Robertson, op. cit., p138. Also see O'Sullivan, op.cit., p37

13. The African Regional Human Rights Documents

With specific regard for the creation of human rights institutions, it can be argued that the African continent is, in some part, behind both Europe and the Americas[75] – but this has to be considered in its given context. Africa's approach and perspectives towards human rights protection are, in simple terms, of a very different nature.

In 1981, following numerous pleas by the various parties of the UN Commission on Human Rights and NGOs and other interested parties dating back to 1961, the Eighteenth Assembly of Heads of State and Government of the Organisation of African Unity (OAU), when convening in Nairobi, adopted the 'African Charter of Human and People's Rights.'[76] This is also referred to as the 'Banjul Charter', as it was first drawn up in Banjul in Gambia, before being passed on for ratification.[77]

The Charter devotes its first 18 Articles to the rights of individuals and the following eight Articles are devoted to the rights of peoples. However, as several scholars indicate and maintain, it is the idea that the rights of collectiveness – such as the fact that 'peoples' should enjoy at least equal dignity with those of individuals – which is often declared to be a significant characteristic of the African approach to human rights. This is, indeed, reflected in the very title of the document: 'African Charter of Human and People's Rights.'[78] Very much like the European and American counterparts, the African Charter provides for the establishment of an African Commission on Human Rights, but the African approach is that the emphasis for its work should be first on promotion and then on the implementation of rights.[79]

A further belief is that there should be no restriction on who may file a complaint with the Commission, thus allowing it to accept

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[75] Vincent, op. cit., p.96

[76] Robertson, op. cit., p167. Also see Sieghart, op. cit., p.29 and Weston, op. cit., p.279

[77] Robertson, *ibid.*, p167 and see Vincent, op. cit., p.39. Also see A. Sesay, O. Olusola and O. Fasehun, *The O.A.U. After Twenty Years*, London, Westrian Press, 1984, p.84

[78] Vincent, *ibid.*, p.39. Also see Sesay, *et al*, *ibid.*, p.84.

[79] Vincent, *ibid.*, p.96. Also see Weston, op. cit., p.279 and also see Sieghart, op. cit., p.29

petitions from states, individuals, groups and NGOs, whether or not they are victims of an alleged violation. However, in contrast to the European and American procedures, concerned states are encouraged to reach a friendly settlement without formally involving the investigative or conciliatory mechanisms of the Commission. Another obvious contrast is that the Charter does not demand the creation of a human rights court. Weston elaborates on this point:

> *African customs and traditions, it is said, emphasise mediation, conciliation and consensus, rather than the adversarial and adjudicative procedures common to western legal systems.*[80]

Vincent quotes Howard's argument which reinforces this culturally specific emphasis within the Charter, stating that:

> *if priority is to be determined between individual and collective rights, there is a tendency among interpreters of traditional African culture to find favour of the latter.*[81]

Thus, it is the emphasis on social harmony and from this, the preservation of the fabric of social life which comes first in African thought. The base of this fabric is to be found in, for example, extended families, and these circumstances of normality creates the distinctive African regional emphasis, in terms of how human rights are perceived. It is clear that 'individuals' are not visible in this context, only the duties they discharge and – hence – the functions they will fulfil. To gain identity as a person in traditional African society, an individual has to be incorporated within the group and community.[82] This is on a very similar line of interpretation to that of Islam, with the belief that an individual can only gain identity from and operate legitimately within society, by denying personal autonomy and being completely subservient to Allah. The very term

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[80] Sesay, *et al*, op. cit., p.86 and also see Weston, *ibid.*, p.279. Also see O'Sullivan, p.38.

[81] Vincent, op. cit., p.34. Also see B. Okere, 'The Protection of Human Rights in the African Charter on Human and People's Rights: A Comparative Analysis with the European and American Systems' in *Human Rights Quarterly*, Vol.6, No.2, May 1984, Baltimore, The John Hopkins University Press, p.145

[82] Vincent, *ibid.*, p.39. Also see Sesay, *et al*, op. cit., p.84.

Islam translates into English as "submission" – meaning, specifically, the person's total and absolute submission to God.[83]

Therefore, in Africa, as Vincent succinctly phrases it: "personhood, in contrast to individualism in the West, is intelligible only in the group and not against it."[84] If group-values predominate, then the language of 'duty' is of more natural usage than that of 'rights', as obligations to the greater community over-ride freedom from it. Vincent maintains that this is also reflected within the Banjul Charter, with a chapter on duties as well as on rights.

The duties presented involve not just the recognition of the equal rights of others, but also – in contrast to both the European and American Conventions – the promotion of such substantive goals as the harmonious development of the family. This is placed in Article 29(1), together with other specifically named groups, such as women, children, the aged and infirm. In further contrast to the other two Conventions, the right to national solidarity, independence and self-determination, in Article 29(4) and (5) are accorded specific reference, together with African cultural values and unity in Article 29(7) and (8).[85]

> Article 29
>
> The individual shall also have the duty:
> (1) to preserve the harmonious development of the family and to work for the cohesion and respect of the family; to respect his parents at all times, to maintain them in case of need;
> .....
> (4) To preserve and strengthen social and national solidarity, particularly when the latter is threatened;

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[83] O'Sullivan, op. cit., p38. For further, more detailed, information on this topic, see Declan O'Sullivan, 'In Defence of Islam and the Western Misinterpretation of What is Perceived to be 'Islamic Fundamentalism',' in *Le Courrier Du Geri – Recherches D'Islamologie et de Theologie Musulmane*, Vol. 2, No. 3. Automne 1999, GERI (Groupe d'Etudes et de Recherches Islamologiques), l'Université Marc Bloch de Strasbourg, France, p161-181. Article can also be found on: http://stehly.chez.tiscali.fr/N.2/3.htm or http://stehly.chez.tiscali.fr/declan.htm

[84] Vincent, op. cit., p.39.

[85] Vincent, *ibid.*, p.39-40. Also see Weston, op. cit., p.279-80

(5) To preserve and strengthen the national independence and the territorial integrity of his country and to contribute to its defence in accordance with the law;

.....

(7) to preserve and strengthen positive African cultural values in his relations with other members of the society, in the spirit of tolerance, dialogue and consultation and, in general, to contribute to the promotion of the moral well being of society;

(8) To contribute to the best of his abilities, at all times and at all levels, to the promotion and achievement of African unity.[86]

It can be asserted that the emphasis on the group is intrinsically linked to another area of African thought, that which bases the organisation of society so that it meets – or moves towards meeting – basic human needs, as opposed to allowing it to promote individual inquisitiveness. The corollary of this approach means that African culture pays attention to justice in the distribution of social goods, in a way that western liberalism does not.[87] The Banjul Charter also reflects in its formulation – and thus, it is therefore a direct representation of the African interpretation of human rights protection – that fortune, race, ethnic group, colour, sex, language, religion, opinion, social origin, birth and status should not be a bar for the enjoyment of the rights and freedoms it guarantees. As it states in Article 2:

> *Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.*[88]

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[86] Article 29 of the *African Charter on Human and Peoples' Rights*, found on: http://www.hri.ca/partners/forob/e/docs/AfriChar.htm

[87] A. Legesse, 'Human Rights in African Political Culture,' in K. Thompson (ed.), *The Moral Imperatives of Human Rights: A World Survey*, Washington, University Press of America, 1980, pp.125-6

[88] See: *African Charter on Human and People's Rights* ('Banjul Charter'), 1981, Article 2; found on: http://www.hri.ca/partners/forob/e/docs/AfriChar.htm

It can also be argued that it uniquely embraces two 'third-generation' or 'solidarity' rights as:

> *.....belonging to all people: the right to economic, social and cultural development and the right to national and international peace and security.*[89]

In addition to this point, it has also been observed that the assertion in the Charter's preamble is rather significant, as it promotes the essential need to pay attention to the right for development – as the satisfaction of economic, social and cultural rights is a guarantee for the further enjoyment of civil and political rights.[90]

However, not to be misled by the obvious presence of an African perspective in the document, it is still based on the tenets of the UN Universal Declaration of Human Rights and the accompanying Covenants. This point is widely documented in the literature and is also expressly stated in the Charter's preamble, with declares the ultimate desires and aims, which are:

> *to coordinate and intensify their [the OAU's] co-operation and efforts to achieve a better life for the peoples of Africa and to promote international co-operation having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights.*[91]

14. The Differing Culturally-Specific Declarations and the Subjective Perspectives on Understanding Human Rights: A Comparison

The three regional arrangements for human rights protection within the Human Rights Commissions of Europe, the Americas and Africa, will be compared and contrasted to gain some appraisal

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[89] Weston, op. cit., p.280. Also see Sieghart, op. cit., p.29

[90] Vincent, op. cit., p.40. Also see Sesay, *et al*, op. cit., p.109-10.

[91] Sesay, *et al*, *ibid.*, p.110. Also see Okere, op. cit., pp.152-3 and also Espiell, op. cit., p.454 and Robertson, op. cit., p.166. Also see O'Sullivan, op.cit., p39 and the *'Preamble'* of the *African Charter on Human and People's Rights*, ('Banjul Charter'), op.cit.

of the specific similarities and differences that exist between them. As stated above, the Arab perspective cannot be included in this context of the debate although having stated this, the discussion will actually – through necessity – involve an Islamic perspective.

The European and American Conventions emphasise, as does the African Charter, the protection of life and liberty as the most elementary human rights. Okere argues that the American Convention protects the right to life "in general, from the moment of conception"[92] and that both the European and American Conventions contain specific provisions concerning the death penalty. Okere suggests that the African Charter is rather more laconic – by promoting the primary qualification for the right to life, in that: "no-one may be arbitrarily deprived of this right."[93]

All three systems, of European, American and African perspectives, guarantee the right for protection against torture, inhuman or any degrading treatment,[94] liberty of the person,[95] and the right to a fair trial.[96] However, Okere indicates that an interesting point in the African Charter is the actual prohibition of retrospective penal legislation.[97] For example, Article 8 of the European Convention and Article 5 of the American Convention protect the right to privacy and family life. Okere suggests that:

> *what is contemplated under these provisions is, essentially, absence of interference, such as the negative duty of*

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[92] Okere, *ibid.*, p.153

[93] Okere, *ibid.*, p.153. *Article 4* of the 'Banjul Charter', reads as: "Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right," Banjul Charter, op.cit.

[94] See the *African Charter*, Article 5; *European Convention*, Article 3, and *American Convention*, Article 5

[95] See the *African Charter*, Article 6; *European Convention*, Article 5, and *American Convention*, Article 7

[96] See the *African Charter*, Article 7; *European Convention*, Article 6, and *American Convention*, Article 8

[97] Okere, op. cit., p.154. Also see the *African Charter*, Article 7, paragraph 2 which reads as: "No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender," Banjul Charter, op.cit.

forbearance from encroachment through secret surveillance.[98]

He also argues that, in contrast, the African Charter does not guarantee the right to privacy and family life in these terms, as Article 18(2) imposes, instead, a positive duty on the state "to assist the family, which is the custodian of morals and traditional values recognized by the community."[99]

A very interesting area – and a controversial issue for the Commissions to address – is the interpretation of rights to protect 'illegitimate' children. The American Convention covers this factor in Article 17, paragraph 5, where it recognises equal rights for both children born out of marriage and those born within it.[100] The European Convention does not contain explicit provisions covering this issue, but Okere cites the 1979 legal case of *Marckx v. Belgium*,[101] in which the European Court of Human Rights held that there was no objective and reasonable justification for treatment in which an illegitimate child had no entitlement to intestacy in the estate of members of their mother's family.[102] Okere postulates that, in the light of that decision, most distinctions in law between the legitimate and illegitimate child are in contravention of the European Convention, as being discriminatory within the meaning of Article 14, which it is read in conjunction with Article 8.[103]

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[98] Okere, *ibid.*, p.154

[99] Okere, *ibid.*, p.154. Also see O'Sullivan, op.cit., p 40 and also the *African Charter*, Article 18(2), Banjul Charter, op.cit.

[100] *Article 17, 'Rights of the Family'*: (5). The law shall recognize equal rights for children born out of wedlock and those born in wedlock, found on http://www.cowac.org/amerrights.html

[101] Details of the legal case found on: http://www.womenslinkworldwide.org/pdf/co_reg_echr_marckx.pdf

[102] Okere, *ibid.*, p.154-5

[103] Okere, *ibid.*, p.154-5. Also see *The European Convention* Articles 14 and 8, which read as *Article 14*: "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status" and *Article 8*: "(1) Everyone has the right to respect for his private and family life, his home and his correspondence. (2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public

The position of this argument continues with the comparison of this area with the African approach on this matter. Okere claims that, given the predominantly polygamous nature of such traditional marriages, it could be expected that a provision resembling the American Article 17(5) would have been integrated into the African Charter. However, it is also argued that such explicit recognition would be in danger of openly offending both Muslim and Christian conceptions of morality. For an explanation and a defence of this point, Okere offers the reaction to a similar provision in the Nigerian Constitution. Section 39(2) of this document prohibits discrimination against an individual "merely by reason and circumstance of his birth."[104] The original draft actually declared that no citizen of Nigeria shall be the subject of discrimination purely on the grounds that 'he was born out of wedlock.' An offence to this statement was raised by members of the Constituent Assembly, based on the grounds of repugnancy towards morality. Okere explained:

> *they argued that, for example, under Islamic law, a bastard has no right to the estate of his deceased putative father and a constitutional provision which presumably nullifies this would be contrary to the way of life of a large majority of the population.*[105]

Christians also announced their serious reservations which were based on their own perspectives. They demanded that recognition of illegitimacy may actually encourage sexual promiscuity within the community. As Nigeria is a multi-ethnic, multi-cultural and multi-religious society, it could well be considered a microcosm of Africa as a whole. Thus, it follows, it could be argued that recognition of rights for illegitimate children within the African Charter could offend both Muslims and Christians throughout the continent.[106]

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safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others," *The European Convention on Human Rights*, (1950), found on: http://www.hri.org/docs/ECHR50.html

[104] Okere, *ibid.*, p.154-5

[105] Okere, *ibid.*, p.154-5. Also see O'Sullivan, op.cit., p.41

[106] O'Sullivan, *ibid.*, p.41

Both the European and the American Conventions guarantee other freedoms, such as that of conscience and religion,[107] of assembly and association,[108] together with the right to property.[109] Concerning freedom of expression, Article 13(2) of the American Convention expressly prohibits prior censorship, although the European document contains no such provision. Also, it can be seen that Article 14 of the American Convention adequately provides:

> *a very detailed right of reply, protecting any individual injured by inaccurate or offensive statements or ideas disseminated to the public in general, by a legally regulated medium of communication.*[110]

According to this Article, it can be argued that there is a right to reply or to correction, using the same mode of communication, under the conditions established by the law. Notably, there are no such provisions that can be found in either the European Convention or the African Charter.[111]

The American Convention in Article 21(2)[112] also grants a right to compensation for anyone and everyone deprived of their property, whereas the European Convention, while not guaranteeing compensation, refers to general principles of international law. The African Charter resembles more of the European approach and, as such, Okere comments that it "falls short of the American ideal."[113] In Article 14 of the African Charter, property rights may be infringed "in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate

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[107] See the *European Convention*, Article 19, and *American Convention*, Article 12

[108] See the *European Convention*, Articles 9 and 10, and *American Convention*, Article 13

[109] See the *European Convention*, Article 1 of the First Protocol, and *American Convention*, Article 21

[110] Okere, op. cit., p.155

[111] O'Sullivan, op.cit., p.42

[112] Article 21; *Right to Property*; 21(2) reads as: "No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law," see *American Convention on Human Rights*, found on: http://www.cowac.org/amerrights.html

[113] Okere, op. cit., p.155

laws."[114] Although it makes no provision for compensation payments, the wording is very consistent with the African perspective on human rights, as was discussed above, in more detail.

In general terms as an overview, the African Charter is closer to the American Convention in the realm of content of guaranteed rights, than that of the European Convention. To support this claim, Article 22(8)[115] of the American Convention can be used as an example as it provides that under no circumstances can an 'alien' citizen be deported or returned to a country – regardless of whether it is their country of origin – if in that country their right to life or personal freedom is in danger of violation due to their race, religion, nationality, social status or political opinions. Article 12(3) of the African Charter secures a very similar right, which is not found in the European Convention.[116]

Together with this similarity, Article 23[117] of the American Convention grants much wider protection than Article 3[118] of the

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[114] *Article 14* reads as: "The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws", see *African Charter on Human and Peoples' Rights*, op.cit.

[115] Article 22; *Freedom of Movement and Residence* – 22(8) reads as: "In no case may an alien be deported or returned to a country, regardless of whether or not it is his country of origin, if in that country his right to life or personal freedom is in danger of being violated because of his race, nationality, religion, social status, or political opinions," See *American Convention on Human Rights*, op.cit.

[116] *Article 12(3) reads as*: "Every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with laws of those countries and international conventions," see Banjul Charter, op.cit.

[117] Article 23 of the *American Convention* reads as: "Article 23: *Right to Participate in Government* (1). Every citizen shall enjoy the following rights and opportunities: a). to take part in the conduct of public affairs, directly or through freely chosen representatives; b). to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and c). to have access, under general conditions of equality, to the public service of his country. (2). The law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings, See *American Convention*, op.cit.

[118] *Article 3* of the European Convention *reads as*: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment," See the European Convention, op.cit.

European Convention by not only guaranteeing the right to free elections, but also a general right to participate in the conduct of public affairs directly or through freely chosen representatives. It allows the right to vote and be voted for and to have access, under general conditions of equality, to the public service of the country. Article 13[119] of the African Charter bears very close affinity, almost identically worded, to these statements.[120] The greatest area of rapprochement between the American Convention and the African Charter is the common concern for both internal and international adoption of measures to attain the objectives of economic, social, educational, scientific and cultural development of their respective regions.[121] In addition to this, and as an indication of the presence of regional – even cultural – concerns, is that both these documents contain provisions which establish a working relationship between rights and duties.[122]

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[119] *Article 13* of the Banjul Charter *reads as*: "(1) Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law. (2). Every citizen shall have the right of equal access to the public service of his country. (3). Every individual shall have the right of access to public property and services in strict equality of all persons before the law," See Banjul Charter, op.cit.

[120] Okere, *ibid.*, p.155-6. Also see O'Sullivan, op.cit., p42

[121] Compare the *Article 22* of the Banjul Charter which reads as: "All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind. 2. States shall have the duty, individually or collectively, to ensure the exercise of the right to development" with *Article 26 of the* American Convention, which reads as: *Progressive Development*: The States Parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires.

[122] Compare *Article 32* of the American Convention, which reads as *Relationship between Duties and Rights*: "1. Every person has responsibilities to his family, his community, and mankind. 2. The rights of each person are limited by the rights of others, by the security of all, and by the just demands of the general welfare, in a democratic society" and also the three Articles 27-to-29 in the Banjul Charter reads as: *Article 27*: 1. Every individual shall have duties towards his family and society, the State and other legally recognized communities and the

However, having reached this point in assessing the comparison and contrast between the three human rights systems, it is actually in the area of the machinery used for the protection of the guaranteed rights where the greatest and most openly significant differences become apparent between the African Charter, and both the European and American Conventions. The African Charter emphasises – although it also limits itself to – diplomatic settlement of cases involving human rights violations, which are dealt with by using the Commission of Human and People's Rights. The European and American systems have both advanced beyond the diplomatic settlement of problems to the ultimate stage of judicial arbitration of human rights violations – which is utilising the workings of their Human Rights Courts. In conclusion, as Okere remarks:

> *these human rights courts constitute an innovation in international relations and reflect the higher degree of integration and cohesion attained by these regional organisations, the cultural affinity which unites them and the community of interests shared by them. African states,*

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international community. 2. The rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest.

Article 28: Every individual shall have the duty to respect and consider his fellow beings without discrimination, and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance.

Article 29: The individual shall also have the duty: 1. to preserve the harmonious development of the family and to work for the cohesion and respect of the family; to respect his parents at all times, to maintain them in case of need; 2. To serve his national community by placing his physical and intellectual abilities at its service; 3. Not to compromise the security of the State whose national or resident he is; 4. To preserve and strengthen social and national solidarity, particularly when the latter is threatened; 5. To preserve and strengthen the national independence and the territorial integrity of his country and to contribute to its defence in accordance with the law; 6. To work to the best of his abilities and competence, and to pay taxes imposed by law in the interest of the society; 7. to preserve and strengthen positive African cultural values in his relations with other members of the society, in the spirit of tolerance, dialogue and consultation and, in general, to contribute to the promotion of the moral well being of society; 8. To contribute to the best of his abilities, at all times and at all levels, to the promotion and achievement of African unity.

still jealous of their newly acquired national sovereignty, have not yet come round to conceding, to an international judicial organ, the arbitration of human rights questions.[123]

It is clear then that, although each regional system states their clarified and positive links with – and respect for – the UN Universal Declaration of Human Rights, there are obvious manifestations of indigenous regional cultural characteristics which are protected in each regional document.

15. 'Cultural Relativism' and 'Universalism' – A Continual Debate

The presence of both approaches may signal a form of compromise between Universalism and Cultural Relativism, but it is still clear that the debate between these diametrically opposing views is very much present and on-going.

The universalists' notion that human rights arrangements at the regional level exist to carry global standards into all the provinces of international politics, is strengthened by their belief that implementation will be more successful the closer the attention to local circumstances occurs. Also, universalists believe that states generally, are more likely to accept machinery for implementation of 'universal' standards, if this is established among a group of neighbouring, like-minded countries, rather than being imposed by a distant centralised body.[124] However, quite serious problems are encountered here, not least in the realisation that the actual definition of a given region is contentious *per se*.

Added to this problem, the mere fact of a 'neighbourhood' in no way guarantees solidarity of concerns. Falk argues that such solidarity, when it is encountered, may even have been achieved to oppose a regional 'outsider', such as in the scenarios of Western Europe confronting Eastern Europe; in the Americas – the communist enemy within; throughout the Arab world confronting the creation of Israel; and in Africa confronting the apartheid system in South

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[123] Okere, op. cit., p.156 and p.158. Also see Vincent, op.cit., p.96. Also see O'Sullivan, op.cit., p43

[124] Vincent, ibid, p101 and also see O'Sullivan, ibid, p43

Africa.[125] Cultural Relativism asserts that the argument professing global standards, implemented regionally, is an improbable reality. Vincent argues that this would make regions mere executives of a global 'legislature,' whereas he believes it is far more probable that the homogeneity of culture – which is used as a defence for creating regional mechanisms by universalists – actually generates regional principles as well as procedural mechanisms. Thus, localities should be marked off by their differing conceptions of rights and not the different routes they take to protect the same basic rights.[126]

The cultural relativist position claims that regional institutions may well move in quite different directions than global ones, thus it follows that they may well simultaneously be moving in different directions to each other – since it is their very differences from each other that prompted the setting-up of these regional arrangements in the first place. Conversely, universalists attack this assertion as self-destructive. They maintain that allowing the regions of the world to arrange enforcement of rights based on their own individual terms, could end up damaging human rights protection, rather than promoting or protecting it. Thus, to return to a point raised by, Jean Jacques Rousseau, when comparing the *moi commun* (the individual as a member of a particular community) when compared to *moi humain* (the individual as a member of the human race) – "*moi commun*, even on the level of the region, may still drive out the *moi humain*."[127]

A further attack by supporters of 'Universalism' opposing the idea of 'Cultural Relativism' – with specific regard to the regional Human Rights Commissions – is the defence of universalism in what they see as:

> *the blow struck by regionalism in the matter of human rights against that necessary universalism which springs from the intrinsically identical nature of all human beings.*[128]

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[125] Falk, R., *Human Rights and State Sovereignty*, 1981, Holmes and Meiser, New York, USA, p154. Also see O'Sullivan, *ibid.*, p44

[126] Vincent, R., op.cit., p101 and O'Sullivan, *ibid.*, p44

[127] Vincent, R., *ibid.*, p35 and p48. Also see O'Sullivan, *ibid.*, p44

[128] Espiell in Vasak, K. [Ed.], op. cit., p454 and also see O'Sullivan, *ibid.*, p44

This is the language of strong, if not extreme universalism, with little flexibility for compromise and accommodation with the views and values held by those who they would claim are diametrically opposed to their aims. Universalists have a very strict and rigid idea of how the regional procedures should exist and believe that this regional protection of human rights, if it is to be acceptable at all:

> *must come within the framework of regional organisation in accordance with the Charter of the United Nations and become one aspect of the policy of integration. If, however, regional protection were but a form of inter-governmental co-operation, the parochial and perhaps even selfish attitudes of which it would also be an expression, would by no means justify the danger of such a serious blow to universalism."*[129]

However, both doctrines clearly have been considered in the drafting of the salient documents, but with differing emphasis within the different regions. The arguments for the presence of each are – in their context – equally defensible and valid. Thus, the constant exchange of these strong words, promoting each approach, offers some idea of how difficult any compromise – let alone rapprochement – is to achieve in the continual battle for a dominant paradigm in human rights: – be it either Cultural Relativism or Universalism.[130]

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[129] Espiell, *ibid.*, p455 and also O'Sullivan, *ibid.*, p44

[130] O'Sullivan, *ibid.*, p44