Some Reflections on the Right of Access to Justice in Its Wide Dimension

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I Introduction

It is with special satisfaction that I associate myself with this just and timely tribute to Professor Budislav Vukas, with whom I have shared some memorable moments of fruitful academic work at the Institut de Droit International. I take the occasion to address briefly a topic which is of great significance to me, namely, that of the right of access to justice in its wide dimension. The right of access to justice (comprising the right to an effective domestic remedy and to its exercise with full judicial guarantees of the due process of law, and the faithful execution of the judgment), at national and international levels, is, in effect, a fundamental cornerstone of the protection of human rights. It is provided for, e.g., under the human rights treaties endowed nowadays with international human rights tribunals, namely, the European Convention on Human Rights, the American Convention on Human Rights, and the African Charter on Human and Peoples’ Rights. The right of access to justice conforms a true right to the Law, disclosing a conception of access to justice lato sensu.

II The Normative Dimension

In so far as access to international justice is concerned, the right of individual petition has proven to be an effective means of resolving not only cases pertaining to individuals, but also cases of massive and systematic violations of human rights. At normative level, the fundamental importance of the provision on the

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right of individual petition was reckoned in the corresponding *travaux préparatoires* of the three aforementioned regional Conventions on Human Rights. Under each of them the right of individual petition has, in practice, and not surprisingly, had a distinct historical development. Under the three Conventions, however, the pursuance of a wide conception *ratione personae* of the right of individual petition — a wide conception of the *legitimatio ad causam* — has had the immediate effect of enlarging the scope of protection, mainly in cases where the alleged victims (e.g., *incommunicado* detainees, disappeared persons, among other situations) find themselves in the impossibility to act on their own, and stand in need of the initiative of a third party as petitioner on their behalf.

### III The Procedural Dimension

Of all the mechanisms of international protection of human rights, the right of individual petition is in effect the most dynamic, in attributing the initiative of action to the individual petitioner himself (the ostensibly weaker party *vis-à-vis* the public power), distinctly from the exercise *ex officio* of other methods (such as those of reports and investigations) on the part of the organs of international supervision. The granting of *locus standi in judicio* to individuals before international human rights tribunals, in all stages of the procedure before them, has contributed to render the protected rights truly effective.

The human person has thus been erected as subject of the International Law of Human Rights, endowed with juridico-procedural capacity in the proceedings before the Inter-American Court. This has undoubtedly been a development of much significance; as I saw it fit to ponder in my intervention of 10.06.2003 at the plenary of the General Assembly of the OAS in Santiago of Chile, as then President of the Inter-American Court of Human Rights, this latter, in the evolution of its procedures and of its case-law, has given a relevant contribution to

the consolidation of the new paradigm of International Law, the new *jus gentium* of the XX1st century, which recognizes the human being as subject of rights.¹