Human Rights Proceedings:
European Provisions and Experience*

Presentation by

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Mr Chairman, Ladies and Gentlemen,

First of all I should like to say how pleased I was to be invited by the Chief Justice of Nigeria, the Commonwealth Secretariat and Interights to address such a distinguished audience - especially in this country which I have never previously had the privilege to visit. I am grateful for an opportunity to speak on a subject which is of course close to my heart but one which is also, I believe, of relevance to current developments on this continent. I refer to the system of human rights protection embodied in the European Convention on Human Rights, and its machinery - in particular the European Court of Human Rights. Nigeria and the community of the States which are parties to that Convention have in common that their fundamental rights provisions are, to use the words of our colleague Nnaemeka-Agu, largely based on the norms set out in the Universal Declaration of Human Rights adopted in 1948 by the General Assembly of the United Nations.

The Nigerian Constitutions and the European Convention on Human Rights therefore have the same origin as regards the rights and freedoms which they guarantee. What is more, the African Charter on Human and Peoples' Rights of 1981 is also to be viewed, just like the European Convention, within the context of the broader human rights landscape of the Universal Declaration. Because of these common roots - and therefore common responsibilities - the European experience may be of some value to our African colleagues, while their experience is of course of great interest to us.

I. THE CONVENTION SYSTEM

1. The European Convention on Human Rights was introduced as a response to the horrors and atrocities experienced in Europe in the 1930s and 1940s and in particular during the Second World War. The lesson learnt was that observance of human rights is not exclusively a matter between the State and its citizens: the international community as a whole has responsibility for safeguarding the fundamental rights and freedoms of human beings.

2. On 4 November 1950, eighteen months after the signature of the Statute of the Council of Europe and barely nine months after the first meeting of the governmental experts appointed to draft the text, the Convention for the Protection of Human Rights and Fundamental Freedoms was signed in Rome. In present-day terms it is little short of miraculous that it proved possible to establish a system as far-reaching as that of the Convention in such a short time. Evidently there existed a political consensus as to the need for European
protection of human rights.

3. By virtue of the Convention the Contracting States undertake to secure to everyone within their jurisdiction a number of rights and freedoms set forth in the Convention. In sum, these are the classic civil and political rights. In addition, the Convention sets up a control machinery for enforcing the undertakings of the Contracting States. The Convention allows not only States but also individuals to take proceedings against a

Contracting State responsible for an alleged breach of the Convention. It is thus a legally binding instrument under which sovereign States agree to accept positive duties and to recognise that individuals have rights under international law. As such the Convention represented a historic and unprecedented step forward in international law. There can be no doubt that the right of individual petition is of crucial importance and lies at the very heart of the Convention's system of protection.

4. Three institutions are vested with the function of ensuring observance of the undertakings contained in the Convention: the European Commission of Human Rights, the European Court of Human Rights, both of which were created by the Convention itself, and the Committee of Ministers of the Council of Europe.

The Convention entered into force on 3 September 1953. The Commission was established in 1954 and the Court in early 1959.

5. All applications under the Convention are examined in the first place by the Commission. An application may be introduced against a Contracting State either by another Contracting State or by any person, non-governmental organisation or group of individuals.

The Commission's task is threefold. It has first to determine whether the application satisfies the requisite conditions for admissibility. It then holds itself at the disposal of the parties with a view to securing a friendly settlement. And finally, if no settlement is reached, it draws up a report in which it establishes the facts and expresses an opinion as to whether the facts found disclose a breach of the Convention. This opinion is not binding on the parties but is intended to assist the body which has to take the final decision, namely the European Court of Human Rights or the Committee of Ministers of the Council of Europe.

6. The Court is an independent judicial institution in the normal sense of the term, with one judge from each member State of the Council of Europe and a public procedure.

The Committee of Ministers, which is the executive "organ" of the Council of Europe, decides those cases not referred to the Court, albeit in a procedure which can hardly be said to be judicial.

A case may be brought before the Court by the Commission or by a Contracting State concerned in the case, but, as a result of a compromise reached when the Convention was being drafted, not by the individual complainant who instituted proceedings before the Commission. However, there now exists a protocol, which will, it is hoped, enter into force next year, conferring on the individual applicant a right of access to the Court in cases admitted by the Commission.

7. The Court's judgments are final and binding. They are declaratory in nature. If the Court finds a violation of the Convention, it has no power to quash the decisions of the national authorities or to order consequential measures. It may however award "just satisfaction" in the form of financial

compensation. The judgments are transmitted to the Committee of Ministers, which supervises their execution.

8. This, in brief, is how the Convention functions. It was some time before the Court could play to the full the role entrusted to it under the Convention. Several States were slow to recognise the right of individual petition and/or the compulsory jurisdiction of the Court. Besides, the Commission and the States concerned were somewhat reluctant to refer admitted cases to the Court. This explains why one of my predecessors, Judge Rolin, in a lecture some 25 years ago discussed whether the Court had a future and why the first Danish Member of the Court, Judge Ross, in a paper given at about the same time, spoke of us as a court seeking employment.

Today the situation is totally different. First, with the temporary exception of Hungary, Czechoslovakia and Poland, which only recently joined the Council of Europe and signed the Convention, all member States have accepted both the right of individual petition and the compulsory jurisdiction of the Court. Furthermore, in admitted cases raising legal issues of importance, not only the Commission but also a growing number of governments now consider it appropriate or even necessary that the final decision should be given by the Court. The increase in the Court's activities is strikingly demonstrated by the fact that whereas in the first 15 years on average only one case a year was brought before the Court, the yearly figure was 31 cases in 1989, 61 cases in 1990 and (81) in 1991. The Court took 26 years to deliver its first one hundred judgments, whereas it reached its second hundred in only a little more than 4 years and its third hundred in about 2 years.

9. The Convention does not - and I wish to emphasise this point - institute a system intended to replace national human rights protection. On the contrary, as the Court has said on several occasions, the Convention system is of a subsidiary nature. The primary responsibility for the effective safeguarding of human rights and freedoms lies with the Contracting States, in particular with their judiciary. This is reflected in the rule that no State has to answer before the Convention bodies for its acts before it has had an opportunity to redress the alleged wrong within the context of its own legal order.

A number of States have incorporated the Convention into their domestic law. The Contracting States are, however, not required to do this in order to enable their authorities to secure the rights and freedoms guaranteed. Several States, including the United Kingdom and my own country, Norway, have not incorporated the Convention. Nevertheless, as regards those States also, it is, of course, a legally binding instrument. At the time of ratification the British and the Norwegian Governments assumed that their domestic law was in full conformity with the Convention's provisions. It is, however, undeniable that the Convention as interpreted by the European Court has had some impact upon the domestic legal systems in both countries.

As regards Norway, some important human rights which are not contained in the Norwegian Constitution are included in the

European Convention, and the Norwegian courts seek to interpret national law in such a way as to avoid conflict with the Convention. In order to justify its reasoning the Norwegian Supreme Court has thus in several judgments cited the Convention as an authoritative reference text for the interpretation of fundamental rights and also relied on the case-law of the Strasbourg Court. If there were to be a conflict between national law and the provisions of the Convention, it would be for the courts to decide. I should perhaps mention that in a lecture in 1981 I said that in my opinion it could be argued that precedence should be given to the Convention.

I am aware that the position is different in the United Kingdom. I know, however, that the United Kingdom courts have also referred in some instances to the European Convention and to the case-law of the Strasbourg Court.

II. THE IMPACT OF THE COURT'S CASE-LAW

10. After these summary observations concerning the Convention system in general, I should like now to focus a little more closely on the Court and on the impact of its case-law within and outside the Convention community.

1. The Kind of Case Dealt With by the Court

11. The States which are parties to the Convention are already committed to upholding human rights, since by virtue of their membership of the Council of Europe they have undertaken to "accept the principles of the rule of law and of the enjoyment by all persons within [their] jurisdiction of human rights and fundamental freedoms". The Strasbourg Court as a consequence does not in practice have to deal with allegations of serious and wide-scale violations of human rights of the kind that occurred in Europe before and during the Second World War and which even today are sadly too frequent in other parts of the world.

12. This is not to say, however, that the cases which come before our Court may not be of great significance for the States involved. This can be seen by looking at the subject-matter of some of the judgments delivered in the last three or four years. The Court has naturally retained its staple diet of "judicial procedure" cases concerning the arrest and detention guarantees and the right to a fair administration of justice in civil and criminal matters. In addition, the range of issues coming up for decision has been extended beyond these classic grievances to cover, to cite but a few examples: the risk alleged by Chilean nationals and Sri Lankan Tamils of being exposed to torture or inhuman treatment in the event of being expelled to Chili by Swedish authorities (in the first case) or to Sri Lanka by the British authorities (in the second case); application of the immigration rules in the United Kingdom, and of expulsion or deportation rules in the Netherlands, in Belgium, in France and in Sweden; the constitutional prohibition of divorce and the status of children born out of wedlock in Ireland; issues related to the taking of children into public care in Sweden and the United Kingdom; various aspects of freedom of expression in member countries; security vetting for government employees in

Sweden; homosexuality laws in Ireland; absence of access to the courts to challenge decisions of administrative authorities and professional bodies in the Netherlands, Sweden and Belgium; compensation for nationalisation of the British shipbuilding and aircraft industries; the language provisions in Belgian legislation governing elections to Regional Legislative Assemblies; succession and rent control laws in Austria. And the list could be continued. The short point is that the Court's judgments are more and more concerned with issues going to important aspects of social or even economic life in the Convention countries.

2. The Nature of the Review Carried out by the Court

13. The European Court of Human Rights is thus called on to review the actions of legislative, executive and judicial authorities in the democratic countries subscribing to the Convention. The Convention strikes a subtle balance between the sovereignty of the Contracting States and the power of review of the Convention institutions. To take account of the special character of the Convention, the Convention institutions have developed a number of principles of interpretation, the most important of which may be briefly described as follows:

(a) "Autonomous" Nature of the Concepts in the Convention

14. In many of its provisions, the Convention refers back to concepts found in the domestic legal systems of the Contracting States, for example a "criminal charge". If the concrete meaning to be given to those concepts in relation to a specific case were invariably to be the meaning found in the domestic law of the respondent State, this would lead to unequal protection under the Convention in the various Contracting States as a result of the "accident" of the way in which the domestic law happened to be framed. In order to avoid such inequality of treatment and to ensure consistency in the content of the Convention's guarantees from country to country, the Court has enunciated the principle of the "autonomy" of the meaning of the expressions used in the Convention, as compared with their meaning in domestic law.

The legislation of the respondent State is not, however, without importance: it provides the starting-point for the analysis. Similarly a comparative study of the legal systems of all the Contracting States may well disclose the existence of a common approach and thus a uniform core to the Convention concept.

(b) Evolutive Interpretation

15. The vast majority, if not all, of the concepts stated in the Convention are directly linked to social and legal conditions in democratic society. As a result, they are not static, but, on the contrary, are susceptible of evolution and development with the passage of time. There is thus a concurrent need for an evolutive interpretation of such concepts, reflecting relevant changes in the life of democratic society, if the Convention is not to become progressively ineffective. "The Convention", the Court stated in a 1978 judgment, "is a living instrument which

must be interpreted in the light of present-day conditions". In some of the cases so far referred to the Court, the changes were judged to be decisive, so that State action - or omission - which may once have been permitted by the Convention now became prohibited, as for example in a Belgian case concerning the legal status of unmarried mothers and illegitimate children. In other cases the admitted changes had not reached a critical stage justifying such a conclusion.

This technique of treaty construction of course has its limitations. Extending the list of guaranteed rights can only be achieved by "legislative" action, that is by elaboration by the Contracting States of additional Protocols to the Convention. Evolutive interpretation nevertheless has a significant role to play in ensuring that the existing rights in the Convention are not overtaken by events but remain adapted to our European society of today and tomorrow.

(c) Margin of Appreciation

16. On the whole the Convention, with its general language, sets standards rather than imposing inflexible uniform rules. The manner of meeting the required standard will vary from country to country, depending upon the prevalent legal, social and political conditions and traditions. The national authorities have a choice, in other words a discretion, as to the means to be employed for implementing the Convention standard. This notion has been expressed in the Strasbourg case-law by saying that in such instances the Convention leaves the Contracting States a "margin of appreciation". In cases where this doctrine applies, for a violation of the Convention to be found, the national authorities must have exceeded their margin of appreciation.

Of course, the margin of appreciation and, correspondingly, the bite of the Court's review will vary according to the context. In areas where there is a legitimate range of difference of opinion in democratic society, the decision falls within the sphere of responsibility of the national authorities acting in accordance with democratic processes. Provided that the national authorities remain within the legitimate range of difference of opinion, it is not for the European Court of Human Rights to substitute its own view as to what would have been a preferable solution. In other areas, for example where the language of the text is restrictive rather than flexible, the Convention leaves lesser scope for national discretion, it imposes greater restraints on national sovereignty; consequently, the margin of appreciation is narrow.

As the renowned international jurist Sir Humphrey Waldock, former President of both the European Commission and the European Court of Human Rights and thereafter the President of the International Court of Justice, has written:

"The doctrine of the 'margin of appreciation' ... is one of the more important safeguards developed by the Commission and the Court to reconcile the effective operation of the Convention with the sovereign powers and responsibilities of governments in a democracy."

Criticism of the Court's use of the margin of appreciation doctrine has focused on its lack of precision, its use without principled standards. It may be that such criticism is justified to some extent. However, the Court needs flexibility to deal with vague concepts in the Convention and the diversity of legal systems and practices in member States. I agree with Sir Humphrey Waldock that the doctrine of the margin of appreciation is important, and I am convinced that it is an enduring concept in the jurisprudence of the Court.

(d) Effects of the Court's Judgments

17. A judgment by the Court is binding only for the State or States party to the particular case. (50) Its judgments do however furnish guidance to the other Contracting States, depending of course on the subject-matter which was in issue before the Court. Indeed it is by no means unusual for the legislature or the judiciary of a State which was not a party to a given case to act upon a decision of the Court by amending its legislation or adapting case-law. To give but one example: the 1988 judgment in the case of Brogan and Others v. United Kingdom led the Netherlands Government to reconsider whether the time which, under the Dutch Criminal law, may elapse between the arrest of a person and his or her appearance before a judge can still be deemed to satisfy the requirement of "promptness" laid down by Article 5 of the Convention. The Netherlands Parliament is currently examining a Bill providing for an amendment of the Code of Criminal Procedure on this point.

(e) Conclusion

18. My distinguished colleague Judge Walsh, who until his recent retirement also went by the title of Mr Justice Brian Walsh of the Irish Supreme Court, has said that the European Court of Human Rights acts rather like a constitutional court. Whilst the particularities of the Convention system render it dangerous to push the analogy too far, it is true that the kind of issue that comes before the European Court of Human Rights has much in common with the civil-liberties or fundamental-rights issues commonly adjudicated upon by constitutional or supreme courts in political democracies. Equally, the judicial review carried out by the European Court is similar in nature to that carried out by constitutional or supreme courts.

3. The Convention and the Outside World

(a) The Soering Judgment

19. This move towards a constitutional role clearly has effects within the Convention community itself, but it can also be seen to have an increasing influence on the community's relations with the outside world. A striking indication of this development is the case of Soering v. United Kingdom, decided in July 1989, where the European Court unanimously held that the extradition of a young German national to the United States of America to face a capital murder charge and the attendant risk of the death penalty would involve inhuman or degrading treatment contrary to Article

3 of the Convention, notably because of his exposure to the so-called "death-row phenomenon".

The Soering judgment confirmed the case-law of the European Commission of Human Rights that extradition by a Contracting State may under certain conditions involve the responsibility of that State under the Convention for foreseeable ill-treatment which the extradited person is liable to suffer in the receiving country. The primary purpose of Article 3 is clearly to proscribe ill-treatment by the Contracting States' own agents, whether by overt or covert action; but the obligation imposed by Article 3 is such a fundamental one in a democratic society that it also embraces not sending an individual to a destination where he faces a likely fate of prohibited ill-treatment. There consequently exists a degree of extra-territorial responsibility under Article 3.

(b) The Convention and the European Community

20. As I have endeavoured to explain, the Human Rights Convention has been assuming over the years the mantle of a basic law for Europe on fundamental rights. This being so, it is evident that the Convention community of twenty-six States cannot remain indifferent to human rights protection within the European Community of the Twelve - what used to be known in ordinary parlance as the Common Market -, which does not have a human rights constitution of its own. Two solutions to fill this void have been under discussion for many years, namely the adoption of a catalogue of fundamental rights by the European Community itself and the accession of the European Community as a full Party to our Convention. The latter solution is favoured by the Parliamentary Assembly of the Council of Europe, the European Parliament and the Commission in Brussels which, following a proposal of its President, sought last year the authorisation of the Council of Ministers, to enter into negotiations with a view to the possible accession of the European Community to the Convention.

In the meantime it is the European Court of Justice in Luxembourg which ensures the protection of the fundamental rights and freedoms of the individual in his or her relations with the European Community institutions. It does so on the basis of general principles of law, which are deemed to be an inherent part of European Community law. In identifying the principles material for the safeguarding of fundamental rights and freedoms, the European Court of Justice draws inspiration not only from the constitutional traditions common to the twelve member States but also from international treaties for the protection of human rights on which those member States have collaborated or of which they are signatories, including in particular the Strasbourg Convention.

(c) The Convention as a Model outside Europe

21. Furthermore, the Convention's influence has extended beyond the frontiers of Europe and it is seen as an example in countries and continents where attempts have been made to secure a better protection of human rights. Thus it provided the model for the American Convention on Human Rights of 1969, which came into

force in 1978; it also served as one of the reference texts for those drafting the African Charter on Human and People's Rights. Its reach can perhaps be said to be worldwide, not only because of its influence as a model, but also because more and more often courts in countries such as Canada, Australia and India are seeking interpretational guidance in the case-law of our Court.

3. Conclusion

22. Mr Chairman, Ladies and Gentlemen, my attempt to outline to you the European Court of Human Rights and its work was intended to explain what has been achieved so far under the Convention system and thereby to point to its potential. It is my firm conviction that if the Court continues in the course that it has followed since its early days it will consolidate more and more its emergent role as a European constitutional court. This evidently calls for a certain amount of "activism" from the Court in interpreting the Convention in order to ensure that it remains a "living instrument", allied with some caution in applying the Convention to the remarkably varied spectrum of cases nowadays submitted for decision, "judicial self-restraint" also being an esssential element of the equation. On the other hand, there is no future for the Court unless the Contracting States are willing to preserve actively what has been achieved so far, and to adapt the machinery where changing circumstances so require.

III. REFORM OF THE CONVENTION SYSTEM

23. This brings me to the question of the reform of the Convention system, which has been under discussion since the Ministerial Conference on Human Rights held in Vienna in March 1985. The call for reform was prompted by the ever increasing growth in the workload of the Convention institutions and the consequential adverse effect on the length of the Strasbourg proceedings. I referred earlier to some statistics concerning the Court's activities. As to the Commission, I would mention that whereas 596 applications were registered in 1985, the figure in 1990 was 1,657.

The reasons for such a substantial increase are doubtless manifold and careful analysis is needed to explain fully this progression. Evidently it has something to do with the fact that over the last ten years more and more States have joined the Council of Europe and accepted the Convention as well as the right of individual petition to the Commission and the compulsory jurisdiction of the Court. But there is also a more fundamental reason. It certainly cannot be said that the rights of the individual are today more frequently disregarded within the Council of Europe member States. Many of the applications to the Convention institutions may be explained rather by the fact that citizens, who are now generally more conscious of their individual rights than ever before, believe that a European remedy is the best remedy for their grievances. Indeed, it is not surprising that in our "shrinking" and homogeneous society at the end of the 20th Century the citizen should seek to take this supranational route.

24. The Commission and the Court operate within a framework which was conceived and established some 40 years ago and which has undergone only minor changes in the intervening period. As to length of proceedings I am able to say that so far the Court has succeeded in maintaining an average of some 12 to 15 months for the examination of cases brought before it. For a court which is not in permanent session this is perhaps not unreasonable. But the total duration of proceedings before the Convention institutions - from introduction of an application before the Commission until the Court's delivery of judgment - is clearly overlong.

25. Various schemes for preserving the effectiveness and thus the future of the Convention system have been suggested, including the three following possibilities:

1. the Commission and the Court should become permanent within the existing framework;

2. the Commission should be converted into a first-instance court, the Court into a court of appeal;

3. a single permanent court should be instituted with competence to decide on both the admissibility and the merits of applications.

The Court has not yet been invited to express an opinion on the possible restructuring of the Convention control machinery. On the three proposals canvassed I would only say the following:

26. The first solution has an advantage which is by no means negligible, that it could be achieved fairly easily and rapidly: to make the Commission and the Court permanent institutions, otherwise functioning within the present framework of the Convention, requires no more than the funds necessary for them to operate as such. It can also be expected that proceedings under the Convention would on the whole be shorter if the Commission and Court could sit on a permanent basis. However, the conferring of permanent status on the institutions will not in itself help to overcome the complexity of the present control machinery. The problem here is that, under the Convention, two independent institutions were set up, one of which is primarily competent to consider the admissibility of applications, while the other has jurisdiction to decide finally on the merits. To understand fully this special structure, it should be recalled that in 1950 the creation of a court as a control body under the Convention did not meet with the agreement of all the member States of the Council of Europe. Today one must ask whether it is really the best solution to continue with a system that requires cases to be examined by two institutions, one of which serves more or less as a filter for the other. Such separation involves a duplication of effort and an in-built factor of delay. It is also, of course, a drain on resources. Furthermore, with the likelihood that, after Hungary, Czechoslovakia and Poland, more new European democracies will join the Council of Europe and ratify the Convention, it may be questioned whether it is reasonable to envisage a permanent Commission and Court, each with perhaps thirty members.

27. Under the second solution the Commission would operate as a court of first instance. Individual applicants and States would be accorded the right to appeal to the Court against the Commission's decision, possibly subject to leave to appeal being granted, a decision which would obviously fall to the appellate court.

The introduction of such a system may have the advantage that it would not necessitate a complete remodelling of the Convention control machinery. Furthermore an examination of a case at two levels of jurisdiction may enhance the quality and authority of the final decision. Nevertheless, I am afraid that I do not find this proposal convincing.

The Strasbourg proceedings have to be seen as a last resort in human rights cases. As the Court has said many times, the Convention system is of a subsidiary nature: it is in the first place for the national authorities and in particular for the domestic courts in our countries to secure the protection of the human rights and freedoms set forth in the Convention. This is reflected in the rule that no State has to answer before the Convention bodies before it has had an opportunity to redress the alleged wrong within the context of its own legal order. The practical consequence of this pre-condition is that complaints lodged in Strasbourg will usually have been examined by two or more national courts and, in most Convention States, already under the very same provisions which are later at issue in Strasbourg. In this respect there is an important difference in relation to the usual situation in the European Communities. It is therefore misconceived to point to the establishment of a court of first instance in Luxembourg as a model to be followed in Strasbourg.

The setting up of a Convention control mechanism in the form of two courts - either both having full competence or one having full competence and the other being an appellate court with limited competence - is not likely to meet the challenge of dealing with cases within a reasonable time. It is significant that none of the Contracting States which have instituted a specific judicial mechanism of human rights protection have opted for a system with two levels of jurisdiction.

28. The third solution is that of the creation of a single court vested, as the courts in Europe traditionally are, with jurisdiction to decide on both the admissibility and the merits of a case brought before it. Such a reform of the control machinery, which would have the advantage of avoiding the delays inherent in a two tier system, would obviously be a radical and substantial one. It requires careful reflection, intellectual ingenuity and imagination. To mention only one aspect, it would be important to retain the possibility of a friendly settlement procedure, which has proved so valuable in proceedings before the Commission.

29. It came as no surprise at the Vienna Ministerial Conference when the Swiss Government advocated an amendment of the Convention along the lines of a single court. Several years have passed since then and the enlargement and possible further enlargement of the Convention community following the recent

political developments in Central and Eastern Europe have made it quite plain that a solution has to be found in the near future. The problem is currently under examination within the Council of Europe Steering Committee for Human Rights. Without underestimating in any way the difficulty of its task, I hope very much that the Committee will be able to report soon, so that the Commission and the Court will have sufficient opportunity and time to study and comment on the results of its work. The reform of the Convention system has indeed become a matter of urgency. In any event an appropriate solution will have to be found so as to maintain the effectiveness of the Convention system in the face of all the attendant difficulties, not least those which the growth and very success of the system are generating.

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Mr Chairman, Ladies and Gentlemen,

Last year, we celebrated the 40th Anniversary of our Convention. Over the years the Court has developed from a minor organ in the European legal framework to an institution of considerable significance, not only for the lives of individual European citizens but also for the Convention community as a whole. The achievement of the Strasbourg institutions goes beyond remedies afforded in specific cases. There is an awareness in Europe, at government level as well as amongst ordinary citizens, that proper respect for human rights is essential for the functioning of political democracy as we know it. The Convention is the expression of that awareness. The Convention institutions have been entrusted with the task of giving body, continuity and consistency to the aspirations for a greater unity between the member States of the Council of Europe based on the principles of political democracy and the rule of law as articulated in the Convention.

This task entails a great responsibility especially, as far as the future is concerned, as a result of the events in the countries in Central and Eastern Europe. The Convention community is open to those countries; the construction of the European Home, to use President Gorbatchev's expression, began forty years ago with the Council of Europe, an idea launched by Winston Churchill even before the end of the Second World War. This solid and existing foundation should not be overlooked in amid the current proliferation of new ideas and concepts concerning the future landscape of Europe. The breakthrough, if I can put it like that, of political democracy on our Continent at the close of this century gives us the opportunity to extend the unification process in Europe, but it is in our interests to do so on the foundation of what has been achieved over the past forty years, in particular in the field of the protection of the individual's fundamental rights and freedoms.

However, and I wish to emphasise once again what I said at the beginning: the main protection of human rights and fundamental

freedoms has to be secured by national authorities, in the last resort by domestic courts. Accordingly, the success of the Convention system will depend on whether or not there is to be some sort of "co-operation" between national courts in member countries and the European Court.

Under the African Charter of Human and Peoples' Rights there is no Human Rights Court. In the light of our experience in Europe I should like to suggest that every effort should be made to establish such an institution within the framework of your Charter. I am convinced that, for an international human rights protection system to be effective, it is essential to make provision for the possibility of a final and binding decision on human rights complaints by a court.

Mr Chairman, Ladies and Gentlemen, I thank you for your attention.