**The Evolution of Human Rights Law in Europe: Comparing the European Court of Human Rights and the ECJ, ICJ, and ICC**

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**Abstract**

Human rights protection in Europe evolved significantly over the last century, culminating in the creation of the European Court of Human Rights. Unfortunately, the decisions made by the European Court of Human Rights are not binding and do not serve as precedent for future cases. The court has the potential to hold significantly greater influence over human rights protection, but its institutional structure and guiding doctrine (the European Convention on Human Rights) does not allow for this. Although the Court maintains jurisdiction over a smaller number of states, it has a more significant influence over human rights protection than other courts, including the European Court of Justice, the International Court of Justice, and the International Criminal Court. This paper compares the roles that each court plays in human rights protection.

The historical evolution of human rights in Europe is essential to understanding the status ofthe region's unique legal structure and why human rights protection is a critical area of focus.

The main supranational legal institutions in Europe are the European Court of Human Rights and the European Court of Justice. Each court maintains separate jurisdictions within Europe: the European Court of Human Rights oversees the 47 members1 of the Council of Europe, while the European Court of Justice oversees the 27 member states of the European Union.

The courts vary in their respective methods of addressing rights and appealing cases. Historically, the European Court of Human Rights has been more accessible to individuals and thus offers a more valuable protection of rights to citizens, and is "…the most effective supervisory machine for human rights in Europe."2 Although there are many legal institutions that play important roles in the European legal system, there have been insufficient studies conducted on the effectiveness of the legal implementation and enforcement of human rights law in Europe.

Legal historian Lawrence Friedman also indicates that there have been insufficient studies conducted about the future of the legal culture in Europe, although there have been studies on the legal culture's impact on domestic legal systems, legal methodologies, and structural aspect of the courts.3

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As this analysis illustrates, the European Court of Human Rights has had the greatest impact on defending and protecting human rights, but it has not been recognized with due credit for its pioneering achievements. Therefore, the focus of this paper is on the history of the courts and comparisons of case outcomes of mainly the European Court of Human Rights, and to a lesser extent the European Court of Justice. It leads to an analysis of the historical background of these legal institutions that have jurisdiction in Europe, their respective jurisdictions, examples of cases from each court, and an analysis of their unique features.

Given the nature and scope of this paper, the materials used and applied for research focus mainly on an institutional history of the courts, case outcomes, governing doctrines of legal institutions (such as the European Convention on Human Rights and the Universal Declaration on Human Rights), as well as legal opinions and legal trends.

**I. Institutional History**

Other international courts that have jurisdiction in Europe are the International Criminal Court (ICC) and the International Court of Justice (ICJ), each overseeing a larger jurisdiction (quantitatively) and are comprised of more member states than the European Court of Human Rights. The ICC, ICJ, and European Court of Justice are also limited in their scope to hearing complaints by states, and do not allow an individual person to petition cases to the court.4 The European Court of Human Rights, however, allows any individual to appeal his or her case, and therefore covers a much wider range of issues and consequently number of people.5

This distinction is important in the realm of human rights protection, as it is unique to selective courts in Europe. This factor is not only relevant with regard to the quantity (111 member states) but also in range and scope of concerned issues. Thus, it is more inclusive and therefore conducive to a deeper examination and analysis of the facts. The limited scopes of the ICC, ICJ, and European Court of Justice eliminates many potentially valid complaints and concerns of individuals that would otherwise hold a valid claim to an appeal, as only a petitioners appealing as a member of a party of a state can have their case considered for appeal. To better examine and provide an overview of the court system, the four main courts will be discussed to evaluate the effectiveness of the European Court of Human Rights.

Historically, the urgency for a supranational court arose after the Second World War. Following the atrocities of the Holocaust, a permanent international court was necessary for future cases after the Nuremberg trials were held in a specially created court.6 Prior to this, no permanent international world court had been established. The creation of the court at an international level was unprecedented and revolutionary: the emergence of such an influential institution is rare.

As the United States Supreme Court record details, the crimes tried in Nuremberg ranged from using members of the concentration camps for sterilization testing, experimentation with freezing techniques, mutilation experiments, exposure to poison gas, and other fatal tests.7 The defendants (Nazi party officials) were also charged with war crimes and crimes against humanity through the mistreatment of civilians, torture of prisoners, and murder through an attempted eradication of minority populations (including but not limited to those of Jewish descent, Romani descent, Polish descent, disabled persons, homosexuals, and political opponents).8,9

Although it took many years after the Nuremburg trials to establish the International Criminal Court, the precedent set by the trials was critical in serving as the foundation for a permanent world court. Ratified by 111 member states in July of 2002,10 the Rome Statute conferred the ICC with the jurisdiction to span across the European continent with a focus on the prevention of the atrocities of war crimes and crimes against humanity. The issues covered by the ICC are separated into four categories: crimes against humanity, war crimes, crimes of aggression, and genocide. Although the ICC holds a greater number of states under its jurisdiction, there are limited means to bring a case to "court of last resort."

The only permissible criteria are by being a member of a national state party, having a crime committed in a country that is party to the Rome Statute, or if the matter has been referred to the court by the United Nations Security Council.11 This severely limits the number of cases that can be brought before the Court. The ICC does not have any authority to review grievances from an individual's claim: if a case falls outside the scope of the aforementioned qualifications, the case cannot be presented to or proceed further to the International Criminal Court. Thus, the lack of scope that the ICC covers presents great danger to the substantive protection of rights at even the most fundamental level.12

The ambition of human rights protection was furthered by the initiative taken to create the European Court of Human Rights in 1950,13 and the desire to promote the idea of political freedom.14 Through the European Convention on Human Rights, the guiding doctrine of law upon which the Court is based, one judge from each member country holds a seat on the bench, thus currently comprised of 47 judges.

The European Court of Human Rights has the difficult task of "…establishing common human rights standards, but also [in] preserving national particularities at the same time."15 With many member states, each with unique cultural and social practices, it is difficult to reach common ground and agree upon a definition of human rights. Although there has not yet been a universal agreement upon such a definition (which is inherently problematic) for the purposes of this paper, human rights is defined as:

The opportunity for the holder of the right to perform or not to perform certain actions; the exclusion of actions of third parties which involve some harm to the holder of the right (either they deprive him of something or do him some injury); or requirements on third parties which involve a benefit for the holder of the right.16

Unfortunately, since its inception, many challenges have plagued the European Court of Human Rights, but such criticisms are not unique to only the European Court of Human Rights. For example, the trials at Nuremberg received harsh denunciation for lack of sufficient conviction of the defendants, with punishments deemed far from adequate relative to their crimes.

It was further condemned for creating laws that would apply retroactively (*ex-post facto*17) in order to substantiate punishment for crimes committed. Similar problems continue to plague the ICC and European Court of Human Rights today as they are both heavily criticized for egregious violations of principles of law.

The International Court of Justice was founded on the premise of having a comprehensive global jurisdiction and is known as the primary judicial body for the United Nations. Although the ICJ also maintains coverage over members of the United Nations, its jurisdiction is dependant upon the consent of member states that allow the ICJ's decisions to take precedence over individual national court decisions.

Therefore, it is sporadically and selectively applied law as its decisions are inconsistently upheld by individual member states in the form of both binding and nonbinding advisory opinions. This severely detracts from the legitimacy of the ICC as its decisions do not have sufficient enforcement.18 The ICJ, the ICC, and the European Court of Justice appear to maintain a less effective jurisdiction than the European Court of Human Rights.

Of these, the court that has been most comparable in scope of human rights protection is the European Court of Justice, but the European Court of Human Rights remains distinct in its ability to act as a protectorate, and as such, their comparisons will be the primary focus of the remainder of this paper.

**II. Evolution of Courts in Europe**

**Background of Human Rights**

The increased focus on the importance of human rights over the course of the latter half of the 20th century in Europe has been influenced by centuries of legal evolutionary discourse. Cultural and traditional differences have also played an essential part in the formation of the legal culture that defines human rights. Conflicts and wars have also both directly and indirectly influenced legal systems.19

As power dynamics change, legal systems adapt to a certain extent to accommodate social mores.20 For example, many legal systems are often criticized for being "behind" technologically, specifically in cyber law. Recent progress in this field is evident with the creation of the Budapest Convention, ratified in 2004 to regulate cybercrime,21 a concern that had not been as directly addressed to date. This dynamic has been a trend in law dating back as far as Roman civil law and English common law.22 Some posit that the openness of law has changed in that it became more open to revision after the French Revolution (1789),23 and more inclusive of a myriad of cultures and ideologies.

Additionally, the influences from other legal cultures have played essential roles in shaping the current European legal system. Jean-Jacques Rousseau and the Baron de Montesquieu contributed to the Napoleonic Code, which in itself became one of the most influential legal doctrines. Many legal institutions are based on the Code, and have implemented elements of it into their own respective legal codes.24 It has been influential and incorporated into the legal systems of many European countries and some South American countries.25

The ideologies reflected by the Code promote the protection of individuals, as opposed to primarily focusing on states' rights. The shift toward protecting the individual manifested itself after the Second World War, predominately in Western Europe26 and with the adoption of the Universal Declaration of Human Rights. In addition to the creation of the Convention of Human Rights in 1953, Europe continued to shift in the direction of defending and protecting individual rights.

Unfortunately, the enthusiasm for human rights protection expressed by Western Europe was not matched by Eastern Europe. This was made evident by Eastern Europe's response to Western European's foundation of NATO (North Atlantic Treaty Organization) in 1949 with the Warsaw Pact in 1951. Eastern Europe remained focused on the "collective good" as opposed to the protection of the individual.27 This ideology remained the norm arguably until the end of the Cold War in 1989.28

The significance of the contrasting approaches taken by Western and Eastern Europe was critical to the legal systems that resulted. As discussed, the European Court of Justice (established in 1953) holds the most similar position to the European Court of Human Rights with regard to its protection of rights. To understand the ways the courts function, it is essential to identify their individual histories.

**III. Evolution of the European Community**

The Treaty of Paris (1951) established the European Coal and Steel Community, which would later become the European Union. Under the auspices of the European Coal and Steel Community, the European Court of Justice was formed upon the premise that each member state would maintain its own supreme court.29 The original court allotted one judge per state with the addition of one member to ensure a decision without a tie, for a total of seven judges. The original signatory states to the European Coal and Steel Community Act in 1957 ratified the Treaty of Rome, which also provided grounds for the creation of this unprecedented supranational system.

This was another critical step towards the establishment of the Western European focus on human rights. The Community formally became the European Union in 1992 with the ratification of the Treaty of Rome. Through the EU came many of the documents that created more bases and specific cases for the protection of human rights. For example, the membership of states to the European Union was contingent upon being party to the Convention on Human Rights.3031

Western states were concerned that the Eastern European states would not follow human rights standards as strictly as in the west.32 This concern was not limited to the European continent, but globally, in various countries in Africa, Asia, and the Middle Eastern. Ken Roth of Human Rights Watch profoundly stated:

The latest batch of new members [to the Commission on Human Rights] illustrates how poorly this system works. They include such dubious paragons of human rights virtue as Algeria, the Democratic Republic of Congo, Kenya, Libya, Saudi Arabia, Syria, and Vietnam. Needless to say, such governments do not seek membership out of a commitment to promote human rights abroad or to improve their own abysmal human rights record. Rather, they join the commission to protect *themselves* from criticism, and to [eventually] undermine its work.33

The initial enforcement and (arguably) intent to uphold standards of human rights was insufficiently supported at the inception of the EU. Thus, the courts themselves are not necessarily blameworthy in their inability to ameliorate the status of human rights violations. Although the ICJ has the authority to impose fines upon member states that do not comply with its rulings, it is an insufficient incentive to motivate members to comply with its decisions.34

It is necessary to have the combined force of willing states coupled with court rulings to allow for an effective legal basis in European countries. "The decision of the court has no binding force except between the parties and in respect to that particular case."35Not only does this undermine the legitimacy of legal decisions but challenges the legal institutions themselves on several levels.

The European Court of Human Rights adopted a structure that endows it with the power to concentrate efforts to areas that are a priority in its jurisdiction. These adaptive methods include two main guiding principles representing the idealism of the European Convention on Human Rights, and are known as the Margin of Appreciation and Living Instrument doctrines.36 The Margin of Appreciation doctrine established the idea that domestic courts will still retain a great amount of power even if they fall under the jurisdiction of the European Court of Human Rights simply by being a member of the Council of Europe.

The countries that are under the European Court of Human Rights are not necessarily obligated to follow the decisions of the Court: it is dependent upon each state, and how much power they wish to delegate and hand over to the Court. This is extremely problematic, because it becomes difficult to determine with certainty which court will stand as the final authority on various issues. It is the decision of each domestic court to determine if the country's individual court system will take precedence over the European Court of Human Rights.37

This problem has been justified to provide as a safeguard for the retention of domestic power, but is counterproductive to its intent. By not maintaining a consistent application of law, the court detracts from its legitimacy and undermines its own authority. Historically, when courts have legally binding decisions, this has resulted in significant societal impact (not necessarily immediate, but over time).38 The "domestic effect of the Convention depends on whether a state employs a monistic or dualistic approach to international law."39 This is based through the safeguard of Article 46 of the Convention on Human Rights:

1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.
3. If the Committee of ministers considers that the supervision of the execution of a final judgment is hindered by a problem of interpretation of the judgment, it may refer the matter to the Court for a ruling on the question of interpretation. A referral decision shall require a majority vote of two thirds of the representatives entitled to sit on the committee.
4. If the Committee of Ministers considers that a High Contracting Party refuses to abide by a final judgment in a case to which it is a party, it may, after serving formal notice on that Party and by decisions adopted by a majority vote of two thirds of the representatives entitled to sit on that committee, refer to the Court the question whether that Party has failed to fulfill its obligation under paragraph 1.
5. If the Court finds a violation of paragraph 1, it shall refer the case to the Committee of Ministers for consideration of the measures to be taken. If the Court finds no violation of paragraph 1, it shall refer the case to the Committee of Ministers, which shall close its examination of the case."40

There are some advantages to the Margin of Appreciation doctrine, for example, it allows the court sufficient authority without infringing upon domestic courts' power. " 'It is in no way the Court's task to take the place of the competent national court but…to review…the decision…in the exercise of their power of appreciation.' "41 If other supranational courts such as the European Court of Justice employed this distinction of division of power, they would be able to achieve a balance between themselves and domestic courts.

Consequently, neither would feel that its authority had been undermined, and would maintain a more effective legal authority in resolving cases. The Living Instrument doctrine provides for the concern that law will not change as society evolves, thereby maintaining the relevance of laws over time. This doctrine allows human rights protection to grow and evolve with changes in European society, without compromising the integrity of the laws.42

The Council of Europe plays "the irreplaceable role as the leading human rights organization in Europe"43 and was founded upon "…[the] three pillars [of] the enjoyment of human rights and fundamental freedoms by all persons within the jurisdiction of its member states, the consolidation of the rule of law, and the existence of a genuinely pluralistic democracy, based on the …moral values which are the common European heritage."44

Recently, cooperation of the European Union with the Convention on Human Rights (ECHR) has been proposed through the Lisbon Treaty.45 Furthermore, Protocol 14 of the ECHR makes the members of the EU and European Court of Human Rights subject to the Convention on Human Rights,46 and any subsequent human rights law under the jurisdiction of the Council.

Currently there are concerns with consistent application of the law under the European Court of Human Rights and the European Court of Justice. The alliance of the Council and the EU would help to alleviate the concern, but there would still remain a tenuous relationship between the two courts.

**IV. Scope of the Courts**

Although they lack absolute authority, courts in Europe now hold increasingly supranational power and influence over countries and have come to have direct impact on domestic courts much more than had been historically expressed.47 The idea of a more consistent and universal application of a definition of human rights was the goal and intent of creating the European Court of Human Rights.48 This is an extremely difficult task, as there has always historically been a debate over what constitutes human rights.49

It has become even more challenging by virtue of the fact that there are so many cultural and traditional differences in each member state of such supranational organizations, such as the European Union and even the United Nations. It is up the to the European Court of Human Rights to enforce the European Convention of Human Rights, which will hopefully lead to a more common standard and approach to human rights. Unfortunately, such a mechanism does not yet exist for the court, aside from recommendations to the Committee of Ministers.50

The European Court of Human Rights has been the recipient of significant backlash for a lack of enforcement and lack of implementation of its decisions,51 but its task is indeed difficult and has thus far achieved a great deal of progress in the scope of human rights. As the world has become more interconnected through globalization and recognition of universally observed principles, the legal culture itself has also become more inclusive.52 It is through a more diversely incorporated application of rules, treaties, and principles that we can come closer to an ideal universal definition of human rights.

**Criticisms of European Court of Human Rights**

The European Court of Human Rights has been criticized as having less impact because it does not hold power over as many countries quantitatively as some of the aforementioned courts, namely the ICC and ICJ, but only over member countries bound by Article 46 of the Convention on Human Rights. Article 46 grants the European Court of Human Rights with the authority to enforce its decisions such that they are legally binding.53

Although there are technically no enforcement mechanisms for implementing judgments (which is true of most courts, whether they be international or domestic courts) members of the Council of Europe can be expelled for ignoring judgments.54 The court has not as of yet voted to expel any members, but Ukraine has come close to removal as it has blatantly ignored decisions of the Court by failing to implement its judgments in 2001. 55

**V. Relationship to the United States**

Although the United States is not a signatory to the ICC or ICJ, its own legal institutions, namely the United States Supreme Court, respect the inherent values of European courts' decisions. When asked what role international law could hold in United States courts, Chief Justice John Roberts emphasized that he felt international law did indeed play an important role in understanding the legality of issues that were not decided through the American legal system.

The problem with looking to international law court decisions is that the jurisdiction is unclear, and therefore does not allow for the best interpretation of the law. The Chief Justice noted that looking to such decisions for precedent would be like "looking into a crowd and [only] picking out all your friends."56 He also stated that:

You may [for example] like what the German High Court says, you may not like what the Indonesian High Court says, but if you're just decid[ing] the ones you like, you know, what are you [really] doing? …It doesn't help narrow your discretion in any way. I do think that there are serious legitimacy issues. Some people think that the [Supreme Court] Justices don't believe in international law. Of course we do. We will benefit from looking at that, and we do.57

Thus, the American legal system appears to have great potential to interact more so with the European legal system, both to provide and understand precedent. The problematic concern lies in the fact that international jurisdictions are unclear. The European legal system has a broad reach, as discussed, but has not maximized its full potential in part due to its unclear organizational system.

**VI. Case Analysis**

**European Court of Human Rights**

Each of the aforementioned European courts represents various contributions to the legal system in different ways, but none have thus far been as inclusive of or effective as the European Court of Human Rights. The right to a fair trial, for example, as protected under Article 6 58 of the ECHR, was amended through *Funke v. France (*1992)*.* Prior to this decision, the right to fair trial had been ambiguously defined. It neither guaranteed "fair" processes for discovery of evidence, nor the proper treatment of the accused party during periods of detention. Jean Gustave Funke was a French citizen who appealed his case to the European Court of Human Rights after French government officials entered his home without a warrant and searched for documents, namely bank statements.

The government believed that such documents would contribute to their allegations that Funke was guilty of fraud. Funke was later ordered to discuss evidence that would put him at risk of indicting himself. The French government perceived his noncompliance with this order as uncooperative behavior, and charged him accordingly. He was imprisoned and fined for his alleged transgressions.

In 1988, the court heard his case on appeal, after a court in Strasbourg (Colmar Court of Appeals, March 1983) ruled in favor of the French government. Funke appealed his case on the grounds of violation of the European Convention on Human Rights, specifically Article 6 (right to fair trial) and Article 8 (right to privacy).59 Prior to this case, the right to a fair trial had not been a guaranteed right of specific pre-trial discovery: the case modified the ambiguity.

Another issue addressed by this case clarified the legalities of the seizure of evidence. Funke was fortunate enough to have his case accepted for hearing on appeal of *certiorari* in the European Court of Human Rights. After an extensive appeals process and time-consuming investigation, the court ruled in favor of Funke, citing that the initial request for documents was not invalid, but the methods by which they were sought constituted a violation of privacy.60

The ramifications of this decision helped to ensure that in the future searches could not be made legal after they had been conducted by eliminating the possibility of creating *ex-post facto* laws. The court's decision affected the future conduct of the French government and brought about reforms in the collection of evidence. The distinction is not the request for evidence, but the discovery process and the manner in which it is obtained.

As discussed, the European Court of Human Rights allows individuals to appeal directly to the court: a case such as this, despite being ridden with problems, would be inadmissible to the European Court of Justice. The level at which the individual's human rights are impacted demonstrates how the European Court of Human Rights directly reaches the people within its jurisdiction. Other courts do not have the ability to have such influence.

**Ezelin v. France**

Another significant case heard by the European Court of Human Rights is *Ezelin v. France,* in which M. Ezelin, the applicant, was accused of endangering national security and for the obstruction of justice via protest.61 The court upheld the position of the applicant, and maintained his right to peaceful assembly which was deemed "necessary in a democratic society."62

As can be seen from this and *Funke*, the European Court of Human Rights focuses more on the individual rights than the European Court of Justice: this analysis is not meant to minimize the significance of states' rights, but points to important areas of law that are overlooked when individuals are not allowed to appeal to a specific court, such as the right to privacy and protest.

**Chechnya Case**

Serious human rights concerns arose during the Second Chechen War, when Russian military forces invaded Chechnya in 1999. The invasion resulted in the massive killings and torture of Chechen people in the region. Immediately following the conflict, many people filed claims against Russia in the European Court of Human Rights.There have been over 31 cases filed in connection with the Chechen Wars ranging from allegations of torture to extrajudicial executions and murder.

Human rights advocate Zura Bitiyeva brought some of the harshest claims to the European Court of Human Rights for abuses sustained while detained in Chernokozovo Prison63 for anti-war protests.64 She provided accounts of her experience in prison, which she alleged included torture. Although declared to be a coincidence of events,65 after she filed her claim against the Russian government, she and her family were killed before the Court could reach a judgment.66

Her only surviving child continued her case in the European Court of Human Rights, though it left him in constant danger of assassination.67 Although the process of appealing to the Court may present a danger to the individual (especially in this case) it at least grants petitioners the access to the legal system that they would not otherwise have. The European Court of Human Rights uniquely provides the opportunity to voice concerns of states' transgressions, and provides a means of accountability to check their behavior.

**European Court of Justice**

**Nold v. Commission**

As discussed, cases that have been appealed to the European Court of Justice maintain a different range of appellants than the European Court of Human Rights. In the case *Nold v. Commission* (1974) the European Court of Justice decided that "…[it] is bound to draw inspiration from constitutional traditions common to the member states, and it cannot therefore uphold measure[s] which are incompatible with fundamental rights recognized and protected by the Constitutions of those states."68

This decision established an understanding between member states and the European Court of Justice: it allowed state courts to suggest recommendations when European Court of Justice law and state court's rights came into conflict. Although this ideology protects state courts, it is somewhat deleterious to what the European Court of Justice sets out to achieve, and detracts from its legitimacy and authority.

By virtue of the fact that a case as such has been brought before this court, it is indicative that more intense scrutiny and a higher mitigating party is necessary, something that a lower court could not provide. Individual member states of the EU need to have an ultimate authority to make substantial differences through decisions as opposed to unsuccessful domestic courts that do not even begin to address individuals' issues. The European Court of Justice is limited by the Treaties of the European Union (TEU), which illustrate restrictions on the Court and grants far too many exceptions that do not allow decisions to stand.

The specific role of the European Parliament and of the Commission in this area is defined by the Treaties. The Court of Justice of the European Union shall not have jurisdiction with respect to these provisions, with the exception of its jurisdiction to monitor compliance with Article 40 of this Treaty and to review the legality of certain decisions as provided for by the second paragraph of Article 275 of the Treaty on the functioning of the European Union.69

These restrictions on the authority of the other courts in Europe force the European Court of Justice to retain less authority and ultimately legitimacy. Unfortunately, this has become a way to justify the lack of enforcement of judicial decisions. There are both short and long-term repercussions to such an approach. The short-term effects provide domestic courts with a substantial authority, while the long-term effects will hopefully benefit the European community by upholding individual rights.

**International Criminal Court**

**The Prosecutor v. Joseph Kony, Vincent Otti, Okat Odhiambo and Dominic Ongwen**

Unfortunately, as has been observed through various cases that have been presented to the ICC and ICJ, some cases have been insufficiently resolved and justice has not necessarily always prevailed. One such example is the case in connection with the Rwandan genocide generals who were tried on the grounds of war crimes and of crimes against humanity.70 Similar charges have been brought against Joseph Kony, the leader of the Lord's Resistance Army in Uganda.71 His troops force children to commit horrendous atrocities:

The Lord's Resistance Army spent more than 20 years terrorizing their community and others in the region, stealing children, enslaving them, forcing them to kill their parents and siblings. Many who were not stolen were brutalized. Militia members hacked off people's hands, their heads, their lips and ears.72

Although these are blatant violations of human rights, Kony has not yet been faced with sufficient punishment for his crimes. Despite the fact that his Army had been committing such crimes since 1988, only in 2005 did the ICC even call for his arrest.73 The amount of time that it has taken to attempt to bring him to justice through the international court system can be criticized as a problem of bureaucratic delay to some extent, an inefficient judicial system, or merely an ineffective legal process.74

**International Court of Justice**

**Nicaragua v. United States**

The case brought by Nicaragua against the United States was a demonstration of the how the International Court of Justice presided over the two countries' conflict in 1986.75 The ICJ ruled that the United States had violated international law by supporting the Contra guerrilla organization in Nicaragua whose forces had attempted to overthrow the current government at the time. The ICJ ruled in favor of Nicaragua and presented its decision to the United Nations Security Council, which voted to enforce the Court's decision immediately. The United States was ordered to stop its attacks on Nicaragua, which was deemed to be in violation of international codes of conduct.76

Although both Nicaragua and the United States are UN members, and all UN members are under the International Court of Justice, the US claimed that the ICJ did not have the authority or the jurisdiction to decide the case. Former U.S. ambassador to the United Nations, Jeane Kirkpatrick, called the International Court of Justice a "semi-legal, semi-juridical, semi-political body, which nations sometimes accept and sometimes don't."77 Although the court was effective in deciding the case, the fact that such legal authority can be undermined so easily through mere rhetoric, deeply tarnished its ability to be taken seriously, and is highly indicative of a wavering legitimacy.

**Bosnia and Herzegovina v. Serbia and Montenegro**

The International Court of Justice heard the case of *Bosnia and Herzegovina v. Serbia and Montenegro (2007)* in which Serbia was accused of genocide against Muslims living in Bosnia, constituting the systematic elimination of a particular group.78 The court decided that Serbia was not directly at fault or responsible for the genocide, and that it was not a party to a conspiracy against Muslims.

However, the court also stated that Serbia had breached the Genocide Convention.79 It argued that because Serbia had not directly prevented the genocide or punished the perpetrators, it had defaulted on its obligation to do so under the Convention.80 The court had previously ruled that Serbia must do "everything in its power to prevent genocide" and referred to this in its condemnation of Serbia's actions.81

That, as a result of the international responsibility incurred for the…violations of the Convention on the Prevention and Punishment of the Crime of Genocide, the Federal Republic of Yugoslavia (Serbia and Montenegro) is required to pay, and the Republic of Bosnia and Herzegovina is entitled to receive, in its own right…full compensation for the damages and losses caused, in the amount to be determined by the Court… for the proceedings in this case.82

The court did not embrace its authority to the extent that it could have, and reached its verdict by taking the perspective of a state court while still applying the definitions of the Genocide Convention. While this scope would be acceptable at a state level court, the court should have ruled with the authority of an international body. The court would potentially be better able to determine and rule on issues that would have been helpful to the population of Bosnia-Herzegovina as a whole.

Even the president of the International Court of Justice, Rosalyn Higgins, felt that the evidence presented to the court was sufficient to convict Serbia for crimes against humanity and war crimes in Bosnia-Herzegovina, but that the court lacked sufficient jurisdiction to rule on such claims. "The International Court of Justice does not have jurisdiction over them [allegations of war crimes and crimes against humanity], because this case deals 'exclusively with genocide in a limited legal sense and not in the broader sense sometimes given to this term."83

This landmark case has been presented to the ICJ with charges including both genocide and war crimes, but the verdict falls short on multiple levels: the decision was not as effective as it could have been and the court did not fulfill its potential as a legal institution. The court's effectiveness is thus unclear: however, through historical examination and research, the European Court of Human Rights has demonstrated and offered a variety of solutions to injustices that have been imposed upon the global community.

**VII. Conclusion**

Human rights protection has steadily risen over the past century: increasing societal awareness coupled with a legal system better positioned to attend to such concerns has manifested itself in many ways. Supranational legal institutions have been established to address the grievances of citizens and concerns of the states. Although all equipped to decide issues, unlike the European Court of Human Rights, the lack of jurisdiction of the ICC, European Court of Justice, and ICC has diminished both their ability to substantiate their legitimacy, and enforcement of their authority.

The courts play significant roles within the European legal system: however, none have the same jurisdiction as the European Court of Human Rights and none are as attuned to the protection of the rights of the individual. Despite many concerns, some of which have been outlined in this paper, the European Court of Human Rights holds the potential to greatly impact the direction of the European legal community and potentially influence enforcement of human rights law in years to come. Its decisions create precedent and can be used to support other cases before the court.

If other courts had similar jurisdiction as the European Court of Human Rights, not only would they be more comprehensive in scope, but also in their power to protect such individual rights. States' rights are certainly of importance, but it is difficult to uphold them when individual rights are insufficiently protected: there must at leastbe equal protection of both.84

Through the examination of various cases and historical data, this analysis has shown the European Court of Human Rights to be the most effective legal institution compared to its relative counterparts within the realm of human rights protection. Historically, the appeals heard by this court have empowered petitioners, which in most cases have been state actors. This impact goes far beyond the scope of the institutions of the courts themselves.

The European Court of Human Rights has created legal standards that are now more universally accepted and implemented in various jurisdictions. The benefits of the unique coverage of the European Court of Human Rights further helps to present valuable and timely protection of human rights concerns upon which other courts cannot decide. It has given an opportunity to citizens to voice their discontent and grievances, and fight for their rights in order to create a "fair" way of living. This is the true purpose of any legal institution in society: to present, protect, and defend the rights of its citizens.

Though as in any legal system and any legal institution, there are imperfections and the European Court of Human Rights is not an exception, this court has delivered its promise to administer justice and encourage a more fair and harmonious standard of living within the European community, and has great potential for higher standards of rights protection with future progress.

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(a) Killing members of the group;

(b) Causing serious bodily or mental harm to members of the group;

(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(d) Imposing measures intended to prevent births within the group;

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