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Explaining International Human Rights Regimes: Liberal Theory and Western Europe

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Under what conditions are effective international regimes for the promotion of human rights likely to emerge? Case studies of European institutions — the European Convention on Human Rights, the European Community and the Conference on Security and Cooperation in Europe — confirm hypotheses more consistent with Liberal theories of international relations than their Institutionalist or Realist counterparts. The uniquely successful mechanisms of the European regime, in particular its fine-grained system of individual petition and supranational judicial review, function not by external sanctions or reciprocity, but by 'shaming' and 'coopting' domestic law-makers, judges and citizens, who pressure governments from within for compliance. The evolution of these mechanisms presupposes the existence of an autonomous independent civil society and robust domestic legal institutions and, even in the relatively propitious circumstances of postwar Europe, required several generations to evolve. Such institutions appear to be, with only a few exceptions, most successful when they seek to harmonize and perfect respect for human rights among nations that already effectively guarantee basic rights, rather than introducing human rights to new jurisdictions. Those nations in which individuals, groups or governments seek to improve or legitimate their own democratic practices benefit the most from international human rights regimes.

Under what conditions are effective international regimes for the promotion of human rights likely to emerge? The institutions of the European region — the European Convention on Human Rights, the European Community and the Conference on Security and Cooperation in Europe — constitute the world's most extensive and effective system of international institutions designed for this purpose. What explains its unique, but uneven, level of

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success? Under what conditions might similar institutions be successfully transplanted to other regions, for example, Eastern Europe, the former Soviet Union and the Western Hemisphere? This article seeks to answer these questions by offering a detailed analysis of the procedures and record of the major multilateral European institutions for the promotion of democracy and human rights, proposing hypotheses about the structural conditions that have facilitated their unique success, and generalizing those hypotheses to human rights regimes more broadly.

The theoretical analysis is grounded in the Liberal approach of international relations and international law, which asserts that the most fundamental influence on international cooperation is not relative power, as Realist theory asserts, nor the institutionalized contractual environment for structuring international bargaining, as Institutionalist (sometimes termed neoLiberal) theory maintains. In the Liberal view, the most important factor defining the opportunities for and constraint on cooperation is the level of convergence of national preferences, which in turn reflect the demands of those domestic groups represented by the state (Burley, 1993a; Moravcsik, 1992). Effective international regimes are likely to emerge only where they have deep roots in the functional demands of groups in domestic and transnational society, as represented by the domestic political institutions that mediate between society and the state. Regimes foster compliance with international norms not by altering the external incentives facing a unitary state, but by altering the domestic incentives facing societal groups and politicians, thereby shifting the domestic coalitions that define state preferences.

A Liberal analysis of the European human rights regime suggests that the distinctive institutional practices on which its remarkable record of success rest depend on the prior convergence of domestic practices and institutions. The unique mechanisms of the European system, in particular its finely-grained system of individual petition and supranational judicial review, function not by external sanctions or reciprocity, but by 'shaming' and 'coopting' domestic law-makers, judges and citizens, who then pressure governments for compliance. The decisive causal links lie in civil society: international pressure works when it can work through free and influential public opinion and an independent judiciary. The fundamental social, ideological and political conditions that give rise to active civil societies and representative political institutions, which in turn contribute decisively to the extraordinarily high rate of membership and compliance enjoyed by the European human rights regime, are distinctive to advanced industrial democracies.

Conventional theoretical treatments of international human rights regimes, in which some countries are assumed to employ regimes to ameliorate major human rights abuses elsewhere or to impose their preferred

ideology, miss the central dynamic of the European system. The uniquely developed international institutions and practices of human rights protection in Europe — those elements that distinguish it most clearly from other such regimes throughout the world — are not designed to induce basic adherence to human rights on the part of illiberal governments, whether inside or outside European human rights regimes. While the norms ratified by the Helsinki process may have encouraged dissident groups in Eastern Europe and the promise of EC membership may have induced greater attention to human rights in potential applicant states, both consistent with Liberal theory, neither causal chain has been widely or consistently exploited to alter government policies. Nor has the experience of European countries in employing sanctions, diplomatic suasion and other traditional instruments of human rights diplomacy produced a particularly distinguished record of success.

The unique success of the West European system lies not in the transformation of undemocratic regimes, but in the improvement of democratic ones. West European human rights regimes harmonize and perfect human rights and democracy among nations that already effectively guarantee basic rights, rather than introducing them to new situations. It is those countries in which individuals, groups or governments wish to employ international human rights regimes to strengthen *their own democratic systems* that benefit the most from them. The most effective elements of the European human rights system are thus also the subtlest. This delicate process of legal harmonization proceeds slowly. Even where a critical mass of functioning democracies exist, the international institutional mechanisms require — if the European case is a guide — several generations to become broadly effective.

It follows that effective regimes on the European model are likely to spread only slowly to other regions. Constructing or improving similar institutions in other regions — whether in the Western Hemisphere, where such a system already exists on paper, or the former Soviet Union and all but the most advanced sections of Eastern Europe — is likely to have modest consequences over the short- and medium-term. A brief analysis of current policy in these regions confirms this prediction. More appropriate to non-European settings, and perhaps also to much of Eastern Europe, are more traditional instruments, such as the Conference on Security and Cooperation in Europe (CSCE) system. CSCE functions on an intergovernmental level; it is essentially a formalization of the sort of human rights monitoring procedures that already exist through bilateral initiatives and the activities of non-governmental organizations. While the formalization of state-to-state interactions might be helpful elsewhere, it is unlikely to function significantly more effectively than current procedures, although it may do so somewhat more consistently.

This article is organized as follows. Section 1 argues that international regimes influence policy by altering domestic constraints. Three policy instruments of international democracy and human rights promotion are distinguished, which I term *sanctioning*, *shaming* and *cooptation*. Each employs a distinct mechanism through which international pressure may alter the domestic calculations of governments regarding democracy and human rights: respectively, material, symbolic and institutional means of influence. Sections 2–4 examine the European institutions and practices for sanctioning, shaming and cooptation. The European Community (EC), Conference on Security and Cooperation in Europe (CSCE) and the Council of Europe's European Convention on Human Rights (ECHR) systems are examined. Section 5 analyses the results in light of Liberal theories of international relations and suggests general hypotheses about the conditions under which international human rights regimes are likely to succeed and fail.

1. Sanctions, Shaming and Cooptation: Three International Instruments of Human Rights Protection

International actions to increase domestic protection for human rights succeed only where they alter the domestic calculations of governments. Setting aside the use of military force, which is not legally sanctioned by the European human rights system, we can distinguish three international instruments for promoting democratization and domestic protection of human rights: *sanctioning*, *shaming* and *cooptation*. Each takes the same basic form: actions by foreign countries influence civil society in the target state, leading to a shift in the coalitions or calculations that underlie government policy, sparking in turn a change of policy.

What differs across these three modes is the precise international instrument that is employed and the resulting 'transmission belt' through civil society in the target state whereby external pressure shifts the domestic incentives facing governments. *Sanctions* seek to promote democracy and respect for human rights by linking these goals to preferential international economic arrangements. Sanctions exploit material power by denying domestic groups access to desired foreign goods and services, markets or capital. Where the instrument is effective, the concern of domestic groups for their economic well-being leads them to influence the government, thereby shifting the domestic political balance of power in favor of greater protection for human rights. Examples from the European system include the limitation of imports to EC markets; restrictions on exports of capital and goods; the curtailment of EC development aid; and the manipulation of

bilateral association agreements with, or the eventual membership of, neighboring European countries.

The second instrument, *shaming*, seeks to enforce individual human rights and promote democracy by creating an international and domestic climate of opinion critical of national practices. Shaming exploits the symbolic legitimacy of foreign pressure and international institutions to unleash domestic moral opprobrium (Lumsdaine, 1993, McElroy, 1992). Shaming is instigated through the dissemination of information and the promulgation of norms, as well as through the creation and exploitation of international practical institutions that enjoy domestic legitimacy. The domestic balance of power shifts in favor of the protection of human rights when the government or the citizenry seeks to avoid undermining its reputation and legitimacy at home or abroad. Examples cited below include the Council of Europe's European Convention on Human Rights and various Conference on Security and Cooperation in Europe (CSCE) agreements and institutions, which define and publicize human rights violations.

The third instrument, *cooptation*, seeks to enforce human rights and promote democracy by coopting or reforming domestic political institutions and legal systems in such a way as to shift the domestic balance of power in favor of human rights protection. Through direct links with international political institutions and organized pressure from international groups, the purposes of semi-autonomous political elites can be influenced directly. Examples cited below include the efforts of the European Court of Justice to coopt the domestic courts that request and enforce its judgments, and the slow process of incorporating the European Convention on Human Rights into domestic jurisprudence and statute.[1]

2. Sanctions

Sanctions seek to promote human rights and democracy by linking respect for them to preferential economic relations. The threat to economic relations aims to mobilize key societal groups against human rights violations, thereby shifting the domestic balance of power in favor of greater protection for human rights. The only effective European organization for sanctioning, the EC, has a number of policy instruments at its disposal. First, the EC can impose negative import, export or investment sanctions on third countries, generally organized by the European Political Cooperation (EPC) mechanism. Second, it can restrict foreign development assistance and trade preferences under its Lomé Convention arrangements with former African and Caribbean colonies. Third, it can manipulate the promise of bilateral association agreements with, and potential membership for, neighboring European countries.

The European Community: Trade and Investment Sanctions

EC countries possess a battery of varied and formally powerful legal means to coordinate trade and investment sanctions in support of human rights and democratization, yet the record of successful action is modest. The disparity between the open-endedness of potential means and the modesty of real action suggests that the constraint lies not in the lack of appropriate institutions or organizations, but in the unwillingness of EC governments to use them. This conclusion is born out by a closer examination of EC actions.

The Treaty of Rome provides a number of legal instruments for the imposition of sanctions.[2] Moreover, since neither the EC's foreign policy cooperation procedure (EPC, now termed 'Common Foreign and Security Policy' or CFSP) or the European Council, at which the heads of state and government meet for quadrennial summits, is directly limited by EC commercial law, governments may also coordinate any domestic legal or political instrument of foreign policy available to them. Decisions about sanctions could be taken by the Council of Ministers of the EC, acting either through its normal trade policy procedures or through less formal EPC/CFSP procedures for foreign policy cooperation. In addition, heads of state and government may agree to sanctions at meetings of the European Council — their regular quadrennial summits. Although all of these procedures require in practice a unanimous vote, the flexibility for member governments is otherwise near total.[3]

Sanctions have been imposed, most often through EPC. Over the past 20 years, EPC has moved incrementally toward more coordinated foreign policy-making. A 'true consultation reflex' has emerged, in which EC governments initially seek to establish a common position with regard to major multilateral issues.[4] Yet this system has not up to now resulted in the effective use of sanctions in support of foreign policy goals, particularly in crisis situations.

The record of the past decade illustrates the weakness of the EC commitment to coordinated sanctions (Hill, 1992: 145). In the Iranian hostage affair of 1980, EPC was unable to impose effective sanctions on Iran. In the Polish crisis of 1981, the EPC crisis mechanism 'spectacularly failed to function'; it proved difficult to convene meetings and Greece blocked the imposition of sanctions. In the Falklands/Malvinas crisis of 1982, the member states of the EC imposed collective sanctions on Argentina, but their renewal after the war began was criticized by Denmark and opposed by Ireland, with its neutral and anti-British heritage, and Italy, with its close relations to Argentina. Unable to overcome the opposition of these two states, the EC process broke down, permitting Ireland and Italy to pursue independent bilateral policies of breaking sanctions, while the other

governments, supportive of British policy from the beginning, maintained them in place.[5] In response to the Israeli Invasion of Lebanon in 1982, the EPC advised the Commission to delay signing of the financial protocol of a new trade agreement. The EC reacted to neither the KAL 007 crisis nor the Grenada invasion of 1984, with Greek dissent blocking action on the former. Divergent positions on the Iraq crisis of 1990, with the British supporting the USA and the French mediating, consigned collective European action to ineffectiveness, except where UN decisions took precedence. The imposition of limited sanctions of China in response to the Tiananmen Square massacre of 1989 constituted an isolated success.

The European experience in targeting two countries is particularly instructive for judging the potential for sanctions in support of human rights: Yugoslavia and South Africa. In the Yugoslav crisis of 1991, the EC played the role of mediator, but was not able to back up its actions with more symbolic economic sanctions, let alone military intervention, until joint Western action was taken under the UN. Close analysis of European decision-making suggests that the lack of coordination on the question of whether to accord diplomatic recognition to Croatia and the lack of strong measures in other areas was due primarily to divergent opinions or the absence of political will on the part of major member states, not to institutional failure. To be sure, a unanimous vote was required, but it would have made little difference if the system had been reformed to permit a commitment to be made by a qualified majority. At no point over the past three years was there a qualified majority for stronger policies of sanctions or intervention (Steinberg, 1992). Moreover, it is unclear whether successful multilateral sanctions would have made any difference. Collective Western sanctions have subsequently devastated the Serbian economy, with meagre political results.

South Africa is an even more instructive example, since there was the maximum possible ideological opposition to the domestic practices of a target state — overt and formal racism being universally condemned in the international community. Yet European governments proved very hesistant to levy expensive sanctions in support of human rights goals. On balance, sanctions may have had some cumulative, long-term effect in strengthening white opposition to apartheid in South Africa. But this analysis suggests that, with the possible exception of the investment ban, their effect was largely symbolic.

In the 1970s and 1980s, EC member states held strikingly different views on the proper response to apartheid in South Africa, with the UK and Germany interested primarily in maintaining trade, while other member states were more supportive of sanctions in the service of political goals. Until 1977, EC pressure on South Africa to dismantle apartheid and provide for the economic liberation of the black states was limited to rhetoric. In

1977, the EPC adopted a Code of Conduct for European firms doing business in the region, which normalized labor relations between European firms and black South African workers. Being simply an attempt to coordinate national policies, however, this lowest common denominator policy was implemented unevenly across different member states. From the perspective of scholars and human rights activists alike, it was a failure: it 'prevented the implementation of sanctions, protected EC business interests in South Africa, and delayed anti-apartheid pressure for dis-investment' (Holland, 1991: 186).

With popular pressure growing for a stronger policy, the EC Council of Ministers in 1985 proposed joint initiatives, many of which had already been implemented by individual member states. In addition to the limitation of certain oil exports to South Africa, these included: 'the end of exchange of military attachés with Pretoria; the termination of nuclear and military cooperation, and of official contacts and international agreements in the sphere of security; an embargo of EC exports of arms and paramilitary equipment; and the discouraging of sporting and cultural contact "except where these contribute towards the ending of apartheid".' Yet the UK and Germany blocked any broadly applicable mandatory trade sanctions under EPC, rendering coordination 'ineffectual and largely symbolic' (Holland, 1991: 186–7).

In 1986, with pressure increasing even more, the member governments acted through EPC to adopt trade and investment sanctions, banning a modest amount of imported iron and steel from South Africa, prohibiting the import of krugerrands and limiting 'new' EC direct investment in South Africa. The latter provision was weak, exempting portfolio investments and remittable earnings from South African subsidaries. Trade sanctions were imposed, but they affected only 3.5% of South African exports to Europe (Holland, 1991: 187–9). Moreover, only the suspension of iron and steel imports and the ban on krugerrands were actually implemented through EC regulations or decisions. The member states declined to give legal standing in the Treaty of Rome to other actions, instead employing EPC decisions to coordinate national policies. The result was that the cost of defection was considerably lower. With a thawing of the South African situation in 1990, for example, Britain unilaterally withdrew from the investment ban, a move that Irish Foreign Minister Gerrard Collins declared tantamount to the 'destruction' of EPC. There was at no time a consensus for moving further (Collins cited in Holland, 1991: 188).

It is at best unclear whether the strengthening of the EC in recent years will bolster its de facto ability to impose sanctions. The recent Maastricht Treaty expands these powers, explicitly acknowledging a security dimension, changing the name of the procedure to the Common Foreign and Security Policy (CFSP), and making provisions for member states to unanimously

dictate that all secondary decisions concerning any single issue be made by qualified majority vote. It is difficult to see how these provisions would have made a difference in the case of either South Africa or Yugoslavia. The completion of the single market may limit the ability of states to impose bilateral sanctions on a target state, as did Denmark and Ireland on South African agricultural and coal products. Once such products are within the EC, they will be able to move anywhere within it, thereby evading bilateral restrictions. Whether this will spur European governments to greater cooperation or undermine what little has been achieved remains to be seen.

Aid to Less Developed Countries: The Lomé Convention

The second form of economic sanctions contains restrictions on aid. The Lomé Convention provides non-reciprocal trade preferences for selected African, Caribbean and Pacific (ACP) countries, mostly former colonies of EC member states.[8] The Lomé Convention has proved to be a weak but not totally ineffectual instrument for promoting democracy and human rights. The Lomé treaties contain no formal legal basis on which to halt aid in response to human rights abuses; indeed, any such restriction would be legally questionable. Moreover, the political legitimacy of the Lomé Convention in Africa rests to a large extent on its non-political image, for which continuing aid to Ethiopia despite its dismal human rights record, is often publicly cited as an example. Official activities are limited to actions of the EC's ACP–EEC bureau, which is permitted to examine cases of human rights and to prepare general reports (ACP–EEC, 1987: 131–2).

When the EC attempted a decade ago to insert a human rights clause in the renegotiated Lomé Convention, which would have permitted the suspension of aid, the ACP countries unified in opposition. They argued that the Convention should be non-political, that it gives ACP states no reciprocal power to sanction the EC, and that human rights include economic and development rights as well, which the EC systematically violates. In response, the EC dropped its insistence on the clause and did not even attach a unilateral declaration to the final treaty. (Shortly thereafter, the EC and ACP reversed ideological roles over South Africa, against which the latter demanded sanctions. This time the EC hid behind the apolitical nature of the institution and the ACP criticized such distinctions.)[7] The 'Objectives and Principles of Cooperation' section of the fourth Lomé Convention, signed in 1989, is more ambiguous, committing the signatories to two potentially contradictory rhetorical goals — the defense of state sovereignty and the protection of various human rights, including women's rights and providing no explicit rules and procedures for achieving either.

Although there is little formal role for human rights concerns in EC relations with ACP countries, some observers of the Lomé Convention detect the emergence of an informal set of three criteria employed to condition aid on human rights grounds. Aid is likely to be restricted if (1) there is a particularly gross abuse of human rights; (2) a change of regime is foreseen in a relatively short time; *and* (3) the concerned state is not, like Zaire and Ethiopia, of major political interest. For example, aid to Uganda and Equitorial Guinea in the 1970s was limited and rechanneled through international charitable organizations. The EC Council of Ministers directed that aid to Uganda be spent in such a way as to impede government oppression. Although commodity support (STABEX) transfers continued, presumably because they were of interest to EC firms, food aid was restricted and only 5% of the indicative aid program that had been committed was actually disbursed. Aid was restored after the fall of Amin's regime. There is no evidence, however, that sanctions helped to undermine the Amin regime (Lister, 1988: 197).

The EC and Democratizing European Countries: Aid, Association and Membership

The EC has long employed a third form of economic sanction — aid, association and membership agreements with neighboring European governments — as a means of encouraging humans rights and democratization. Here, commitment to a basic principle has been clearly established: the European heads of state and government, meeting at the Lisbon European Council of September 1992, reiterated the importance of 'initiatives giving active support to countries which introduced democracy, enhanced human rights and promoted good governance' (Commission, 1993: 366–7). In practice, a commitment to liberal governance has facilitated the negotiation of bilateral aid or association agreements with the EC. Democratic government is also an explicit precondition for membership in the EC. Yet the effectiveness of these measures remains unclear.

This policy has been consistently applied. In 1962, Spain applied for an association agreement with the EC, which would have provided for preferential trade arrangements and economic aid. The EC response fell far below Spanish desires and expectations. The EC's acceptance of the application was initially blocked by pressure from Spanish dissidents, inside and outside of Spain, and the opposition of Denmark and the Netherlands. At the same time, the European Parliament's Birkelbach Report called for democratic conditionality for association agreements. (French and Italian farmers were also concerned about possible economic competition, but General de Gaulle appears nonetheless to have supported the application.) Only a linkage with the similar application from Israel led to the signing of

an agreement with Spain in 1970 — eight years later. Not only were the terms of the agreement disappointing to Spain, but the agreement was deliberately signed for only six years, after which it would be up for renegotiation and during which time the political issues might arise again (Tsoukalis, 1981: 76–7).

In the mid-1970s, when Spain and Portugal began to democratize, European aid was discretely employed to assist the process. European Investment Bank (EIB) loans were targeted to prop up centrist parties in Portugal (Hill, 1992: 140). The history of relations between the EC and Mediterranean countries, in addition to the explicit requirement that member states be democratic, led many among Spanish, Portuguese and Greek elites and publics to view EC membership and democratization as mutually reinforcing. In each country, the preservation of democracy was a strong argument for accession; the desire to be a member of a regional economic, cultural and political union was a strong argument for democracy. Membership in the EC was seen as a means of combating radical left-wing or separatist pressures, as well as reducing the probability of a military coup. In Portugal it was a cornerstone of the anti-communist alliance; in Spain a bulwark against subnational regionalism (Tsoukalis, 1981: 110, 117, 123).[8]

The EC has more recently followed a similar pattern with respect to democratizing countries in Central and Eastern Europe. In early 1990, the EC began to explore the possibility of association agreements with Poland, Czechoslovakia, Hungary, Bulgaria and Romania. From the beginning, these agreements were 'linked to compliance with the principles of democracy and economic liberalization. . . .They were to contain sections on political dialogue, free trade and freedom of movement, economic, financial and cultural cooperation', as well as democratic institutions (Commission, 1991: 267ff.). All transitional agreements, much like the trade and economic cooperation agreements signed at the same time with Argentina and Chile, contain common understandings that the agreements are based on respect for democratic principles and human rights. In the East European cases the transition to a market economy is also specified as a 'basic condition' underlying the agreement (Commission, 1991: 356).

There is some evidence that conditionality is actually imposed, though not consistently. In 1990, agreements were signed with all countries except Romania, where a poor human rights record led EC countries to limit aid to humanitarian assistance. In December, however, a trade and cooperation agreement was signed with the USSR, although the human rights situation was not fully clarified. So-called 'Europe Agreements' were signed in December 1991 with the three 'Visegrad' countries: Poland, Hungary and the Czech and Slovak Federal Republic. These agreements, while short of full association agreements, supersede previous trade and cooperation

agreements. In 1992 the negotiation of similar agreements with Romania and Bulgaria were authorized, but the Bulgarian negotiations went slowly, perhaps because of the uncertain human rights situation. On the whole, despite successful democratic transitions in many countries, the East Europeans were disappointed by the eventual association agreements, which reflected considerable protectionist pressure in Western Europe.[9]

Sanctions and the European Community: A Balance

The EC is the major European institution able to employ aid, export and import sanctions as an instrument of policy. On balance, it appears that the widespread desire to maintain close economic and political relations with trading partners and former colonies, as well as the lack of catalyzing political change in the ACP states, has limited the EC's systematic use of sanctions or foreign aid restrictions as an instrument for the promotion of human rights outside the European continent. Among neighboring European states, the domestic political consequences of manipulating aid, association and accession agreements are more difficult to assess. The existence of the EC appears to act as a magnet, leading to a measure of 'anticipatory adaption' by neighboring countries, as evidenced by Eastern Europe (Haggard et al., 1993: 173–95). On the other hand, this may reflect unrealistic expectations about the speed and thoroughness with which the EC is prepared to offer membership and association. To be effective, the use of aid, association and accession appears to require a democratizing government and strong bilateral support from individual European countries. In Spain, for example, the slow negotiation of association and the promise of accession did not undermine the Franco regime, nor dissuade the army from attempting a coup, but it may have assisted on the margin to bolster democratic forces once the transition was underway.

3. Shaming

Shaming, the second mechanism through which international pressure may influence dramatic developments, seeks to enforce individual human rights and promote democracy by creating a domestic and international climate of opinion critical of national practices, thus shifting the domestic balance of power in the target state toward the protection of human rights. Shaming operates by manipulating information about, and according ideological legitimacy to, certain domestic practices of states. The two most striking examples of European systems for promoting human rights and democratization through shaming are the Council of Europe's European Convention on Human Rights and the various documents and institutions emerging from the CSCE process.

The Council of Europe and the European Convention on Human Rights

The most important and effective multilateral institution concerned with the protection of human rights within Europe is the Council of Europe, under whose auspices the European Convention for the Protection of Human Rights and Fundamental Freedoms was drafted and signed in 1949–50. The ECHR system has been termed 'the public order of Europe' (Frowein, 1992).

In the immediate post-World War II period, heads of government and non-governmental organizations, mindful of the recent past, pressed for the creation of a regional human rights regime. Particularly influential was the International Committee of Movements for European Unity, which called a pan-European Congress in 1948. In its 'Message to Europeans', the Congress called, among other things, for a character of human rights enforced by a supranational court. In response, the European Convention was signed in 1950, entering into force in 1953. The ECHR has 23 signatories. Beginning with Hungary in 1990, East European countries are now becoming members (Sikkink, 1993: 144–9).

Unlike the United Nations Universal Declaration, the European Convention on Human Rights is limited to civic and political rights. It lists the rights to life, liberty and security of person; the right to a fair trial; freedom from retroactive laws, torture, slavery and servitude; freedom of thought, conscience, religion, expression and assembly; and the right to privacy and family life, as well as to marry and found a family. A number of other rights, controversial for various reasons during the founding conference, are enumerated in protocols. These include the right to peaceful enjoyment of one's possessions; to education; to free elections; to liberty of movement and choice of residence; a ban on the death penalty in peacetime; the right to review of criminal sentences; the right to be free of the threat of expulsion; and protection against double jeopardy. The ECHR system does not extend to most social and economic rights, about which there is little consensus (Weiler, 1986: 1113). The Council of Europe did also sponsor a Social Charter — drafted between 1955 and 1958, signed in 1961 and in force as of 1965 — which recognizes the rights to work, to organize, to collective bargaining, to social security, to social and medical care, to protection of the family and to protection of migrant workers.

The basic task of the organization, however, is 'soft law' standard-setting, rather than adjudication or enforcement. Committees of independent experts report on the situation across Europe or in specific countries. Their recommendations are subsequently approved or rejected by an inter-governmental Committee of Ministers, voting by a two-thirds majority (Archer, 1990: 49).

The ECHR employs a subtle but effective institutional apparatus to promote compliance. According to the Convention, the enumerated rights are to be enforced through a system consisting of a commission and a court of human rights. It is unique among European human rights instruments in combining two provisions to promote effective enforcement by these bodies: the individual right of petition and compulsory jurisdiction for the international court (Robertson and Merrill, 1993: 250ff.).

The system functions as follows. Individuals or governments may petition the Commission for consideration of specific claims that human rights have been violated. Since governments tend to shy away from pursuing human rights claims, individual petitions, rather than state-to-state complaints, have contributed the most to the development of an international legal order. Unlike the EC (see below), whose court generally considers cases referred by national courts, individuals may submit petitions directly to the Commissions, a body elected by national representatives to the Council of Europe, rather than to national courts. This clause generated controversy during the drafting and was subsequently described as 'a remarkable innovation in international law' (Mower, 1991: 91). Article 26 permits the Commission to take up individual petitions only when domestic remedies have been exhausted; they can be neither anonymous nor destructive of human rights. The Commission may also conduct its own further investigation, which member states are required to assist. If the Commission determines that a violation of human rights may have taken place, and subsequent attempts to reach a 'friendly settlement' fail, the Commission may issue a report and refer the case to the Committee of Ministers, which votes by two-thirds majority on the case or, as occurs in most cases that are declared admissible, refers it to a court of human rights for a final judgment.[10]

What sanction does the Committee have in response to non-compliance? There are only two. First, the Committee may dictate that the Commission report be published. While this may initially have been considered an effective sanction, today 'whatever force lay in this threat has now been lost', because nearly all the Commission's reports are published anyway (Mower, 1991: 98–9). Today 'the desire of responsible governments not to be seen to be repudiating their human rights obligations is . . . normally all that is needed' (Robertson and Merrill, 1993: 328). The second sanction is expulsion, which has only arisen as a possibility in the Greek case of 1969, described below.

Despite its lack of overt compliance mechanisms, the ECHR system is generally considered to be highly effective at securing compliance. Between 1953 and the end of 1990, the Commission received 15,457 petitions, nearly all from individuals. Of these, 14,636 were declared inadmissible, 96 resulted in a friendly settlement, 430 resulted in a report by the Commission

and 251 court decisions were handed down (Frowein, 1992: 227).[11] The large number of inadmissible petitions results from the stringent set of criteria that complaints must meet. Most were struck because all domestic remedies had not been exhausted; others did not present a *prima facie* case of violation of a right guaranteed under the Convention or were submitted anonymously (Robertson and Merrill, 1993: 273). Non-compliance is 'exceptional'. Insiders estimate that 75% of the member states display a 'high' degree of cooperation with decisions and 25% a 'moderate' degree (Mower, 1991: 20). The ECHR system required a long period to achieve this level of effectiveness. Until 1973, the ECHR had little effect on the legal order of member states; the next decade was a transitional period. In the 1980s, however, the ECHR system began to develop extensive European constitutional case law (Frowein, 1992: 357). Due to the greater knowledge about the system and its increasing geographical scope, there has been an exponential growth in the number of petitions, with the great majority being submitted in the 1980s. Before 1973, less than a dozen cases annually were declared admissible and there was an average of only one court decision; this figure has more than tripled over the past decade (Yearbook, various years).

The delay in the evolution of the ECHR legal order to its current level of effectiveness is explained by the fact that ratification of the instrument and adherence to various of its specific provisions is voluntary. Only recently has the near universal recognition of the individual right of petition and binding jurisdiction created the political preconditions for the Commission to adopt a more aggressive strategy in referring cases to the court — contributing to the effectiveness of the organization and the current rapid increase in its caseload. Up to that point, the Commission was inhibited by the fear that strong enforcement would dissuade governments from strengthening their commitment to the regime.

In order to become a full legal participant, governments must ratify the ECHR; recognize individual petitions and compulsory jurisdiction of the court, both of which are optional; and decline to take reservations to specific rights enumerated in the ECHR. Most major European countries, including Turkey, ratified the ECHR in the 1950s, but some, including France, Switzerland and the Iberian countries, did not do so until the mid-1970s. Widespread recognition of individual petitions under Article 25 was delayed for decades. For historical reasons, Germany and a handful of other countries recognized it immediately. The UK, however, did not permit individual petitions until 1966, Italy not until 1973 and France only in 1981. By 1991, only Malta and Cyprus had not recognized this right. Finally, voluntary recognition of the binding jurisdiction of the Court has been similarly slow to emerge, although it is now nearly universal. Finally,

signatories have taken reservations concerning specific protocols and provisions of the ECHR, which continue to undercut the uniformity of protection.[12]

Where flagrant, systematic violations of the convention occur and judicial remedies are ineffective, the only recourse under the ECHR is to file a state-to-state complaint or to demand expulsion. There are substantial variations in the willingness of governments to file state-to-state complaints against flagrant violators of the ECHR when it is not directly in their interest to do so. There are two such cases, involving many of the same states. In 1967, Denmark, Sweden, Norway and the Netherlands filed a petition under the ECHR against the military government of Greece. An investigation was conducted and Greece withdrew from the Council of Europe to avoid expulsion; it was invited to return only with the re-establishment of democracy in 1974 (Sikkink, 1993: 149–50). In 1982, these four countries were joined by France, a traditional defender of Greek interests, in filing a similar petition against Turkey. In response, Turkey modified its behavior slightly and accepted individual right of petition. Ireland and Austria have brought state-to-state petitions for more transparently self-interested reasons (Frowein, 1992: 283–5ff.). Other states have been reticent to promote or contribute to multilateral enforcement. These cases suggest that the ECHR system does not provide an effective infrastructure to defend general guarantees of basic human rights.

The subtlety and delicacy of the ECHR's domestic mechanisms for enforcement of human rights are grounded not just in consensus, but in the workings of national legal and legislative systems. From a purely legal perspective, the emergence of the ECHR system might best be seen as one element in a broader process of expanding constitutional judicial review to political systems that had never fully practiced it, including the UK, most of Scandinavia and Benelux, and, to an extent, France (Frowein, 1992: 357; Stone, 1992). This helps explain why citizens of countries with strong constitutional protections and domestic judicial review, such as Germany and Italy, tend to bring proportionately fewer complaints. In such countries, ECHR norms have been incorporated into the basic legal structure through judicial action or legislative revision (both independently and as a conscious response to international norms); domestic courts provide adequate defense of such norms.[13] (This is true, as we shall see below, of the European Community legal system as well.) Those domestic legal orders with no judicial review for fundamental human rights have brought more cases and, in general, more important ones. A number of controversial cases have been brought against the UK, for example, challenging non-enforcement of gender wage equality in the workplace and practices of detaining prisoners in Northern Ireland (Frowein, 1992: 278).

The ECHR is best seen as an instrument to perfect and harmonize pre-existing human rights guarantees, rather than to extend basic guarantees. Since it is dependent on domestic public opinion, legal legitimacy and legislative authority as tools to induce voluntary compliance through shaming, its unique level of compliance and effectiveness relies upon underlying socioeconomic and political factors, most notably an elite or popular consensus in favor of human rights, adequate protection for individuals who voice their opinions or raise complaints under the system, and institutions to transmit that consensus to policy-makers. Where such underlying preconditions are absent, these domestic mechanisms to transmit norms break down. In such cases, shaming must be transmitted by more traditional, state-centred diplomacy, to which we now turn.

The Conference on Security and Cooperation in Europe

The Conference on Security and Cooperation in Europe (CSCE) grew out of pan-European East–West negotiations during the 1970s — the so-called Helsinki process. The geographical scope of the CSCE process is unique; it is the only regional human rights organization with members across the European continent. CSCE meetings at Helsinki (1975), Belgrade (1977), Madrid (1980), Stockholm (1984), Vienna (1986–9) and Copenhagen (1991) have generated a series of international agreements on human rights. An expanding set of individual and collective rights have been codified in increasingly concrete and practical language. In recent years, following the democratization of Central and Eastern Europe, the system has been strengthened considerably. The Vienna Concluding Document, negotiated between 1986 and 1989, moved far beyond the Helsinki Accord and Madrid Document. It enlarged commitments to the individual's right to know, as well as protections against arbitrary arrest, degrading treatment, harsh detention and torture. It was particularly detailed on freedom of religion, and commitments to the freedom of movement have been strengthened. On the other hand, it remains weak on various areas where consensus was elusive, including capital punishment, compulsory military service, and visa policies (Buergenthal, 1992: 186–8; Bloed, 1991: 72–3).

The Charter of Paris for a New Europe, adopted at the November 1991 CSCE summit, moves further: not simply reaffirming support for human rights, democracy and the rule of law, but also seeking the protection of the 'ethnic, cultural, linguistic and religious identity of national minorities . . . without any discrimination' (Commission, 1991: 356). Although incomplete and carefully worded, these guarantees of minority rights are unparalleled in international treaties for their detail and thoroughness in treating this sensitive issue. Among other things, CSCE recognizes the right

to be a member of a minority group and to 'unimpeded contact' with members in other countries (Bloed, 1991: 67–9).[14]

As political agreements, rather than treaties, CSCE accords are not legally binding, internationally or domestically. The language of CSCE agreements consistently distinguishes between CSCE 'commitments' and international law 'obligations'. Under international law, CSCE commitments become binding as customary law only if participating states come to treat them as such (Buergenthal, 1992: 200ff.). Nonetheless, CSCE accords can influence state behavior in two ways. First, the shaming process may create a symbolic environment that stimulates domestic opposition in non-complying governments. The publication of the Helsinki Accord, with its provision guaranteeing 'the right of the individual to know and act upon his rights and duties', had a dramatic and unexpected impact in various countries behind the Iron Curtain. It served as a focal point, stimulating the formation of 'Helsinki groups' throughout Eastern Europe (Buergenthal, 1992: 177). Whereas the major pressure for the recognition of religious rights in Eastern Europe clearly came from internal democratization, the CSCE is credited by some with offering a focal point, source of legal language and provisions for legal reforms (Luchterhand, 1991: 162–6).

Second, the CSCE contains extensive procedures for information exchange and intergovernmental consultation, developed mostly in recent years. The Vienna and Copenhagen meetings established a 'four-step' procedure for formalizing interstate human rights grievances, which amplifies the effectiveness of shaming. In step one, a state may address, to any other state, a request for information about domestic human rights protection. The request must be answered in writing within four weeks. If the first state is not satisfied with the information, it may move to step two by requesting a bilateral meeting, the agenda of which is limited to the original claim. If it still remains unsatisfied, it may elect to move to step three by contacting other states about the case. If the issue remains unresolved, step four permits states to voice their disagreements in a forum attended by all member states (Buergenthal, 1992: 199).

In addition, CSCE has recently created common institutions for information gathering. The CSCE's Office for Democratic Institutions and Human Rights, based in Warsaw, has recently been enhanced to make it 'the main institution of the human dimension' of CSCE, in direct competition with the Council of Europe's activities. (The shift from its former name, the 'Office of Free Elections', suggests a deepening of the conception of minimum democratic institutions; see McGoldrick, 1993: 423, 431.) This organization arranges missions, acts as a clearing house for information, and reviews implementation of CSCE commitments. Missions can be sent without the agreement of the state concerned. Similarly, the CSCE has created a High Commissioner on National Minorities, which may collect

information, issue 'early warnings' and, with proper authorization, consult with parties to potential conflicts. EC countries, acting together, have strongly supported these changes.

By exchanging and publicizing information, and by forcing human rights onto the domestic and international agenda of governments, the CSCE structures the international and domestic shaming processes to maximum effect. This system relies upon the consensus of its members, but the level of domestic convergence required is lower than that required by the Convention system. It is difficult to assess the level of compliance with the CSCE system. While its early role as a focal point is striking, there is little evidence that its subsequent actions have had similar consequences.

The European Community and Shaming

By comparison to CSCE and the Council of Europe, EC institutions for shaming are less well-developed. The European Parliament and European Political Cooperation are active rhetorically, generating unilateral statements of regret and rebuke concerning international human rights abuses, but unlike the ECHR and CSCE systems, the EC procedures do not oblige involvement or response from foreign governments. Each year, the EC makes over one hundred behind-the-scenes representations, as well as issuing over one hundred public statements concerning human rights abuses outside of the EC, mostly through EPC (Commission, 1993: 368). The European Parliament also engages in promotional activities. In 1977, for example, the Parliament joined with Latin American counterparts in adopting Interparliamentary Conference resolutions denouncing the 'hard and oppressive conditions' and 'the lack of basic freedoms' in Latin America (Mower, 1980: 58–9). It issues numerous resolutions of concern and has recently adopted resolutions in connection with the financial protocols with certain (non-member) Mediterranean countries (Commission, 1993: 369). The European Parliament has often called for a greater institutional commitment to human rights. In response, the Commission proposed in 1990 that the EC accede to the European Convention (Commission, 1991: 354).

4. Institutional Cooptation

Cooptation, the third mechanism discussed in this article, seeks to promote international human rights by coopting domestic political institutions, particularly courts and legislatures, in such a way as to shift the domestic balance of power in favor of human rights protection. As we have seen, some of the international instruments examined above have subtle effects of this

kind. The European Convention on Human Rights, for example, encourages legislatures and courts to incorporate international norms into domestic statutes and jurisprudence. Yet the most impressive case of institutional cooptation is surely the human rights protection afforded by the EC's supranational court, the European Court of Justice (ECJ). The ECJ has established a transnational legal order by coopting domestic courts — and, through them, tacitly coopting individual litigants — into supporting European law. The result is the world's most effective supranational legal system. Among the principles of EC jurisprudence is the protection of individual human rights (Burley and Mattli, 1993).

The Treaty of Rome, which founded the EC, contains no list of protected individual freedoms equivalent to a bill of rights (Metropoulos, 1992). It enumerates only rights connected with the formation of an internal market: 'discrimination on the basis of nationality' (Art. 7) and limitations on the 'free movement of workers' (Art. 48). Further protections seemed unnecessary, given pre-existing protections by national courts and through the Council of Europe.[15]

Today, however, the ECJ doctrinally defends basic human rights. This shift occurred as the result of a bargain between the ECJ and national constitutional courts. To understand this bargain, it is essential first to understand the political process by which it was possible for the ECJ to expand the importance of EC law in general (Burley and Mattli, 1993). According to the Treaty of Rome, cases can come to the ECJ in a number of different ways: the Commission of the EC can bring cases against individual states; states can bring cases against one another; and certain individuals can bring cases 'of direct and individual concern'.

Yet few important cases reached the ECJ in these ways. The primary, though largely unforeseen, instrument of EC legal integration has been instead Article 177 of the Treaty of Rome, which permits national courts to refer cases involving European law to the ECJ for a preliminary ruling. If the national court is the court of final appeal, it is now required to do so, according to European jurisprudence. The acceptance by national courts of the doctrines of the supremacy of EC law over national law and 'direct effect' (the binding nature of EC law even where appropriate national implementing legislation has not been passed), gave individuals the opportunity to employ national courts to challenge national statutes and practices that conflict with EC law. The vast majority of ECJ cases reach the court in this way. Hence EC legal integration depends on a tacit alliance among the ECJ and two types of domestic political actors: individual litigants, who cite EC law, and national courts, which refer cases to the ECJ and incorporate ECJ rulings into their own judgments, which are then enforced through national procedures. It is on the basis of this tacit bargain that legal integration of the EC has taken place (Burley and Mattli, 1993).

As the ECJ established supremacy and direct effect in the 1960s, some national courts — notably the constitutional courts of Germany and Italy, which practiced judicial review and were bound to defend explicitly enumerated individual freedoms — responded by declaring that they would not recognize European law where it clashed with the fundamental provisions of domestic constitutional law, including the protection of individual rights. In particular, the national constitutional courts noted the lack of explicit human rights guarantees in the Treaty of Rome.

The ECJ responded to this challenge to its autonomy in adjudicating conflicts concerning European law — which posed a simultaneous and more fundamental challenge to the uniformity and supremacy of the European legal system — by reading protection of fundamental rights into the basic law of the EC. In doing so, the ECJ recognized as a source not just the Treaty of Rome, but also 'constitutional principles common to the member states' and 'international treaties . . . of which they are signatories', the latter including the ECHR (Metropoulos, 1992: 136).[16] This effort was backed by an EC declaration recognizing the European Convention, though EC membership in it has been blocked. The link to the ECHR, which provides much of the guidance for the resolution of human rights questions, helps integrate the European system as a whole (Weiler, 1991: 1135).

The ECJ's recognition of human rights led national courts to accept, at least provisionally, its judgments in this area. The ECJ was further able to move in the direction of US-style federal incorporation, whereby US federal (in this case, European) courts can oversee state (member state) actions for compliance with standards of fundamental human rights protection. This power is limited to the national implementation of EC legislation; the ECJ does not review purely national laws for compliance with principles of fundamental human rights (Metropoulos, 1992: 145ff.).[17] Some argue that oversight of national legislation is inevitable; even if not, as the scope of EC activities expands, this function is becoming more important (Weiler, 1986: 1136–42).

In establishing human rights law, the ECJ was responding to national constitutional courts and had to satisfy their stringent standards. For the moment, domestic constitutional courts in Europe remain generally more active than the ECJ in enforcing individual rights. The constitutional courts of Italy, Germany and other countries have not relinquished their claim to exercise concurrent juducial review (Weiler, 1986). The resulting plural system creates two possibilities for conflict to arise between international and national human rights norms, in which the ECJ might seek to 'impose' stronger or weaker human rights standards on its members. The first might arise when the ECJ and national courts resolve conflicts between competing fundamental rights in different ways. Recently, for example, the ECJ narrowly avoided deciding the question of whether the Irish constitutional

amendment banning abortion violates a fundamental human right. The second might arise when European and national law resolve conflicts between individual and social interests in different ways. Expanded EC legislation in areas like environmental policy, consumer protection and social protection makes such clashes almost inevitable (Metropoulos, 1992: 150ff.).

The acceptance of the ECJ's activities in the human rights area has been an offshoot of the influence it has gained by adjudicating disputes in the commercial realm and by serving as part of the EC, which itself enjoys a measure of legitimacy.[18] The ECJ has been careful not to overstep the boundaries of the legitimacy that these underlying factors provide (Weiler, 1991; Stein, 1981). Such legitimacy remains fragile. The Maastricht Treaty on Political Union contains a Protocol protecting the Irish anti-abortion amendment, while the revisions to Article 130, incorporating consumer policy, health policy, environmental policy and a number of other policies, specifically seeks to limit the power of the ECJ to review national derogations. Whether or not the Maastricht Treaty marks a trend toward the formal politicization and limitation of ECJ jurisprudence, the perceived political constraints on the court are tightening. Some predict that the ECJ will delay any further movement toward incorporation (Weiler, 1993: 46–32; Metropoulos, 1992: 163).

5. *Lessons from the European Experience*

The analysis above suggests that the success of the European system, while striking in some areas, has been slow and uneven overall. The ECHR and EC systems have developed subtle and delicate institutions for the supranational adjudication of human rights issues, which command consistent compliance among the great majority of European governments. The CSCE and EC provisions for promoting human rights outside of the core of West Europe through the establishment of soft-law norms and the promise of eventual membership have been weak and uneven. The EC's experience with sanctions has been generally disappointing.

This pattern of success and failure suggests a number of hypotheses about the general conditions under which international human rights regimes can succeed. The experience of the Inter-American system under the OAS, as well as efforts to promote human rights in Eastern Europe and the former Soviet Union, all of which are briefly mentioned below, support the preliminary conclusions drawn from Europe.

1. The most effective institutions for international human rights enforcement rely on prior sociological, ideological and institutional convergence toward common norms.

Human rights guarantees must ultimately be implemented by domestic governments. All three instruments of international human rights enforcement outlined above — sanctioning, shaming and cooptation — work by changing the domestic balance of power within and between societal actors and government institutions, thereby increasing the target government's incentive to respect human rights. Some elements within governments targeted by international pressures for human rights compliance will generally oppose compliance; the greater the opposition to compliance, the more external pressure is needed to alter it. Thus, barring the use of extensive coercion, substantial convergence of domestic policy is likely to be a precondition for international influence to be effective. The more the member states already respect human rights, the more successful the regime will be.

The uniquely successful record of European human rights regimes presupposes a strong domestic conseneus and adherence to basic democratic norms. The underlying sources of stability for the European regime are a general respect for individual human rights in public and elite opinion, which leads member governments to avoid public non-compliance, and the existence of independent judiciaries and legislatures, which act semi-autonomously to promote human rights. More subtly, the regime has also paralleled purely legal trends: a gradual legal transformation throughout Western Europe toward more explicit systems of constitutional judicial review, and the regional convergence of commercial law, which has brought with it a certain amount of human rights jurisprudence (Stone, 1992).

These preconditions permit the use of subtle institutional forms of shaming and cooptation, which require the active participation of independent citizens, judges and legislators. Shaming requires the active support of domestic publics within the target state, who must share similar ideological norms. Cooptation requires assistance from courts or legislatures within the domestic polity of the target state, which must be able to act autonomously. Systems based on individual petition, which tend to be the most effective, rely on the existence of private individuals and groups with the requisite education, financial means, and security from retaliation to initiate a petition. The lack of such individuals and groups is explicitly recognized in other regional human rights systems, notably the inter-American system, which provides for petitions on the behalf of others, as well as low standards for the exhaustion of judicial remedies, yet such assistance is clearly not enough to make the system effective in combating fundamental human rights violations. Hence these preconditions are likely to be found only where target states are already democratic or democratizing.

By contrast, European efforts at traditional state-to-state human rights diplomacy have not been particularly successful. Efforts to shame the

Iberian, Greek and Turkish military governments of the 1960s, 1970s and 1980s appear to have been unsuccessful. In such cases, where democratization and adherence to human rights norms may pose a threat to regime stability, international pressure (short of outright coercion) is unlikely to be effective in the short-term without substantial pre-existing opposition.

This suggests what might be termed the 'tyranny paradox'. Human rights enforcement is most costly and least effective when directed against the worst human rights offenders. In Haiti, for example, with its weak commercial and financial classes and the strong role of the army in the polity and economy, serious respect for human rights would 'threaten the institutional power of the armed forces and the distribution of income and wealth'. In such cases, there is good reason to believe that 'authentic restoration could not be achieved by means short of force' or complete societal and economic collapse (Farer, 1994). Moreover, sanctions tend to diminish the welfare of the poorest and most deserving, while leaving rulers unscathed, as appears to have been the case in Iraq, Uganda and Haiti (Roberts, 1993: 20).

This is not to assert that international human rights instruments directed at dictatorships are necessarily futile, only that the unique institutions and practices of the West European system, which distinguish its performance from that of similar institutions in other regions of the world, result from its ability to perfect democratic governance, not to establish it. Hence the true measure of whether other human rights regimes, like the inter-American system, are achieving the same level of development as the European system is not their effectiveness in responding to dictatorships and coups in countries like Haiti, Guatemala and Peru. Instead, it is the perfection, harmonization and extension of human rights and democracy in countries like Argentina, Chile and Mexico and, secondarily, the facilitation of transitions to democracy in Nicaragua, El Salvador, Suriname and Paraguay. Those countries most active in their support for the OAS regime have been those, such as Chile and Argentina, who seek to mobilize international support for perfecting democracy and maintaining civilian rule in their own democracies. This is the motivation that most closely resembles that which gave rise to the European system.[19]

This finding is consistent with recent liberal theories of international relations and international law, which suggest that effective international institutions often presuppose established democratic legal and political orders and robust civil societies, within which domestic actors can work to assure compliance with international norms. Where non-liberal or quasi-liberal states are involved, there is little reason to expect that such untraditional instruments of international politics will function effectively (Moravcsik, 1992; Burley, 1993a, b).

2. The lack of international consensus, rather than the weakness of international institutions, generally imposes the binding constraint on international human rights enforcement.

The obstacles to international institutional commitments by nations in the Western Hemisphere, Eastern Europe or the former Soviet Union stem not from the lack of effective and properly designed international institutions, but from the failure of governments to commit themselves to them. The European record suggests that such commitments develop slowly, even among stable and advanced industrial democracies. Although European institutions have long been capable of issuing declarations, imposing sanctions and developing proper norms, it has taken generations for the procedures that support them to become widely effective. This is particularly true of the most invasive, but ultimately most uniquely effective, European regimes, namely those (the EC and ECHR) that are based on the individual right of petition and binding supranational adjudication.

This is not to deny that other systems, for example, may be moving in the direction of the European system and, in the long term, may reach a similar point. The OAS, for example, currently appears to lack a consensus for moving further. The current consensus on developing the inter-American systems appears to lie in the direction of strengthening provisions against dictatorships. 'Activist' democracies in the OAS system are particularly willing to criticize distant dictatorships such as Haiti — the cases most remote from their own domestic concerns.[22] They appear much less willing to accept de facto supranational jurisdiction over the internal affairs of democratic governments. The declarations of OAS foreign ministers at recent meetings stress above all the attempts to combat dictatorship, rather than to improve democracy. This reflects the inability of governments to impose order domestically, as in the case of Brazil, or the defense of existing one-party systems for maintaining domestic order, as in the case of Mexico (Bloomfield, 1994). In countries like Peru, Honduras, and even Argentina and Uruguay, there is a tendency to view human rights concerns as secondary to national exigencies (Bloomfield, 1994; Méndez, 1994).

The importance of consensual, rather than institutional, limitations is particularly clear if one considers that the OAS system is, in a formal sense, patterned after the European system and stronger than its model. The OAS Commission has been in existence since 1959, charged initially with implementing the American Declaration on the Rights and Duties of Man of 1948 and, after 1979, the American Convention on Human Rights. In a number of ways, such as the recognition of petitions, the formal powers of the Inter-American Commissions and Court are more extensive than their European counterparts. Yet the system has not brought about a higher level of compliance with international norms. Moreover, in contrast to European developments, an increasing politization of the Inter-American Court is

currently visible. These are sobering reminders of the limited independent contribution that international organizations can make to the consolidation of democratic practices.

Even in West Europe, it was only in the 1970s and 1980s, after decades of development, that the norms of binding supranational jurisdiction and individual right of petition were firmly established. Where domestic and international conflicts of interest make such links more risky — as in Central and Eastern Europe, or many parts of the Western Hemisphere — it is likely to require even more time. And in Europe, there remains far less international consensus on social and economic rights than on civic and political rights.[20] Strongly pressuring countries to accept binding jurisdiction and the individual right of petition before they are ready to accept it voluntarily is to invite open non-compliance, as occurred among European dictatorships.

3. While awaiting the development of a system of supranational adjudication, more promising strategies may be to strengthen domestic civil society and political institutions, and to strengthen traditional international organizations that gather information and arrange consultations.

Given that the civil societies and domestic institutions of most Latin American or East European countries are currently unable or unwilling to support the subtle intervention of the mature European-style regime, the primary task for international institutions is to create the preconditions for such a system. The analysis of the West European experience suggests two methods.

The first method is to strengthen domestic institutions through which indidividuals and groups in civil society can express their views. As the European system demonstrates, robust and independent public opinion, non-governmental organizations, legislators and judiciary are a critical link in creating a functioning system. Only where domestic institutions have the safe and impartial production of information and enforcement of claims are regimes likely to work. Election monitoring and oversight of peace agreements are examples (Vaky, 1993: 24–5). Since the instruments discussed here all rely upon the inexpensive provision of information about human rights violations, private and public international organizations that expand the capacity of private actors to transmit information are likely to promote human rights compliance both in the short- and long-term. The role of non-governmental organizations (NGOs) is critical in this regard.

Independent judiciaries comprise an especially important link. Among independent judiciaries, a 'transjudicial dialogue' can emerge, in which normative convergence develops through communication between judges and lawyers in different nations (Burley, 1993b). International regimes that foster transnational contacts and common standards among judges — as well

as parliamentarians, political parties and regulatory agencies — would be a positive step toward creating the preconditions for effective supranational jurisprudence. Recent research suggests that the independence of judges is imperiled not just in non-democratic systems, but in democratic systems with de facto, long-term, one-party rule, of which Mexico is a notable American example[21] and which a number of East European countries may be developing.[22]

The second method is to strengthen more traditional information-gathering and consultative institutions like CSCE and EPC, which are more appropriate to the more diverse normative and institutional environment of Central and Eastern Europe — and, by extension, the Western Hemisphere. Such institutions also rely on an international normative consensus, but it need not run as deep. Such organizations work primarily by shaming internationally and perhaps by the implicit threat of sanctions, but they lack the fundamental grounding in domestic politics that make the ECHR and EC systems distinctive. They act as classical international regimes, contributing legal technique, generating information about common problems and providing for discussion. As such, they are unable to provide the unparalleled level of uniform protection provided by the unique system of Western Europe.

By contrast, there is little evidence from Europe that positive or negative sanctions in support of democratization and human rights are effective or replicable elsewhere. European countries do not, in general, view economic sanctions as a cost-effective means of imposing democracy and human rights. Attempts to pursue this strategy in Africa met with no clear successes. Such efforts tended to be costly, and intergovernmental political consensus behind their use has tended thus to be sporadic at best. Similarly, it seems that the OAS remains skeptical about the use of economic sanctions on governments that systematically violate human rights (Bloomfield, 1994).

A more subtle and perhaps more effective means of achieving a similar end, however, may be to make membership in regional trading arrangements conditional on adherence to norms of democracy and human rights. The possibility that the democratic precondition for membership and association in the EC has played an important long-term role in increasing the legitimacy of democracy in Southern and Eastern Europe cannot be ruled out. Under conditions of democratic transition, in which a number of outcomes are possible, including a reversion to authoritarian rule or communist government, the promise of EC membership may have helped tip the balance toward democracy, and it may help maintain the stability of democracies thereafter.[23] Certainly this is the way the issue was seen in Spain after the death of General Franco. The success of positive sanctions, however, may be difficult to replicate, because the focused ideological and economic pull of the EC is unmatched elsewhere in the world. In any case,

this is not an effective method to employ against entirely undemocratic governments. The possibility of delaying EC membership does not seem to have deterred Iberian, Greek or Turkish military coups. Moreover, sanctions or denial of association agreements may impede the social transformations necessary to create the preconditions for democracy.

In conclusion, the European case suggests that neither a view of human rights regimes as a projection of the beliefs of a dominant power, nor one which sees them as eminating from intergovernmental bargains on the basis of reciprocity, captures their essential dynamic. The European human rights regime was created by governments and groups anxious to secure human rights at home and has been extended through a slow process, lasting half a century, of shaming and cooptating domestic governments into accepting incremental changes in their domestic practices. The most important preconditions for the creation of and compliance with the sort of highly refined regime norms found in Europe are strong pre-existing norms, practices and institutions of liberal democracy, which permit causal mechanisms to operate through civil society and semi-autonomous government institutions. Within such a community of established Liberal democracies, international regimes can contribute to the harmonization, perfection and adjudication of human rights, which can lead, over generations, to the emergence of the transnational rule of law. Outside of such a community, the instruments of international human rights statecraft remain more primitive and the results correspondingly more modest.

Notes

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1. In an attempt to focus on direct policy instruments for the international promotion of human rights and democracy, I have deliberately set aside two distinct groups of policies. The first group comprises education programs which tend to be small and would fit into the categories of *shaming* and *subversion*. The second group comprises indirect policies of achieving democracy and human rights, for example by promoting economic growth, spreading literacy, preventing conflict through military intervention, encouraging judicial independence, and so forth. Some of these will be examined at the end of the article.
2. Article 113 of the Treaty of Rome, providing for the Common Commercial Policy, was employed to impose sanctions against Iran and the USSR; Article

224 was employed in the Falklands crisis; Article 223 to embargo arms against Iran in 1980. In addition, Article 235 offers general powers (see Holland, 1991: 184).

3. Trade sanctions under Article 113 could formally be imposed by qualified majority vote, but Article 113 decisions tend to be taken under an informal rule of consensus.
4. Guy de Bassompierre, cited in Holland (1991: 182).
5. See Hill (1992). For a contrary interpretation, see Martin (1992).
6. The Lomé Convention, which has been revised three times, replaced the Yaounde Convention, concluded in 1963. For an overview, see Lister (1988: 197).
7. The South Africa clause was most enthusiastically supported by the Dutch and British Labour governments, while other EC governments were notably less enthusiastic. See Lister (1988: 197–9).
8. Both European leaders and Mediterranean democratic politicians had led the southern publics to believe that the non-democratic government had been their only obstacle to membership. Hence they were surprised when the EC member countries hesitated, extending the negotiations and the transition period.
9. The role of the EC is one of coordination, not supranational implementation. The EC Commission does not play an important independent role in Eastern Europe, since direct EC aid (as opposed to bilateral aid from EC countries totals only 1–2% of total Western aid. The European Commission was detailed by the Paris G-7 Western Economic Summit of 1990 to coordinate G-24 activities, but had little autonomy in doing so. This coordination simply involved the provision of information and the organization of meetings. It did not include discretion over funding, except for the relatively modest amount of direct EC aid. For a skeptical view of the Commission's influence, see Haggard and Moravcsik (1993).
10. Strictly speaking, any state involved, including that of an individual petitioner, has the right to refer the case to the court. Individual petitioners do not have such a right. In practice, however, almost all referrals are made by the Commission. When Protocol 10 of the Convention comes into force, only a simple majority will be required in the Committee to refer a case. See Robertson and Merrill (1993: 300ff.).
11. The remainder were struck off the list for other reasons. This may underestimate, though probably not greatly, the number of cases in which governments had changed their decisions or policies at an early stage, resulting in a declaration of inadmissibility.
12. For example, as of 1991, Greece, Turkey, Malta, Switzerland and Liechtenstein had not signed Protocol 1, guaranteeing the rights of property ownership, education and free elections. On other areas, see Weiler (1986: 1141).
13. There is a scholarly debate as to whether the ECHR is self-executing. For an initial sally, see Buergenthal (1965). In Belgium, the Netherlands, Germany, Italy, Greece and Turkey, the Convention has been treated as self-executing: in Scandinavia, Ireland and Luxembourg, enabling legislation was required and was often slow in coming.

14. On the other hand, the wording is often loose, with governments committed only to 'endeavor' to achieve specified ends. Nor, of course, is there any recognition of a right to take political action to alter borders. Even so, Greece and Bulgaria submitted interpretative statements that restricted the potential application of these clauses.
15. At an early stage in the development of the EC legal order, the European Court of Justice (ECJ) recognized some fundamental rights of workers. For a more extensive history of this development, see Weiler (1986).
16. On the Court's motivations, see Weiler (1986: 1118; 1138).
17. This includes national derogations from EC law under Articles 36 and 56 for reasons of public order, safety and health.
18. To an extent, the growth of ECJ jurisprudence may have reflected the trend toward explicit judicial review in Europe mentioned above in the context of the Convention. But, as Weiler points out, while 'traditionally, resistance to an enumerated constitutional bill of rights is tied to principled resistance to judicial review', the Treaty of Rome granted the ECJ explicit powers of judicial review, but promulgated no bill of rights (1986: 1110).
19. On Chile's motivations, I draw on the public comments of Heraldo Muñoz, Permanent Representative of Chile to the Organization of American States at the Inter-American Dialogue Conference on 'Advancing Democracy and Human Rights in the Americas: What Role for the OAS?' (2–3 December 1993). It is perhaps no surprise that Chile, with its long democratic tradition, would advocate this position most strongly.
20. Although the need for the enforcement of socioeconomic rights may appear even more pressing in the Western Hemisphere than in Europe, it will probably prove difficult to gain the consent of governments to any binding rules in this area.
21. Lack of partisan uncertainty gives ruling coalitions or parties a greater incentive to 'capture' the judiciary. For an analysis of Japan's one-party rule, see Ramseyer and Rosenbluth (1993).
22. Tom Farer (1994: 14–15) speculates that Haiti was 'too remote and peculiar' to be part of the national interests of the USA and other American nations. Only the OAS, he argues, made it salient. Yet one might also argue the opposite. Precisely because Haiti is distant and dictatorial, it marked a good precedent for implementing the Santiago Declaration.
23. The Argentina–Brazil economic agreement of 1986 founding the MERCOSUR free trade zone, stressed that democratic governance was a 'basic requirement' for the participation of any third parties and an important purpose of the agreement was 'to consolidate democracy as a way of life and a system of government' (Muñoz, 1993: 86).

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