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ARTICLES

ADVOCACY FOR AIDS VICTIMS: AN INTERNATIONAL LAW APPROACH

ROBERT M. JARVIS*

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I. INTRODUCTION

As the AIDS¹ epidemic² enters its eighth year,³ the physical, spiritual and economic toll of the disease on the lives of its victims continues to grow clearer. Because of the complexity of AIDS as a social phenomenon, the crisis has generated intense medical, ethical, and legal debates around the world. These discussions have tended to focus on five broad areas of concern:

1. *Privacy*: Do AIDS victims have the right to conceal their illness, or must they identify themselves? If they must identify themselves, must they do so to society at large or only their sexual partners?

2. *Livelihood*: Do AIDS victims have the right to continue in their jobs, or must they disclose their status to their employers? If they have to reveal their identity in their workplaces, what actions may their employers take? Do the same rules apply with respect to AIDS victims and housing, schooling, social services, and health insurance, or do different rules apply?

1. As used in this article, the term AIDS refers to both Acquired Immune Deficiency Syndrome and to ARC, or AIDS-Related Complex. A person suffering from AIDS has been exposed to a virus known as HIV, or human immuno-deficiency virus. The virus causes a breakdown of a person's natural immunological system, thereby leaving them susceptible to such opportunistic diseases as cancer and pneumonia. See further Mayer, *The Clinical Challenges of AIDS and HIV Infection*, 14 LAW, MED. & HEALTH CARE 281 (1986), and Sicklick & Rubinstein, *A Medical Review of AIDS*, 14 HOFSTRA L. REV. 5 (1985). A useful medical bibliography is U.S. PUBLIC HEALTH SERVICE, AN ANNOTATED BIBLIOGRAPHY OF SCIENTIFIC ARTICLES ON AIDS FOR POLICYMAKERS (1987).

2. At the end of 1987, 68,217 AIDS cases had been reported by a total of 128 countries. This represented a twenty-fold increase from November 1983, at which time approximately 3,000 cases had been reported. Jarvis, *AIDS: A Global View*, 12 NOVA L. REV. 979, 992 (1988). Of these cases, 48,139 were Americans; 27,235 Americans had already died from AIDS by the end of 1987. *Id.* at 988. The remaining cases were spread throughout the world. *Id.* at 1014-18. By May 1988, the World Health Organization had reports of 88,091 AIDS cases in 138 countries. *AIDS Has Touched Most Areas of Globe*, Ft. Lauderdale Sun-Sentinel, May 13, 1988, at 4A, col. 1. The World Health Organization has estimated that 150,000 people will develop AIDS in 1988. *150,000 Could Get AIDS in 1988*, Ft. Lauderdale Sun-Sentinel, June 13, 1988, at 6A, col. 2.

3. AIDS first was recognized by the medical community in 1981. P. DOUGLAS & L. PINSKY, *THE ESSENTIAL AIDS FACT BOOK* 13 (1987). It is now known, however, that a number of individuals died of AIDS prior to 1981. The earliest AIDS fatality appears to have been a 49-year-old Haitian-born shipping clerk who died of AIDS in New York City in 1959. See Williams, Stretton & Leonard, *AIDS in 1959?*, LANCET, Nov. 12, 1983, at 1136. Ten years later, a 16 year-old youth dubbed Robert R. died of AIDS in St. Louis; in 1975, a woman in Louisiana also died of AIDS. See Clark, *A New Clue in the AIDS Mystery: Evidence that the Disease was Here in the '60s*, NEWSWEEK, Nov. 9, 1987, at 62; Gorman, *Strange Trip Back to the Future: The Case of Robert R. Spurs New Questions about AIDS*, TIME, Nov. 9, 1987, at 83. See also Schmeck, *Origin of Human AIDS Viruses May Be As Recent As 40 Years Ago*, N.Y. Times, June 9, 1988, at 11, col. 2 (nat'l ed.).

3. *Medical Treatment*: Do AIDS victims have any rights with respect to receiving medical care? If they do, how much care are AIDS victims entitled to receive, and at what cost?

4. *Research*: Do AIDS victims have the right to insist that government funds be expended on AIDS research? If so, how much of the public treasury must be devoted to such research? If such research produces drugs or treatment which do not win government approval, must such drugs and treatment be turned over to AIDS victims who wish such products? If such drugs or treatments do win government approval, but are very expensive, must the government subsidize such products? If the government must provide a subsidy, how much of a subsidy must the government provide?

5. *Victim Distinction*: Are some AIDS victims entitled to greater rights than other AIDS victims? Are AIDS victims who contract AIDS through blood transfusions more deserving than those who receive AIDS through homosexual activity or illegal drug use?

The responses to these questions have varied widely from nation to nation. While some countries have been very sensitive to the plight of AIDS victims, others have reacted with hostility, suspicion, and fear. As a result, numerous AIDS victims have been deprived of their rights and many of the world's existing inequalities have been heightened and magnified. Moreover, the past few years have seen a rapid growth in the number of laws which would identify, control, and isolate AIDS patients,⁴ even as the world's governments have been urged to protect the rights of AIDS victims.⁵

4. Restrictive laws aimed at AIDS victims already have been passed in such countries as Australia and England. See McGuirl & Gee, *AIDS: An Overview of the British, Australian, and American Responses*, 14 HOFSTRA L. REV. 107 (1985), and Note, *AIDS Quarantine in England and the United States*, 10 HASTINGS INT'L & COMP. L. REV. 113 (1986). For a discussion of restrictive laws in other countries, see D. JAYASURIYA, *AIDS: THE PUBLIC HEALTH AND LEGISLATIVE RESPONSE* (1988). See also Jarvis, *supra* note 2, at 1007-11. For discussions of the subject within the United States, see Ford & Quam, *AIDS Quarantine: The Legal and Practical Implications*, 8 J. LEGAL MED. 353 (1987); Parmet, *AIDS and Quarantine: The Revival of an Archaic Doctrine*, 14 HOFSTRA L. REV. 53 (1985); Comment, *Quarantine: An Unreasonable Solution to The AIDS Dilemma*, 55 U. CIN. L. REV. 217 (1986).

5. In June 1987, the leaders of Western Europe, Canada, Japan and the United States held their thirteenth annual summit in Venice, Italy. At the conclusion of the summit, the leaders issued a statement on AIDS which called on all nations, when designing and implementing AIDS programs, "to ensure that the measures taken are in accordance with the principles of human rights." Jarvis, *supra* note 2, at 1012, 1021. Similar calls were made at the World Health Organization's London Summit in January 1988. Attended by delegates from 148 nations, the Summit promulgated the "London Declaration on AIDS Prevention." The Declaration states, "We emphasize the need in AIDS prevention programs to protect

Interestingly enough, throughout this period lawyers for AIDS

human rights and human dignity. Discrimination against and stigmatization of infected people with AIDS undermine public health and must be avoided." *Optimism on Containment Expressed at Conference*, 3 AIDS Pol'y & L. 10 (Feb. 10, 1988). See also Jarvis, *supra* note 2, at 1001, n.116. In March 1988, Dr. Jonathan Mann, the head of the World Health Organization's Special Program on AIDS, called for the establishment of an international human rights network to monitor worldwide discrimination against AIDS victims at the First International Conference on the Global Impact of AIDS. Dr. Mann declared that, "we need something new We need a voice to say 'if you do that, it will not work'" *International Anti-Discrimination Unit Urged by Dr. Mann at Global Conference*, 3 AIDS Pol'y & L. 1 (Mar. 9, 1988). In May 1988, the annual assembly of the World Health Organization passed a resolution which called on all nations to avoid discriminatory action against AIDS victims. "The call has now gone out to all nations . . . that prevention of discriminatory measures and stigmatization of . . . people with AIDS is of fundamental importance to the global struggle against AIDS." See *'Dignity, Compassion' Urged in Global Fight Against AIDS*, 3 AIDS Pol'y & L. 8 (May 18, 1988). Most recently, the Fourth International AIDS Conference, held in Stockholm in June 1988, devoted considerable attention to the problem of discrimination. See Altman, *Biggest AIDS Parley Ends in Sweden Amid Sober Mood and Deluge of Data*, N.Y. Times, June 17, 1988, at B4, col. 1 (nat'l ed.) ("There were many reminders of the struggles many people with AIDS throughout the world have in fighting discrimination and gaining social justice."); Elsner, *AIDS Experts Put Focus on Prevention in Absence of Cure*, Reuters Wire Service, June 16, 1988 (available on NEXIS, Reuter Library) ("David Baltimore of the Whitehead Institute for Biomedical Research . . . warned against the emergence of discriminatory laws to combat the disease He said many countries were already moving towards discriminatory legislation, especially regarding foreigners and border controls."); *AIDS Talks End; Cure Still Not Seen*, Ft. Lauderdale Sun-Sentinel, June 17, 1988, at 10A, col. 2 ("Australian Supreme Court Judge Michael Kirby . . . warned against the emergence of discriminatory laws to combat the disease"); *150,000 Could Get AIDS in 1988*, *supra* note 2 ("Mann told 7,000 delegates that fighting discrimination is not just a humanitarian stance for AIDS patients, but a necessary public health measure.").

At the same time that the Stockholm conference was being held, President Reagan's AIDS task force recommended strong new laws to protect AIDS victims from discrimination after its chairman, Admiral James D. Watkins, called discrimination the single most important obstacle to controlling the disease. See Cimons, *AIDS Panelist Urges Stronger Anti-Bias Law*, L.A. Times, June 3, 1988, at 1, col. 5; Davidson, *Head of Reagan's Panel Urges President to Sign Order to Prohibit Bias*, Wall St. J., June 3, 1988, at 18, col. 3; Rosenthal, *The Admiral on his Watch: Bias Spreads AIDS Like a Dirty Needle*, N.Y. Times, June 10, 1988, at 25, col. 1 (nat'l ed.); Wagner, *AIDS Panel Chairman Calls Discrimination the Biggest Obstacle in Fighting the Disease*, MOD. HEALTHCARE, June 10, 1988, at 45. President Reagan, however, refused to accept the task force's suggestion and left office only after having killed Congressional plans for such a law. See Rouner, *Reagan Plan Dooms AIDS Anti-Bias Legislation*, 46 CONG. Q. 2189 (Aug. 6, 1988). In the meantime, laws regarding AIDS victims remain murky throughout the world. In Britain, for example, a major test case regarding the firing of a homosexual film projectionist because his co-workers feared they would contract AIDS was settled out of court. As a result, there is still no firm ruling in England on whether workers may be dismissed because of the fear of AIDS. See *Employee Wins Settlement; Dismissal Policy Uncertain*, 3 AIDS Pol'y & L. 10 (Mar. 23, 1988). In Canada, the federal Human Rights Commission announced that it had decided to represent people who, although not infected with AIDS, suffer discrimination because they associate with people who do have AIDS. At the same time, however, several Canadian provinces are considering legislation which would allow provincial health ministers to detain dangerous AIDS carriers. See *Canadian Rights Commission will Broaden Representation*, 3 AIDS

victims appear not to have considered using international law to protect their clients' rights. Perhaps this has been due to the highly specialized nature of international law, or to the commonly held view that international law is still a law for nations, rather than for people. Whatever the reason, international law has been left on the sidelines throughout the AIDS crisis. Yet as will be shown in this article, international law does speak to the problem of AIDS in a number of ways.

In order to demonstrate the utility of using international law to assist AIDS patients, this article will first review those international treaties and resolutions which can be brought to bear on AIDS issues. Next, the use of international law to promote the rights of AIDS victims in both international courts as well as national courts will be explored. The article will then conclude by arguing that the time has come for AIDS victims and their attorneys to work towards the establishment of an international AIDS tribunal. If formed, such a body could serve as an important vehicle for protecting the rights of all AIDS victims.

II. THE RIGHTS OF AIDS VICTIMS UNDER INTERNATIONAL LAW

In general, international law concentrates on the relationships between and among states. Thus, as a matter of long history, individuals received little attention under international law.⁶ But with

Pol'y & L. 5 (June 1, 1988). Finally, a top Indian health official, Dr. Avtar Singh Paintal, has urged his government to ban sex between Indians and foreign visitors as a means of preventing the spread of AIDS. Critics have asserted "that such a law would violate human dignity, the right to privacy and be misused by the police and others to harass people." See Hazarika, *Indian Urges a Ban on Sex with Foreigners*, N.Y. Times, June 15, 1988, at 6, col. 4 (nat'l ed.). Cf. Altman, *Poor Nations Plagued with AIDS Pose Haunting Ethical Questions*, N.Y. Times, June 28, 1988, at 23, col. 1 (nat'l ed.).

6. See generally L. SOHN & T. BUERGENTHAL, *INTERNATIONAL PROTECTION OF HUMAN RIGHTS* (1973). A notable exception was the treatment of aliens by foreign governments. In the *Mavrommatis Palestine Concessions*, the Permanent Court of International Justice wrote that, "It is an elementary principle of international law that a state is entitled to protect its subjects, when injured by acts contrary to international law committed by another state . . ." [1924] P.C.I.J. REPORTS, ser. A, No. 2, at 12. See further M. JANIS, *AN INTRODUCTION TO INTERNATIONAL LAW* 170-71 (1988). The right of a state to protect its own nationals is reviewed exhaustively in L. HENKIN, R. PUGH, O. SCHACTER & H. SMIT, *INTERNATIONAL LAW - CASES AND MATERIALS* 1040-1162 (2d ed. 1987). See also Lillich, *The Current Status of the Law of State Responsibility for Injuries to Aliens*, in *INTERNATIONAL LAW OF STATE RESPONSIBILITY FOR INJURIES TO ALIENS* 1 (R. Lillich ed. 1983); W. MCKEAN, *EQUALITY AND DISCRIMINATION UNDER INTERNATIONAL LAW* 194-203 (1983); McDougal, Lasswell & Chen, *Nationality and Human Rights: The Protection of the Individual in External Areas*, 83 YALE L.J. 900 (1974). For one of the few articles which has argued against the right of

the advent of World War II and the atrocities of Nazi Germany, the world was confronted for the first time with the need to deal with such issues as genocide⁷ and torture.⁸ With this need came the birth of the international human rights movement.⁹ Forty

States to protect their nationals, see Guha Roy, *Is the Law of Responsibility of States for Injuries to Aliens a Part of Universal Law?*, 55 AM. J. INT'L L. 863 (1961).

7. The problem of genocide quickly became the subject of an international convention formally known as the Convention for the Prevention and Punishment of the Crime of Genocide. See 78 U.N.T.S. 277. Adopted by the General Assembly of the United Nations on December 9, 1948, it entered into force on January 12, 1951; as of January 1, 1988, the Convention had been acceded to by 96 countries. The Convention defines genocide as consisting of any acts which are committed with an intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, regardless of whether such acts are undertaken in peacetime or in wartime. Parties to the Convention affirm that genocide is a crime and as such all persons who commit or conspire to commit genocide are criminally liable, regardless of whether such acts are undertaken in their public or private capacities. The history of the drafting of the Genocide Convention is told in MCKEAN, *supra* note 6, at 105-12.

Although the United States was one of the first countries to sign the Genocide Convention, it was not until 1988 that it ratified and implemented the Convention. Genocide Convention Implementation Act of 1987 (the Proxmire Act), Pub. L. No. 100-606, 102 Stat. 3045 (1988) (to be codified at 18 U.S.C. §§ 1091-1093). For further discussions on the Genocide Convention and the United States, see McDougal & Arens, *The Genocide Convention and the Constitution*, 3 VAND. L. REV. 683 (1950); Schiller, *Life in a Symbolic Universe: Comments on the Genocide Convention and International Law*, 9 SW. U.L. REV. 47 (1977); Comment, *The United States and the 1948 Genocide Convention*, 16 HARV. INT'L L.J. 683 (1975).

8. The subject of torture did not receive its own international convention, however, until 1984, when the United Nations General Assembly adopted the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. See U.N. Doc. E/1984/14, E/CN.4/1984/77 at 13 (1984). The text of the Torture Convention can be found at GA Res. 39/46, *opened for signature* December 10, 1984, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1985). The Convention entered into force on June 26, 1987 and had been acceded to by 29 countries as of January 1, 1988. The Convention followed the adoption on December 9, 1975 of General Assembly Resolution 3452 (XXX), entitled Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Declaration is discussed in Toman, *Quasi-Legal Standards and Guidelines for Protecting Human Rights of Detained Persons*, in GUIDE TO INTERNATIONAL HUMAN RIGHTS PRACTICE 212 (H. Hannum ed. 1984) [hereinafter HUMAN RIGHTS PRACTICE]. In addition to the United Nations Convention on Torture, there is also a European Convention on Torture and an Inter-American Convention on Torture. The former is not yet in force; the latter entered into force on February 28, 1987.

9. As Professor Richard Bilder has written:

[M]ost of what we now regard as "international human rights law" has emerged only since 1945, when, with the implications of the holocaust and other Nazi denials of human rights very much in mind, the nations of the world decided that the promotion of human rights and fundamental freedoms should be one of the principal purposes of the new United Nations organization.

Bilder, *An Overview of International Human Rights*, in HUMAN RIGHTS PRACTICE, *supra* note 8, at 5.

Prior to the birth of the United Nations, there had been only isolated attempts to eradicate specific abuses of human rights. Such efforts, focusing on particular institutions rather than on the development of a cohesive body of human rights, did achieve a number of im-

years later, the system of international human rights continues to evolve.¹⁰

Although the subject of international human rights was originally understood as referring to only such gross abuses as those practiced by the Nazis, the term is now understood to encompass a much wider spectrum of activity.¹¹ At the same time, the subject has come to be embraced by both the United Nations and a host of regional organizations. To date, there have been more than forty pronouncements on the subject of international human rights.¹²

portant victories. Thus, for example, the abolition movement ultimately succeeded in wiping out slavery throughout the world, while the humanitarian movement was dedicated to the protection of ethnical and national minorities, such as the inhabitants of Upper Silesia. These three movements are recalled in greater detail in A. ROBERTSON, *HUMAN RIGHTS IN THE WORLD: AN INTRODUCTION TO THE STUDY OF THE INTERNATIONAL PROTECTION OF HUMAN RIGHTS* 15-23 (2d ed. 1982).

10. The current state of the international human rights movement is canvassed in Burgerthal, *International Human Rights Law and Institutions: Accomplishments and Prospects*, 63 WASH. L. REV. 1 (1988), and D'Amato, *International Human Rights at the Close of the Twentieth Century*, 22 INT'L LAW. 167 (1988). An insightful discussion of the continuing evolution of the international law of human rights is contained in Espiell, *The Evolving Concept of Human Rights: Western, Socialist and Third World Approaches*, in *HUMAN RIGHTS: THIRTY YEARS AFTER THE UNIVERSAL DECLARATION* 41-65 (B. Ramcharan ed. 1979) [hereinafter THIRTY YEARS]. For a comprehensible overview of human rights, see Shestack, *The Jurisprudence of Human Rights*, in *I HUMAN RIGHTS IN INTERNATIONAL LAW: LEGAL AND POLICY ISSUES* 69-113 (T. Meron ed. 1984) [hereinafter I LEGAL AND POLICY ISSUES]. Shestack's article includes a useful bibliography. *Id.* at 112-13.

11. See generally Bishop, *Introduction*, in *HUMAN RIGHTS AND THE HELSINKI ACCORD: A FIVE YEAR ROAD TO MADRID 1, 3-4* (M. Dominick ed. 1981) [hereinafter HELSINKI ACCORD], and Symposium, *The Future of Human Rights in the World Legal Order*, 9 HOFSTRA L. REV. 337 (1981). Perhaps the best proof of the increasing scope of international human rights law is the emerging idea that included among human rights is the right to economic development. The notion that economic development is protected under human rights law was first expressed at the International Conference on Human Rights at Tehran, Iran, in 1968. Resolution XVII of the Conference stated that, "there is a profound interconnection between the realization of human rights and economic development." This led to the holding of a series of special sessions at the United Nations devoted to development issues. Finally, on May 1, 1974, the General Assembly adopted a Declaration and Programme of Action on the Establishment of a New International Economic Order (NIEO). On December 12, 1974, NIEO was followed by the creation of a Charter of Economic Rights and Duties of States. See generally JANIS, *supra* note 6, at 63-66 (1987). See also ROBERTSON, *supra* note 9, at 193-95; B. WESTON, R. FALK & A. D'AMATO, *INTERNATIONAL LAW AND WORLD ORDER: A PROBLEM-ORIENTED COURSEBOOK* 699-707 (1980); Brower & Tepe, *The Charter of Economic Rights and Duties of States: A Reflection or Rejection of International Law?*, 9 INT'L LAW. 295 (1975); Ferguson, *Redressing Global Injustices: The Role of Law*, 33 RUTGERS L. REV. 410 (1981); Kwakwa, *Emerging International Development Law and Traditional International Law — Congruence or Cleavage?*, 17 GA. J. INT'L & COMP. L. 431 (1987); Schachter, *The Evolving International Law of Development*, 15 COLUM. J. TRANSNAT'L L. 1 (1976).

12. These are conveniently collected in R. LILlich, *INTERNATIONAL HUMAN RIGHTS INSTRUMENTS* (1986). See also UNIFO, *INTERNATIONAL HUMAN RIGHTS INSTRUMENTS OF THE UNITED NATIONS: 1948-1982* (1983). Because a complete discussion of these pronouncements

A. *The United Nations System of Human Rights*

Human rights as a subject of international law was one of the first subjects to be taken up by the founders of the United Nations. Recognizing the enormous violations of human rights which had occurred during the war, the drafters set out to establish a base on which future international human rights treaties could be built. Their vision found expression in Article 55 of the United Nations Charter.¹³ That article calls upon the United Nations to promote, and nations to respect, human rights and fundamental freedoms for all persons, regardless of race, sex, language, or religion.¹⁴ Similar language is also contained in the Charter's Preamble.¹⁵

is beyond the scope of this article, only the major human rights instruments and institutions are discussed herein. However, advocates who seek to use international law to protect the rights of AIDS victims should be aware that, in a given case, there may be other human rights conventions which clothe their clients with specific rights. In particular, human rights conventions have been enacted with respect to racial and sexual discrimination which may prove very useful. See Greenberg, *Race, Sex, and Religious Discrimination in International Law*, in II HUMAN RIGHTS IN INTERNATIONAL LAW: LEGAL AND POLICY ISSUES 307-44 (T. Meron ed. 1984) [hereinafter II LEGAL AND POLICY ISSUES]. Minorities have also received special protection, building on the movement which began after World War I, *supra* note 9, although such protection has been accorded only to ethnical, religious and national minorities. As such, AIDS victims may not be able to qualify as protected minorities. For detailed treatments of these additional conventions, see T. MERON, HUMAN RIGHTS LAW-MAKING IN THE UNITED NATIONS: A CRITIQUE OF INSTRUMENTS AND PROCESS (1986) [hereinafter LAW-MAKING]. Among the conventions and declarations discussed by Meron are the International Convention on the Elimination of All Forms of Racial Discrimination (1966), the Convention on the Elimination of All Forms of Discrimination Against Women (1979), and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981). Meron also discusses the rights of minorities, albeit briefly. *Id.* at 37-44. A detailed treatment of minority rights can be found in MCKEAN, *supra* note 6, at 14-101.

13. Done at San Francisco, June 26, 1945. A good overview of the Charter can be found in R. RUSSEL, A HISTORY OF THE UNITED NATIONS CHARTER (1958). See also L. GOODRICH, E. HAMBRO & A. SIMONS, CHARTER OF THE UNITED NATIONS: COMMENTARY AND DOCUMENTS (3d rev. ed. 1969).

14. See Article 55(c). Article 55(c) is preceded by two other paragraphs which call, respectively, for the promotion of higher standards of living and the solution of international economic, social, health and related problems. Article 55 must also be read in conjunction with Article 56, which states that, "All Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55." The interplay between the two articles is explored in ROBERTSON, *supra* note 9, at 24-25.

15. The Charter's Preamble states that the parties to the United Nations "reaffirm [their] faith in fundamental human rights." The express language of Article 55, *supra* note 14, then is repeated in Article 1(3). As such, the Charter is an important blueprint for world human rights. Interestingly enough, however, the Charter as originally envisioned would have made little mention of human rights. The full story is recounted in MCKEAN, *supra* note 6, at 53-54.

In addition to the general aspirational language contained in the Charter, the drafters also attempted to provide a permanent mechanism which would have as its principal purpose the defense of international human rights. This desire led to the inclusion of Article 68, which states that the Economic and Social Council of the United Nations, one of the six principal organs of the United Nations,¹⁶ shall set up a commission for the promotion of human rights. Pursuant to Article 68, the Economic and Social Council has created the Commission on Human Rights.¹⁷ The Commission is the central policy organ in the field of international human rights.¹⁸

Following the establishment of the United Nations, a Universal Declaration of Human Rights was enacted by the General Assembly on November 10, 1948 by a vote of 48 to 0, with eight abstentions.¹⁹ In 1975, the Communist states of Eastern Europe accepted the Universal Declaration upon the signing of the Final Act of the Conference on Security and Cooperation in Europe.²⁰

16. Under Article 7(1) of the Charter, the principal organs of the United Nations are the General Assembly, the Security Council, the Economic and Social Council, the Trusteeship Council, the International Court of Justice, and the Secretariat. Article 7(2) allows the United Nations to establish such subsidiary organs as may be necessary.

17. Article 68 also directs the Economic and Social Council to set up commissions in the economic and social fields, and in such other areas as may be required to carry on the work of the Council.

18. Since its establishment, the Commission on Human Rights has created a Sub-Commission on Prevention of Discrimination and Protection of Minorities and an investigatory group on Southern Africa. See further van Boven, *Protection of Human Rights through the United Nations System*, in HUMAN RIGHTS PRACTICE, *supra* note 8, at 46-56. See also LAW-MAKING, *supra* note 12, at 272-79. The original purpose of the Commission, however, was to draft an International Bill of Rights. See *infra* note 19.

19. G.A. Res. 217 A (III), U.N. Doc. A/810, at 71 (1948). A very readable account of the drafting of the Universal Declaration appears in ROBERTSON, *supra* note 9, at 26-28. A fuller discussion is contained in Humphrey, *The Universal Declaration of Human Rights: Its History, Impact and Juridical Character*, in THIRTY YEARS, *supra* note 10, at 21-37. As Professor Humphrey has noted, the Universal Declaration was the International Bill of Rights which the founders of the United Nations, and particularly President Harry S Truman, had in mind when they created the Human Rights Commission. *Id.* at 22 n.4. Professor Humphrey, who served for many years as the Director of the Human Rights Division of the United Nations, was one of the drafters of the Universal Declaration. His observations are set down in a highly personal and hence fascinating book. J. HUMPHREY, HUMAN RIGHTS & THE UNITED NATIONS: A GREAT ADVENTURE (1984). The drafting of the Universal Declaration as the International Bill of Rights is discussed at 17-77.

20. The Final Act, usually referred to as the Helsinki Accord, was signed on August 1, 1975, by 33 European nations as well as the United States and Canada. Developed over three years of often difficult negotiations, the Accord addresses a wide range of topics dealing with European security, culture, education, and politics. The Accord is divided into sections, commonly called baskets. Basket III contains the human rights undertakings of the

Article 1 of the Universal Declaration states that all persons are born free and equal in dignity and rights. Article 2 underscores this by stating that no one is to be discriminated against by reason of their race, color, sex, language, religion, political opinion, national or social origin, property, birth or other status.

For purposes of AIDS advocacy, Article 2 is an important tool. Because of its instruction that persons are not to be discriminated against because of their "status," the reach of Article 2, and thus of the Universal Declaration, goes further than that of Article 55 of the United Nations Charter, which identifies only the characteristics of race, sex, language, and religion as improper bases of discrimination.²¹ The Universal Declaration has several other articles which also speak to AIDS issues. Article 7 states that all persons are equal before the law and may not be discriminated against by the law. Article 9 states that no one may be exiled in an arbitrary fashion, while Article 12 extends to all persons the right to be free from arbitrary interferences with their privacy. Article 13(2) ensures the right to travel across national borders.

In unison, these articles provide a powerful command to nations that they respect the privacy of AIDS victims. In addition, Articles 9 and 13 clearly prohibit countries from either advocating or implementing programs to keep AIDS victims out of their territory or confining them to remote quarantine centers.

The most important articles, however, are Articles 21(2), 23(1) and 25(1). Article 21(2) states that everyone has the right of equal access to public service in his country. Article 23(1) extends the right to work and to be free from unemployment to all people. Finally, Article 25(1) states that all people have the right to a standard of living adequate for the health and well-being of themselves and their families, including food, clothing, housing, medical care,

Accord. Two exhaustive treatments of the Accord are HUMAN RIGHTS, INTERNATIONAL LAW AND THE HELSINKI ACCORD (T. Buergenthal ed. 1977) [hereinafter INTERNATIONAL LAW AND THE HELSINKI ACCORD], and HELSINKI ACCORD, *supra* note 11.

21. The four grounds included in the Charter, as well as the greater number of grounds included in the Universal Declaration, are extensively commented upon in E. VIERDAG, THE CONCEPT OF DISCRIMINATION IN INTERNATIONAL LAW, WITH SPECIAL REFERENCES TO HUMAN RIGHTS 86-104 (1973). As Vierdag points out, the term status was originally meant to refer to property status. The two terms were separated, however, at the suggestion of the Chinese delegate, following an objection to the original Ukrainian proposal by the Russian delegate. *Id.* at 102-03. Thus, while the term status was originally meant to indicate that discrimination on the basis of wealth, income or feudal class privileges would be impermissible, *id.* at 103, the insertion of the words "or other" between property and status clearly creates, although perhaps inadvertently, a much broader basis on which to claim human rights.

and necessary social services. Moreover, Article 25(1) states that all persons have the right to security in the event that they are unable to provide for themselves due to "circumstances beyond his control." Taken together, Articles 21(2), 23(1) and 25(1) can easily be read as requiring nations to ensure that AIDS victims are not discriminated against in the workplace, obtain adequate medical care, and have a fair share of public funds allocated for AIDS research.

Once the Universal Declaration had been drafted, work began on additional instruments which would amplify the rights contained in the Universal Declaration. What emerged were two covenants: the international Covenant on Civil and Political Rights (CCPR),²² and the international Covenant on Economic, Social and Cultural Rights (CESCR).²³ Both Covenants were promulgated in 1966; both became effective in 1976. As of January 1, 1988, eighty-six countries had become parties to the CCPR and eighty-nine countries had become parties to the CESCR.

In many respects, the Covenants merely follow the lead of the Universal Declaration. But in three important ways, they break new ground which should be studied by the lawyers of AIDS vic-

22. *Opened for signature*, Dec. 19, 1966. *Entered into force*, Mar. 23, 1976. G.A. Res. 2200 (XXI), 21 U.N. GAOR, Supp. (No. 16) 52, U.N. Doc. A/6316 (1967), reprinted in 6 I.L.M. 368 (1967). The CCPR is discussed in detail in: LAW-MAKING, *supra* note 12, at 83-127; ROBERTSON, *supra* note 9, at 28-54; Henkin, *The Covenant on Civil and Political Rights*, in U.S. RATIFICATION OF THE HUMAN RIGHTS TREATIES: WITH OR WITHOUT RESERVATIONS? (R. Lillich ed. 1981) [hereinafter U.S. RATIFICATION]; THE INTERNATIONAL BILL OF RIGHTS: THE COVENANT ON CIVIL AND POLITICAL RIGHTS (L. Henkin ed. 1981); Ramcharan, *Implementing the International Covenants on Human Rights*, in THIRTY YEARS, *supra* note 10, at 175-95. See also Vincent-Daviss, *Human Rights Law: A Research Guide to the Literature - Part I: International Law and the United Nations*, 14 N.Y.U. J. INT'L L. & POL. 209, 269-73 (1981). For a discussion which ties together the United Nations Charter, the Universal Declaration, and the CCPR, see Lillich, *Civil Rights*, in I LEGAL AND POLICY ISSUES, *supra* note 10, at 171-203. For a discussion which compares the CCPR with the Helsinki Accord, *supra* note 20, see Frowein, *The Interrelationship Between the Helsinki Final Act, The International Covenants on Human Rights, and the European Convention on Human Rights*, in INTERNATIONAL LAW AND THE HELSINKI ACCORD, *supra* note 20, at 71-82.

23. *Opened for signature*, Dec. 19, 1966. *Entered into force*, Jan. 3, 1976. G.A. Res. 2200 (XXI), 21 U.N. GAOR, Supp. (No. 16) 49, U.N. Doc. A/6316 (1967), reprinted in 6 I.L.M. 360 (1967). As with the CCPR, *supra* note 22, the literature on the CESCR is vast. A very useful bibliography can be found in Trubek, *Economic, Social and Cultural Rights in the Third World: Human Rights and Human Needs Programs*, in I LEGAL AND POLICY ISSUES, *supra* note 10, at 264-66. A particularly helpful article is Vierdag, *The Legal Nature of the Rights Granted by the International Covenant on Economic, Social, and Cultural Rights*, 9 NETH. Y.B. INT'L L. 69 (1978). See also ROBERTSON, *supra* note 22, at 27-38; Ramcharan, *supra* note 22, at 160-74; Alston & Quinn, *The Nature and Scope of States Parties' Obligations Under the International Covenant on Economic, Social and Cultural Rights*, 9 HUM. RTS. Q. 156 (1987).

tims. First, under Article 40 of the CCPR and Article 16 of the CESC, all parties agree to submit reports detailing the measures they have adopted and the progress they have achieved in observing the rights recognized by the CCPR and CESC.²⁴ Second, Article 28 of the CCPR sets up a Human Rights Committee.²⁵ Third, under Article 20(2) of the CCPR, any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence is outlawed. Thus, it may well be that Article 20(2) could be used by AIDS victims to argue that calls to have AIDS test results made public are prohibited because they are national incitements to discrimination and hostility. Likewise, calls for AIDS victims to be isolated where the circumstances do not warrant such treatment also may be a violation of Article 20(2).

Simultaneous with the promulgation of the CCPR, the United Nations General Assembly issued an Optional Protocol to the CCPR.²⁶ The Optional Protocol permits individuals to file a complaint with the Human Rights Committee established by the CCPR. The need for the Optional Protocol exists because of the limited powers given to the Human Rights Committee by the CCPR. Under the CCPR, the main function of the Human Rights

24. The reporting systems of the CCPR and CESC are described in detail in Fischer, *International Reporting Procedures*, in HUMAN RIGHTS PRACTICE, *supra* note 8, at 165-85. In addition to the CCPR and CESC reporting systems, Professor Fischer also discusses the reporting systems of the International Convention on the Elimination of All Forms of Racial Discrimination as well as the International Convention on the Suppression and Punishment of the Crime of Apartheid.

25. Once the CCPR came into force on March 23, 1976, plans were immediately formulated to establish the Human Rights Committee. These plans resulted in an inaugural meeting held on September 20, 1976. For a review of the Committee's early work, see Ramcharan, *supra* note 22, at 176-77 and 190-95. For a more recent review, see Fischer, *supra* note 24, at 169-73. For a discussion of the range of action which the Human Rights Committee can take with respect to country reports, see LAW-MAKING, *supra* note 12, at 123-26. See also Prounis, *The Human Rights Committee: Toward Resolving the Paradox of Human Rights Law*, 17 COLUM. HUM. RTS. L. REV. 103 (1985).

More recently, a similar committee has been established to monitor country reports submitted under the CESC. Known as the United Nations Committee on Economic, Social and Cultural Rights, it held its first meeting in Geneva in March 1987. See Alston & Simma, *First Session of the UN Committee on Economic, Social and Cultural Rights*, 81 AM. J. INT'L L. 747 (1987).

26. *Opened for signature*, Dec. 19, 1966. *Entered into force*, Mar. 23, 1976. G.A. Res. 2200 (XXI), 21 U.N. GAOR, Supp. (No. 16) 59, U.N. Doc. A/6316 (1967), reprinted in 6 I.L.M. 383 (1967). The Optional Protocol is discussed in Shelton, *Individual Complaint Machinery Under the United Nations 1503 Procedure and the Optional Protocol to the International Covenant on Civil and Political Rights*, in HUMAN RIGHTS PRACTICE, *supra* note 8, at 67-73; ROBERTSON, *supra* note 9, at 54-60; Ramcharan, *supra* note 22, at 187-89. See also Mose & Opsahl, *The Optional Protocol to the International Covenant on Civil and Political Rights*, 21 SANTA CLARA L. REV. 271 (1981).

Committee is the review of the country reports required by Article 40 of the CCPR. As explained above, the country reports advise the United Nations of the progress that parties have made in achieving the goals of the CCPR. Under Article 41, the Human Rights Committee can also review complaints by one party against another if the party complained against has previously recognized the competence of the Human Rights Committee. But only by means of the Optional Protocol may individuals petition the Human Rights Committee. By January 1, 1988, 39 countries had ratified the Optional Protocol.²⁷

B. Regional Systems

1. The European Human Rights System

In addition to the work of the United Nations, several regional human rights treaties have been concluded. The most important of these is the European Convention for the Protection of Human Rights and Fundamental Freedoms.²⁸

27. In addition to the CCPR's Optional Protocol, the United Nations, at the urging of the Commission on Human Rights, has adopted a second procedure which also allows individuals to submit petitions. Known as the 1503 procedure after the resolution which established it, the procedure allows any individual or group to submit communications to the United Nations Human Rights Centre in Geneva, Switzerland. The person submitting the information need not have been a victim of the violation and need not have first-hand knowledge of the violation. In addition, any State may be the subject of a 1503 proceeding, including States which are not members of the United Nations. An important limitation on the use of the procedure, however, is that it only may be used to complain about systematic and massive violations of human rights. As such, the procedure only rarely can be invoked. The Resolution can be found at U.N. Economic and Social Council Resolution on the Procedure for Dealing with Communications Relating to Violations of Human Rights and Fundamental Freedoms, May 27, 1970, E.S.C. Res. 1503 (XVIII), 48 U.N. ESCOR, Supp. (No. 1A) 8, U.N. Doc. E/4832/Add. 1 (1970). For examinations of the Resolution, see ROBERTSON, *supra* note 9, at 65; Shelton, *supra* note 26, at 59-67; T. ZULDWIJK, PETITIONING THE UNITED NATIONS: A STUDY IN HUMAN RIGHTS (1982). For the history leading up to the adoption of Resolution 1503, see SOHN & BUERGENTHAL, *supra* note 6, at 739-856.

28. Done at Rome, Nov. 4, 1950. Entered into force, Sept. 3, 1953. 213 U.N.T.S. 221, E.T.S. 5, U.K.T.S. 71. The European Convention is discussed in Higgins, *The European Convention on Human Rights*, in II LEGAL AND POLICY ISSUES, *supra* note 12, at 495-550; McKean, *supra* note 6, at 204-27; ROBERTSON, *supra* note 9, at 80-117. Full length treatments include J. FAWCETT, THE APPLICATION OF THE EUROPEAN HUMAN RIGHTS CONVENTION IN DOMESTIC LAW: A COMPARATIVE SURVEY (1983); C. MORRISON, THE DYNAMICS OF DEVELOPMENT IN THE EUROPEAN HUMAN RIGHTS CONVENTION SYSTEM (1981); Z. NEDJATI, HUMAN RIGHTS UNDER THE EUROPEAN CONVENTION (1978); A. ROBERTSON, HUMAN RIGHTS IN EUROPE (2d ed. 1977); F. JACOBS, THE EUROPEAN CONVENTION ON HUMAN RIGHTS (1975); R. POLLACK, THE INDIVIDUAL'S RIGHTS AND INTERNATIONAL ORGANIZATION (1966); G. WEIL, THE EUROPEAN CONVENTION ON HUMAN RIGHTS (1963).

The European Convention was signed in Rome on November 4, 1950, and came into effect on September 3, 1953. Today, 21 countries are parties to the Convention.²⁹ The effect of the European Convention is not limited to nationals of signatory countries, however, because its rights also extend to nationals of non-parties within the jurisdiction of any of the signatories.³⁰ In many ways, the European Convention mirrors the Universal Declaration and international Covenants of the United Nations; as such, its study and use by AIDS lawyers is warranted. In particular, Articles 2, 3, 8 and 14 deserve particular attention.

Article 2 of the European Convention states that everyone's right to life shall be protected by law. Article 3 prohibits inhuman or degrading treatment. Article 8(1) gives to all people a right of privacy, although this right is qualified by Article 8(2), which states that public authorities may interfere with the right of privacy in order to ensure public safety and protect the health and morals of society. Article 14 of the European Convention states that its rights are to be granted without discrimination on the basis of status.

The rights granted by the European Convention are augmented by a number of additional instruments, denominated as protocols. The most important protocol is the European Social Charter (ESC).³¹ The ESC, which is now adhered to by 14 countries,³² contains important rights for AIDS victims in Article 13.

Article 13 is divided into four sections, of which the first two speak to the problem of AIDS. The first section states that all persons without adequate resources and who are unable to secure such resources are to be cared for by society. The second section directs that the political and social rights of persons who are receiving assistance shall not be diminished due to their receipt of such assistance. In the context of AIDS, these commands provide powerful

29. The countries which are parties to the European Convention are: Austria, Belgium, Cyprus, Denmark, the Federal Republic of Germany, France, Greece, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, and the United Kingdom.

30. JANIS, *supra* note 6, at 181.

31. Done at Turin, Oct 18, 1961. Entered into force, Feb. 26, 1965. E.T.S. 35. A brief description of the ESC is contained in ROBERTSON, *supra* note 9, at 197-207. A full length treatment can be found in D. HARRIS, THE EUROPEAN SOCIAL CHARTER (1984).

32. As of January 1, 1988, the parties to the ESC are: Austria, Cyprus, Denmark, the Federal Republic of Germany, France, Greece, Iceland, Ireland, Italy, the Netherlands, Norway, Spain, Sweden, and the United Kingdom.

protection against discrimination.

2. The Inter-American Human Rights System

In 1969, the nations of the Americas followed those of Europe and adopted their own human rights convention. Known as the American Convention on Human Rights, it was opened for signature in San Jose, Costa Rica and came into force on July 18, 1978.³³ Currently, twenty nations are parties to the American Convention.³⁴

The American Convention was not the first foray into the field of human rights for the nations of the Americas. On May 2, 1948, seven months before the United Nations passed the Universal Declaration, the American Declaration on the Rights and Duties of Man was adopted at the Ninth International Conference of American States in Bogota, Colombia.³⁵

There are four important articles in the American Declaration with respect to AIDS advocacy. Article I of the American Declaration states that all persons have the right to life, liberty and security. Article II states that such rights are to be respected without distinction as to race, sex, language, creed or "any other factor." Article XI states that every person has the right to the preservation of his health "to the extent permitted by public and community resources." Finally, Article XIII states that every person has the right "to participate in the benefits that result from intellectual progress, especially scientific discoveries."

The foregoing provision was retained in the American Conven-

33. *Done at San Jose*, Nov. 22, 1969. *Entered into force*, July 18, 1978. O.A.S. T.S. 36, at 1, O.A.S. Off. Rec. OEA/Ser. L/V/II.23 doc. 21 rev. 6 (1979), *reprinted in* 9 I.L.M. 673 (1970). The American Convention is discussed in Buergenthal, *The Inter-American System for the Protection of Human Rights*, in II LEGAL AND POLICY ISSUES, *supra* note 12, at 439-94; ROBERTSON, *supra* note 9, at 132-60; Buergenthal, *The American Convention on Human Rights*, in U.S. RATIFICATION, *supra* note 22, at 47-53. Comparisons between the European and American conventions are made in Buergenthal, *The American and European Conventions on Human Rights: Similarities and Differences*, 30 AM. U.L. REV. 155 (1980), and in Frowein, *The European and the American Conventions on Human Rights - A Comparison*, 1 HUM. RTS. L.J. 44 (1980).

34. *Janis*, *supra* note 6, at 194. On January 1, 1988, the following countries were parties to the American Convention: Argentina, Barbados, Bolivia, Colombia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Peru, Suriname, Uruguay, and Venezuela.

35. O.A.S. Res. XXX, O.A.S. Off. Rec. OEA/Ser. L/V/I.4 (1948), *as revised* (1965). The Declaration is discussed in ROBERTSON, *supra* note 9, at 133-34.

tion, which in many respects simply enlarges on the rights contained in the American Declaration. But in Article 23(1)(c), the American Convention adds another important right for AIDS victims by stating that all citizens shall have access, under general conditions of equality, to the public service of their countries. This right, it could be argued, is not fulfilled where AIDS victims receive less attention from government programs than victims of more socially acceptable diseases, such as cancer.

3. The African Human Rights System

In addition to the European and American human rights systems, there now exists an African regional human rights system. In 1979, the Organization of African Unity embarked on a program to draft an African Charter on Human and Peoples' Rights. The African Charter subsequently was completed and adopted in 1981.³⁶ Known as the Banjul Charter because the principal drafting of the Charter took place in Banjul, Gambia, it came into force on October 21, 1986 and now has more than thirty parties.³⁷

In many ways, the Banjul Charter resembles the Universal Declaration.³⁸ Article 2 of the Banjul Charter, for example, follows Article 2 of the Universal Declaration and states that every indi-

36. OAU Doc. CAB/LEG/67/3, reprinted in 21 I.L.M. 58 (1982). The African Charter is detailed in Gittleman, *The African Charter on Human and Peoples' Rights: A Legal Analysis*, 22 VA. J. INT'L L. 667 (1982); Kannyo, *The Banjul Charter on Human and Peoples' Rights: Genesis and Political Background*, in HUMAN RIGHTS AND DEVELOPMENT IN AFRICA 128 (C. Welch & R. Meltzer eds. 1985); Turack, *The African Charter on Human and Peoples' Rights: Some Preliminary Thoughts*, 17 AKRON L. REV. 365 (1984); Umozurike, *The African Charter on Human and Peoples' Rights*, 77 AM. J. INT'L L. 103 (1983). See generally THE INTERNATIONAL LAW OF HUMAN RIGHTS IN AFRICA (M. Hamalengwa, C. Flinterman & E. Dankwa eds. 1988).

37. As of January 1, 1988, 36 countries had acceded to the African Charter: Algeria, Benin, Botswana, Burkina Faso, Cape Verde, Central African Republic, Chad, Comoros, the Congo, Egypt, Equatorial Guinea, Gabon, Gambia, Guinea, Guinea-Bissau, Liberia, Libyan Arab Jamahiriya, Mali, Malta, Niger, Nigeria, Rwanda, Saharawi Arab Democratic Republic, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Island, Sudan, Togo, Tunisia, Uganda, United Republic of Cameroon, United Republic of Tanzania, Zaire, Zambia, and Zimbabwe.

38. This is not to say, however, that there are no differences. See D'Sa, *Human and Peoples' Rights: Distinctive Features of the African Charter*, 29 J. AFR. L. 72 (1985); Kiwanuka, *The Meaning of "People" in the African Charter on Human and Peoples' Rights*, 82 AM. J. INT'L L. 80 (1988); Marie, *Relations Between Peoples' Rights and Human Rights: Semantic and Methodological Distinctions*, 7 HUM. RTS. L.J. 195 (1986); O'Kere, *The Protection of Human Rights in Africa and the African Charter on Human and Peoples' Rights: Comparative Analysis with the European and American Systems*, 6 HUM. RTS. Q. 141 (1984).

vidual shall be entitled to enjoy his rights fully without regard to distinctions of any kind, including race, color, sex, fortune, birth or other status.

Under Article 5 of the Banjul Charter, the dignity of each individual is affirmed. Article 9 states that all persons are entitled to receive and give information. Article 13 grants each member of society a stake in the government, a right of equal access to the public service, and use of the country's property and services. Article 15 provides a right to work in satisfactory conditions, while Article 16 guarantees medical and health services to anyone that is sick.

From the foregoing it is clear that the Banjul Charter can be adapted easily to the needs of AIDS victims. Not only does the Charter prohibit discrimination against AIDS patients, but it also demands that the special needs of persons suffering from AIDS, such as medical care and employment opportunities commensurate with their physical states, be taken into account.

4. The Arab Human Rights System

On March 22, 1945, the League of Arab States was founded when the nations of Egypt, Iraq, Jordan, Lebanon, Saudi Arabia, Syria and Yemen signed the Pact of the League of Arab States. Until 1966, the League operated as a loose confederation with observer status at the United Nations.

Beginning in 1966, the League became interested in human rights. This interest was heightened when the United Nations declared that 1968 would be International Human Rights Year and the United Nations Commission on Human Rights decided to study the possibility of setting up regional human rights commissions where such commissions did not already exist. Spurred into action by the United Nations, the Council of the Arab League made plans to create a permanent Arab human rights commission. These plans eventually resulted in the promulgation and adoption on September 3, 1968 of Resolution 2443, which established the Permanent Arab Commission on Human Rights. To date, the Commission has limited its focus to alleged human rights abuses by Israel within the occupied territories.³⁹

In December 1985, interest in human rights in the Arab world

39. For a further discussion of the League and the Commission, see ROBERTSON, *supra* note 9, at 161-65.

was revived when the International Institute of Higher Studies in Criminal Sciences hosted a conference on criminal justice for Arab jurists. Out of this meeting came a request that the Institute organize a meeting of Arab experts to draft an Arab charter on human rights. The Institute convened such a meeting on December 5, 1986, and in January 1987 released a Draft Charter on Human and People's Rights in the Arab World. In April 1987, the Draft was endorsed by the Arab Lawyer's Union and has since been endorsed by a number of prominent Arab spokespersons.⁴⁰

When ratified, the Arab Charter will speak to the same subjects as are covered in the other human rights charters. For purposes of AIDS discrimination, a number of the Arab Charter's provisions are very helpful. Article 3(1) states that the integrity of all persons shall be respected. Article 8(3) directs that no one may be expelled from his or her country. Article 23 guarantees all citizens an adequate standard of living. Article 26 bans discrimination in the workplace.

In contrast to other human rights charters, the Arab Charter limits its non-discrimination provision (Article 11) to discrimination based on race, color, sex, birth, national origin, language, religion or opinion, thereby leaving out the very broad term "other status." However, unlike other charters, the Arab Charter in Article 17 orders member states to "provide citizens with the necessary protection against epidemic, endemic and occupational disease." This paragraph is supplemented by Article 21, which further directs the members to "provide special care for the handicapped according to their needs and their physical and mental abilities." Taken together, Articles 17 and 21 are the clearest affirmations now existing in international human rights law that states have a responsibility to provide for the health and welfare of AIDS victims.

III. INTERNATIONAL AIDS ADVOCACY IN COURT

As is clear from the foregoing brief overview, international law is today vitally concerned with human rights, and many of its provisions can be easily adapted to provide significant protection for AIDS victims. The more difficult task, of course, is turning these

40. The text of the Draft, together with its legislative history, can be found in INTERNATIONAL INSTITUTE OF HIGHER STUDIES IN CRIMINAL SCIENCES, DRAFT CHARTER ON HUMAN AND PEOPLE'S RIGHTS IN THE ARAB WORLD (1987).

rules into concrete action. To do this, advocates of AIDS victims must find a hospitable forum.

Currently, there are three international courts which have the power to hear claims involving alleged abuses of human rights. These are the International Court of Justice, the European Court of Human Rights, and the Inter-American Court of Human Rights.⁴¹ Advocates who attempt to use these international courts are likely to find that these forums pose certain problems. As such, most advocates will be required to argue their international law claims in domestic courts.

A. *The International Court of Justice*

The International Court of Justice (ICJ) is the successor to the Permanent Court of International Justice (PCIJ)⁴² and is the main judicial organ of the United Nations.⁴³ Formed in 1946, the ICJ has handled approximately one hundred cases since its inception, a figure slightly above that of the PCIJ.⁴⁴

The major drawback of the ICJ is that only nations may appear before it as parties.⁴⁵ As such, no individual may directly sue in the ICJ. Instead, an individual must convince a country to espouse his or her claim. In addition, the individual must have a genuine link with the country which espouses the claim.⁴⁶ As a result,

41. The Banjul Charter provides for an African Commission on Human and Peoples' Rights (arts. 30-61) but not a Court of Human Rights. The Arab Draft Charter provides for both a Commission on Human Rights (arts. 50-54) and an Arab Court of Human Rights (arts. 55-61), neither of which will be established until the Charter receives sufficient ratifications to enter into force.

42. The PCIJ, part of the League of Nations, was inaugurated on February 15, 1922, following the election of judges to the court in 1921. See JANIS, *supra* note 6, at 98.

43. See *supra* note 16. For recent extended discussions concerning the ICJ, see R. FALK, *REVIVING THE WORLD COURT* (1986); T. FRANCK, *JUDGING THE WORLD COURT* (1986); *THE INTERNATIONAL COURT OF JUSTICE AT A CROSSROADS* (L. Damrosch ed. 1987); S. ROSENNE, *THE LAW AND PRACTICE OF THE INTERNATIONAL COURT* (2d ed. 1985). Older works include *THE FUTURE OF THE INTERNATIONAL COURT OF JUSTICE* (L. Gross ed. 1976); G. ELIAN, *THE INTERNATIONAL COURT OF JUSTICE* (1971); H. LAUTERPACHT, *THE DEVELOPMENT OF INTERNATIONAL LAW BY THE INTERNATIONAL COURT* (1958); O. LISSITZYN, *THE INTERNATIONAL COURT OF JUSTICE: ITS ROLE IN THE MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY* (1951); D. PRATAP, *THE ADVISORY JURISDICTION OF THE INTERNATIONAL COURT* (1972).

44. JANIS, *supra* note 6, at 100. Between 1921 and 1945, the PCIJ rendered 83 judgments, substantive orders, and advisory opinions. *Id.*

45. See Article 34(1) of the Statute of the Court, 59 Stat. 1055, T.S. 993, 3 Bevans 1179. In certain instances, however, international organizations and other organs and specialized agencies of the United Nations may appear before the Court. JANIS, *supra* note 6, at 141-42.

46. See *Belgium v. Spain*, 1970 I.C.J. 3; *South West Africa Cases*, 1966 I.C.J. 6; *Liech-*

it is probable that the ICJ will never prove to be an effective forum for international AIDS advocacy.

B. *The European Court of Human Rights*

Unlike the ICJ, the European Court of Human Rights has the potential to become an important, although indirect, forum for international AIDS advocacy. The Court was set up by the European Human Rights Convention and is part of the European human rights system. Sitting in Strasbourg, France, with twenty-one judges, the Court hears cases in panels of seven. The judges are elected, and serve for nine-year renewable terms.⁴⁷ Although the Court has had a substantial impact on human rights in Europe,⁴⁸ cases do not come directly to it. Rather, the preliminary work is conducted by the European Commission of Human Rights.⁴⁹ The Commission is aided by a permanent staff which is also located in Strasbourg. Although the Commissioners, who are elected to renewable six-year terms, meet five times a year, it is the permanent staff which actually carries out the substantive work of the Commission.

A complaint against a country which is a party to the European Convention is initiated when a petition is filed with the Commission. Under Article 24 of the European Convention, any contracting country may complain about any other contracting country in a system which resembles that of the ICJ. There is, however, an important difference. Under Article 25, individuals may also file petitions if the country which they wish to move against has assented specifically to the filing of such petitions. Currently, 20 of the 21 countries which are a party to the European Convention have agreed to Article 25.⁵⁰

Once a petition is filed, the Commission reviews the petition to determine whether it is admissible and may be acted upon. This

tenstein v. Guatemala, 1955 I.C.J. 4.

47. See Articles 38-45 of the European Convention, *supra* note 28.

48. The human rights case law of the European Court is collected and analyzed in P. VAN DIJK & G. VAN HOOF, *THEORY AND PRACTICE OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS* (1984).

49. The Commission's structure and procedures are reviewed at length in Buquicchio-de Boer, *The European Commission on Human Rights*, 1 EMORY J. INT'L DIS. RES. 219 (1987).

50. See *supra* note 29 for a listing of the countries which are parties to the European Convention. The lone exception to Article 25 is Cyprus.

process is akin to determining whether the petitioner has made out a *prima facie* case. Most petitions are found to fail at this crucial junction, and are thus washed out of the system. For those that survive, the next step is a Commission investigation, followed by an attempt to have the parties reach an amicable settlement. If this proves impossible, the Commission next files a report of its findings. Ultimately, if the Commission believes that there has been a violation, the case can be submitted to the Court for a binding judgement.⁵¹

Despite the somewhat unwieldy nature of the system, roughly 12,000 private claims have been filed with the Commission.⁵² Of the 343 applications found to be admissible by the Commission, 326 have been initiated by private individuals.⁵³

If a petition reaches the Court, the individual has a strong chance of prevailing and an even better likelihood of enforcing the resulting judgment. During its first twenty years, the Court was reluctant to find against countries, and in fact did not do so until 1968. But in more recent times it has become a bold advocate of international human rights. In a recent case, for example, a winning plaintiff was awarded a judgment of nearly \$160,000.⁵⁴

Obviously, the European Commission and Court provide important forums for AIDS victims who can demonstrate that they have not been accorded the treatment to which they are entitled under the European Convention and its protocols. Moreover, each victory by an AIDS victim will have a ripple effect in the other member states of the European system.

C. *The Inter-American Court of Human Rights*

Unlike the highly developed European system, the much younger Inter-American system is just beginning to become an important source of human rights law. Like its older cousin, the Inter-American system is a bifurcated one, composed of both an Inter-American Commission and an Inter-American Court of Human

51. The structure of the European system is laid out in a helpful chart in Drzemczewski, *The European Human Rights Convention: Time for a Radical Overhaul?*, 10 B.C. INT'L & COMP. L. REV. 9, 15 (1987).

52. Buquicchio-de Boer, *supra* note 49, at 219.

53. JANIS, *supra* note 6, at 184.

54. *Id.* at 187.

Rights.⁵⁵ Similarities between the two systems, however, end with their organizational structure.

In contrast to the European system, individuals in the Inter-American system are permitted as a matter of right to file petitions with the Commission.⁵⁶ Such petitions may only be filed after all domestic remedies have been exhausted, although they must be submitted no later than six months after a final domestic decision has been rendered. Once a petition is received, the seven members of the Commission, who are elected for four-year, once-renewable terms, are charged with reviewing the petition and encouraging the parties to reach an amicable settlement.

As in the European system, a failure by the Commission to dispose of a petition can lead to the case being submitted to the Court. The Court is composed of seven judges, who serve for six-year, once-renewable terms. Only States and the Commission may submit a case to the Court, and a State cannot be tried in the Court unless it has submitted to the Court's contentious jurisdiction.⁵⁷ To date, only a few States have done so. As a result, the Court's ability to hear contentious cases has been limited.⁵⁸

Although the record of the Court has so far been disappointing, and the record of the Commission has been only slightly better, the start is encouraging when one compares it with the slow start of the European Commission and Court. Indeed, as the only international tribunal operating in the Western Hemisphere, it cannot be overlooked in the struggle to formulate and conduct a program of AIDS advocacy.

D. Domestic Courts

Because of the limitations of the world's existing international forums, it is likely that AIDS advocates will spend most of their time in domestic courts, arguing international law either solely or

55. For general discussions about the Inter-American system, see C. QUIROGA, *THE BATTLE OF HUMAN RIGHTS* (1988); Abranches, *The Inter-American Court of Human Rights*, 30 *AM. U.L. REV.* 79 (1981); Buergenthal, *The Inter-American Court of Human Rights*, 76 *AM. J. INT'L L.* 231 (1982); Buergenthal, *The Advisory Practice at the Inter-American Human Rights Court*, 79 *AM. J. INT'L L.* 1 (1985).

56. See art. 44 of the American Convention, *supra* note 33.

57. *Id.* at art. 62.

58. See further Espiell, *Contentious Proceedings Before the Inter-American Court of Human Rights*, 1 *EMORY J. INT'L DIS. RES.* 175 (1987).

in conjunction with domestic law.⁵⁹ The use of international law arguments in a domestic court can often be very effective, and could be especially useful before a sympathetic judge who is unable to find legal rights for AIDS victims in domestic law. However, there are a number of important stumbling blocks.⁶⁰

An advocate wishing to rely on the United Nations Charter will be expected to show that the Charter creates binding legal obligations upon nations without the need to await domestic implementing legislation.⁶¹ This is not an insubstantial task given the aspirational nature of both proclamations. While a number of respected commentators have argued that the Charter and Universal Declaration do collectively create binding international obligations,⁶² courts have reacted warily to this position.⁶³ However,

59. A large body of literature exists with respect to using international law in domestic legal proceedings. See, e.g., Burke, Coliver, de la Vega & Rosenbaum, *Application of International Human Rights Law in State and Federal Courts*, 18 TEX. INT'L L.J. 291 (1983); Christenson, *Using Human Rights Law to Inform Due Process and Equal Protection Analyses*, 52 U. CIN. L. REV. 3 (1983); Hartman, *Enforcement of International Human Rights Law in State and Federal Courts*, 7 WHITTIER L. REV. 741 (1985); Hoffman, *The Application of International Human Rights Law in State Courts: A View from California*, 18 INT'L LAW. 61 (1984); Landman, *International Protection for American Indian Land Rights?*, 5 B.U. INT'L L.J. 59 (1987); Lillich, *Invoking International Human Rights Law in Domestic Courts*, 54 U. CIN. L. REV. 367 (1985); Martineau, *Interpreting the Constitution: The Use of International Human Rights Norms*, 5 HUM. RTS. Q. 87 (1983); Schneebam, *The Enforceability of Customary Norms of Public International Law*, 8 BROOKLYN J. INT'L L. 289 (1982); Comment, *Human Rights and Basic Needs: Using International Human Rights Norms to Inform Constitutional Interpretation*, 34 U.C.L.A. L. REV. 1195 (1987); Note, *The Domestic Application of International Human Rights Law: Evolving the Species*, 5 HASTINGS INT'L & COMP. L. REV. 161 (1981). A useful compilation of source materials on the subject is Whisman, *Selected Bibliography: Articles and Cases on International Human Rights Law in Domestic Courts*, 18 INT'L LAW. 83 (1984).

60. See generally Baade, *Proving Foreign and International Law in Domestic Tribunals*, 18 VA. J. INT'L L. 619 (1978); Bazylar, *Litigating the International Law of Human Rights: A "How To" Approach*, 7 WHITTIER L. REV. 713 (1985); Christenson, *The Uses of Human Rights Norms to Inform Constitutional Interpretation*, 4 HOUS. J. INT'L L. 39 (1981); Panel, *Proving International Law in a National Forum*, 70 AM. SOC'Y INT'L L. PROC. 10 (1976).

61. Under the law of most nations, treaties are said to be either self-executing or non-self-executing. If self-executing, the treaty's provisions go into effect immediately, without any further action on the part of the state which entered into the treaty. If non-self-executing, the treaty's provisions remain dormant until independent domestic legislation is enacted. See, e.g., *Foster v. Nielson*, 27 U.S. (2 Pet.) 253, 314 (1829). Whether a treaty is or is not self-executing is a hard question not easily resolved. For a case which grappled with the question, see *United States v. Postal*, 589 F.2d 862 (5th Cir. 1979). The case is considered in Riesenfeld, *The Doctrine of Self-Executing Treaties and U.S. v. Postal: Win at any Price?*, 74 AM. J. INT'L L. 892 (1980).

62. Two of the most celebrated works are by Professor Louis B. Sohn of the Harvard Law School, who has argued that both the Charter and the Universal Declaration stand above all national laws and are binding on every nation. See Sohn, *The New International*

there are cases which have found that other provisions of the United Nations Charter are self-executing; these cases suggest that it may be possible to argue that the Charter as a whole is self-executing and hence does provide direct legal rights to individuals.⁶⁴ Of course, it also may be possible to argue that the failure to draft and enact implementing legislation is itself a violation of the Charter.⁶⁵

A similar problem is faced by those advocates wishing to rely on either the Civil and Political Rights Covenant or the Economic, Social and Cultural Rights Covenant. In countries which have rati-

Law: Protection of the Rights of Individuals Rather than States, 32 AM. U.L. REV. 1, 13 (1982), and Sohn, *The Human Rights Law of the Charter*, 12 TEX. INT'L L.J. 129, 133 (1977).

63. The state of the law in the United States and the criticism of academic commentators is reviewed in depth in R. LILLICH, *INVOKING INTERNATIONAL HUMAN RIGHTS LAW IN DOMESTIC COURTS* (1985). For two early views, see Hudson, *Charter Provisions on Human Rights in American Law*, 44 AM. J. INT'L L. 543 (1950), and Schachter, *The Charter and the Constitution: The Human Rights Provisions in American Law*, 4 VAND. L. REV. 643 (1951). The first American case to reject the use of the Charter in domestic proceedings probably was *Sipes v. McGhee*, 316 Mich. 614, 628, 25 N.W.2d 638, 644 (1947), *rev'd on other grounds*, 334 U.S. 1 (1948). But in *Namba v. McCourt*, 185 Ore. 579, 204 P.2d 569 (1949), the Oregon Supreme Court appeared to give a green light to the idea of using the Charter in domestic cases. The potential of *Namba* was quickly snuffed out, however, by the seminal case of *Sei Fujii v. California*, 38 Cal. 2d 718, 242 P.2d 617 (1952), in which the California Supreme Court turned aside a challenge to the California Alien Land Law based on Articles 1, 55, and 56 of the United Nations Charter. Although the Court struck down the law on the alternative constitutional grounds of equal protection, it found that the human rights provisions of the Charter could have no effect absent independent implementing legislation. 38 Cal. 2d at 722-25, 242 P.2d at 620-22. Interestingly enough, the appellate court had found the Charter to be binding without such independent legislation. 217 P.2d 481 (Cal. Dist. Ct. App. 1950). For a further discussion of the case, see Schulter, *The Domestic Status of the Human Rights Clauses of the United Nations Charter*, 61 CALIF. L. REV. 110 (1973). Since *Sei Fujii*, American courts have consistently applied its reasoning. See, e.g., *Frolova v. Union of Soviet Socialist Republics*, 761 F.2d 370, 373-76 (7th Cir. 1985); *Tel-Oren v. Libyan Arab Republic*, 726 F.2d 744, 809 (D.C. Cir. 1984) (Bork, J., concurring), *cert. denied*, 470 U.S. 1003 (1985); *Diggs v. Richardson*, 555 F.2d 848 (D.C. Cir. 1976); *Camacho v. Rogers*, 199 F. Supp. 155 (S.D.N.Y. 1961). However, in *Dandridge v. Williams*, 397 U.S. 471 (1970), Justice Marshall argued that Article 25 of the Universal Declaration required a finding that a right to receive welfare is now part of man's basic rights. *Id.* at 521 n.14 (Marshall, J., dissenting). Thus, it may be that *Sei Fujii*, which was not appealed to the United States Supreme Court, now may be ready to be dismantled.

64. In an early decision, for example, Articles 100 and 105 of the Charter, which deal with the privileges and immunities of the Secretary-General and the United Nations, were found to be self-executing. *Keeney v. United States*, 218 F.2d 843 (D.C. Cir. 1954).

65. In the *Nambia Case*, 1971 I.C.J. 16, the International Court of Justice in an advisory opinion held that the human rights provisions of the United Nations Charter were binding on all members of the United Nations. See Schwelb, *The International Court of Justice and the Human Rights Clauses of the Charter*, 66 AM. J. INT'L L. 337 (1972). Thus, even if a court were to uphold the doctrine of self-executing treaties, it could still find that the failure to draft independent legislation is itself a legally-cognizable wrong.

fied the Covenants, attorneys face the same question posed with respect to the Charter and Universal Declaration, namely, whether either of the Covenants create binding rights and obligations in the absence of implementing legislation. But in countries which have not acceded to the Covenants, such as the United States, an even more difficult problem is faced. Since United States courts take the view that mere ratification of the Charter does not grant individuals any cognizable rights, they can be expected to find that no rights grow out of instruments which the United States has not ratified.⁶⁶

One possible reply to such an argument would be that the Covenants, each of which have more than eighty parties, now are so widely accepted that their obligations bind all countries under the doctrine of customary international law. Custom has always been an important source of international law, and a number of commentators have argued that the Universal Declaration is now part of United States law through customary international law.⁶⁷ This argument has been accepted by at least one American court.⁶⁸

IV. THE CASE FOR AN INTERNATIONAL AIDS TRIBUNAL

Given the lack of suitable international forums, and the difficulties inherent in enforcing international rights in domestic courts, it may well be that an international tribunal dedicated ex-

66. It should also be pointed out that if the United States ever does ratify the Covenants, it is likely that a declaration will also be passed stating that the Covenants are not self-executing. A Presidential recommendation favoring such a declaration was made to the Senate in 1978. See Message of the President Transmitting Four Treaties Pertaining to Human Rights, S. EXEC. DOC. No. 95-C, D, E, and F, 95th Cong., 2d Sess. (1978). See further Wissbrodt, *United States Ratification of the Human Rights Covenants*, 63 MINN. L. REV. 35, 67-68 (1978), and Note, *The Domestic Legal Effect of Declarations that Treaty Provisions are Not Self-Executing*, 57 TEX. L. REV. 233 (1979).

67. See, e.g., M. McDUGAL, H. LASSWELL & L. CHEN, *HUMAN RIGHTS AND WORLD PUBLIC ORDER* 274 (1980); Humphrey, *The International Bill of Rights: Scope and Implementation*, 17 WM. & MARY L. REV. 527, 529 (1976).

68. In *Filartiga v. Pena-Irala*, 630 F.2d 876, 882 (2d Cir. 1980), the Second Circuit found that Article 5 of the Universal Declaration, which prohibits torture, had become part of international customary law and therefore was binding on the United States. See further Blum & Steihardt, *Federal Jurisdiction over International Human Rights Claims: The Alien Tort Claims Act after Filartiga v. Pena-Irala*, 22 HARV. INT'L L.J. 53 (1981); Claude, *The Case of Juelito Filartiga and the Clinic of Hope*, 5 HUM. RTS. Q. 275 (1983). For an earlier case which had rejected the idea that the Declaration had become binding on the United States through customary international law, see *Jamur Prods. Corp. v. Quill*, 51 Misc. 2d 501, 509-10, 273 N.Y.S.2d 348, 356 (Sup. Ct. 1966).

clusively to AIDS cases is necessary.⁶⁹ If, as some medical experts have predicted, a vaccine or cure for AIDS will not be found for at least another twenty years,⁷⁰ and if the number of AIDS cases around the world continues to grow at current rates,⁷¹ an international AIDS tribunal will become increasingly critical for several reasons.

First, the needs of persons already afflicted with AIDS will continue to mount, particularly with respect to such basic items as housing, medical care, and subsistence. Second, future AIDS cases will create new strains in society. As social service delivery systems are stretched to the breaking point, and as AIDS becomes increasingly prevalent throughout all segments of society, communities are likely to become even more panicked and more intolerant. Such intolerance is likely to lead to a creeping loss of civil liberties, especially as those without AIDS begin to feel more threatened by those with AIDS. Third, existing national legal systems, already bogged down and unable to dispense speedy justice, will become even more overcrowded and more unworkable, until finally case overload shuts them down completely.

While such predictions might strike some as too dire, one need only imagine what society will look like if the predictions are only partially correct to realize that effective management of the AIDS crisis will have to include a global approach to the legal problems spawned by AIDS. Indeed, even if mankind could survive the AIDS crisis without an international legal approach to AIDS, one would be hard pressed to argue that such an approach would not help to alleviate the crisis.

The establishment of an international AIDS tribunal, modelled along the lines of the European and Inter-American human rights courts, would go far to avoid such consequences. While the exact details of the tribunal could only be worked out at an international conference convened for such a purpose, some basic points seem clear. First, the tribunal should seek to achieve three goals. It

69. Nagendra Singh, the President of the International Court of Justice, already has suggested that a forum just for international human rights cases be established, either within the Court or as a separate body. N. SINGH, ENFORCEMENT OF HUMAN RIGHTS IN PEACE & WAR AND THE FUTURE OF HUMANITY 139-42 (1986). Along the same lines, see Comment, *Effective Enforcement of the Law of Nations: A Proposed International Human Rights Organization*, 15 CAL. W. INT'L L.J. 705 (1985).

70. Jarvis, *supra* note 2, at 1002-04. See also Goudreau, *Conference: No AIDS Cure in Sight*, Miami Herald, June 18, 1988, at 1, col. 5.

71. See *supra* note 2.

should provide effective redress for AIDS victims. Whether the tribunal should be available to all AIDS victims in the first instance, or only to those who have been unable to receive adequate redress in their own legal systems, is an open question.

Second, an AIDS tribunal should monitor, and where necessary be able to declare invalid, all national laws which, either in purpose or application, have the effect of denying basic human rights to AIDS victims. In this regard, the cornerstone of the tribunal's work will be in the basic areas of concern which have already been identified in the international AIDS debate: privacy, livelihood, treatment, research, and victim distinction. Finally, the tribunal should seek to educate the public about AIDS in an attempt to increase its knowledge about AIDS as well as its respect for the rights of AIDS victims.

Although the commission-court model could be adopted, special consideration should be given to the fact that AIDS is a terminal disease, and one which often will require accelerated action. As such, it will be necessary to provide streamlined procedures for the bringing and hearing of claims.⁷² Since AIDS is an international problem, the AIDS tribunal should be open to all persons regardless of their national origin. Accordingly, it would be preferable that satellite offices and panels of the tribunal be established at various points around the globe, rather than situating the tribunal in a single location.

The AIDS tribunal either could be made part of the United Nations or could be constituted as a separate institution. In either case, it would need to consult regularly with officials of the World Health Organization as well as national medical entities. Among the staff members of the tribunal there should be a broad cross-sample of medical, legal and social experts.

Could such a tribunal function? Recent history suggests that the answer is yes. Numerous examples exist of international tribu-

72. In its 1987 study on AIDS and the Criminal Justice System, the Association of the Bar of the City of New York found that in at least some instances cases involving AIDS-infected defendants intentionally were delayed in the hopes that the accused would die prior to trial. New York City officials are now investigating the charges. Barbieri, *City to Probe Court Delays for Defendants with AIDS*, MANHATTAN LAW., May 24, 1988, at 11, col. 1. On the civil side, some AIDS-infected plaintiffs have taken the step of including in their wills a direction to their executors that their suits be continued even if their deaths precede the end of their lawsuits. See, e.g., Barbieri, *Judge Grills Baker & McKenzie's Top NY Partner*, MANHATTAN LAW., May 10, 1988, at 1, col. 2, at 17, col. 4.

nals handling vital transnational issues.⁷³ The most prominent of these tribunals is the Iran-United States Claims Tribunal at The Hague, which was formed pursuant to the Algiers Accord which ended the 1979-81 American Embassy hostage crisis.⁷⁴ There are nine arbitrators at the Iran-United States Claims Tribunal, and they sit in panels (known as chambers) of three, with the chairman of each being from a neutral country.⁷⁵ On each panel there is an American judge as well as an Iranian judge, and a simple majority is sufficient to decide a given case. Besides hearing the claims of private individuals, the panels also have ruled, usually *en banc*, on claims by the countries themselves.

Despite the animosity of the United States and Iran towards one another, the Tribunal has, with only limited interruption, been able to carry on its work. It already has disposed of a large number of cases and is moving forward on many more.⁷⁶ Given the hostile

73. The United States, for example, has participated in international claims tribunals since 1794, when it concluded the Jay Treaty with Great Britain. The arbitral tribunal created pursuant to the treaty subsequently issued over 500 awards concerning claims arising from the American Revolutionary War. In the 19th century, a similar arbitral commission was established by the United States and Mexico following the Mexican War. The United States also created arbitration panels to hear claims concerning Ecuador, Peru, Spain, and Venezuela. Following the end of the American Civil War, the United States and Great Britain held the famous *Alabama* arbitration before a panel of five arbitrators drawn from the United States, Great Britain, and three neutral countries. In the 20th century, a mixed-claims commission was established to hear claims between Germany and the United States after World War I. After World War II, a United States-Italian Conciliation Commission was created pursuant to the peace treaty signed by the two countries. In 1965, a Lake Ontario Claims Tribunal was created by the United States and Canada. See generally A. FELLER, *THE MEXICAN CLAIMS COMMISSIONS* (1935); JANIS, *supra* note 6, at 91-97; A. STUYT, *SURVEY OF INTERNATIONAL ARBITRATIONS: 1794-1970* (1972); Bilder, *International Dispute Settlement and the Role of International Adjudication*, 1 EMORY J. INT'L DIS. RES. 131 (1987).

74. See Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran, Jan. 19, 1981, United States-Iran, 81 Dep't St. Bull. 1, 4 (Feb. 1981), *reprinted in* 20 I.L.M. 230, 232 (1981). The Tribunal was established after resort to the International Court of Justice by the United States failed to resolve the crisis. See United States Diplomatic and Consular Staff in Tehran, 1980 I.C.J. 3. The inability of the Court to terminate the crisis is discussed in Janis, *The Role of the International Court in the Hostages Crisis*, 13 CONN. L. REV. 263 (1981).

75. See Mosk, *The Role of Party-Appointed Arbitrators in International Arbitration: The Experience of the Iran-United States Claims Tribunal*, 1 TRANSNAT'L LAW 253 (1988).

76. For a review of the Tribunal's work, see Bockstiegel, *Applying the UNCITRAL Rules: The Experience of the Iran-United States Claims Tribunal*, 4 INT'L TAX & BUS. LAW. 266 (1986); Brower, *Current Developments in the Law of Expropriation and Compensation: A Preliminary Survey of Awards of the Iran-United States Claims Tribunal*, 21 INT'L LAW. 639 (1987); Robinson, *Recent Developments at the Iran-United States Claims Tribunal*, 17 INT'L LAW. 661 (1983); Stein, *Jurisprudence and Jurists' Prudence: The Iranian-Forum Clause Decisions of the Iran-U.S. Claims Tribunal*, 78 AM. J. INT'L L. 1 (1984).

environment in which the Tribunal has had to work, and the success which it has enjoyed to date, there is every reason to believe that an international AIDS tribunal also could function effectively.

V. CONCLUSION

The extraordinary impact of the AIDS crisis poses a seemingly inexhaustible supply of challenges for the nations of the world. For lawyers who represent AIDS victims, the first order of business is to find effective means which will serve the needs of their clients. International law should be, and an international AIDS tribunal could be, a part of those means.