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The Organization of American States

by Natalie Knowlton

The international community focused its attention on protecting human rights in response to horrendous human rights abuses during World War II. Latin and South American states enacted The American Declaration of the Rights and Duties of Man [Declaration] in 1948, shortly after their creation of the Organization of American States [OAS]. While the Declaration set forth dozens of rights, little was done in the next decade to establish a means for their protection.

The 1948 Charter of the OAS [Charter] originally provided for a Commission on Human Rights but one was not formally established until the amending 1959 Protocol of Buenos Aires [Protocol]. The Protocol established the Inter-American Commission on Human Rights, but gave it little power and only a vague mandate to promote human rights. Recognizing ongoing abuses and the need to strengthen the human rights system, the OAS adopted the American Convention on Human Rights [Convention] in 1978.

The Convention reaffirmed the region's commitment to human rights and empowered the Commission. It also established the Inter-American Court of Human Rights [Court] to work with the Commission and further ensure compliance with the Convention. Combined, the Commission and the Court form the sole organ dealing with the promotion and protection of human rights in the Americas. The Commission publishes reports, carries out site visits and reviews petitions which it may then pass along to the Court. The Court has contentious and advisory jurisdiction over signatory members and its decisions are binding.

Because of the system's uneven development--the Commission operating independently prior to the Court's establishment--the joint venture of the Court and Commission has been constrained by institutional problems. While there have been calls for major changes, immediate reforms rest largely on increased cooperation between the Commission and Court. The Inter-American system has already made a positive impact on human rights in the region and further reforms and improvements will create an even more successful regime.

Inter-American Commission on Human Rights

This section is divided into Primary and Secondary sources.

Primary Sources

Conference of American States and Ninth International Conference of American States. 1948. [The American Declaration of the Rights and Duties of Man](http://www.oas.org/juridico/English/ga-Res98/Eres1591.htm).
<http://www.oas.org/juridico/English/ga-Res98/Eres1591.htm>.

Inter-American Commission on Human Rights. 2005. [Annual Report of the Inter-American Commission on Human Rights 2004](http://www.cidh.oas.org/annualrep/2004eng/toc.htm). Inter-American Commission on Human Rights. OEA/Ser.L/V/II.122. <http://www.cidh.oas.org/annualrep/2004eng/toc.htm>.

Official 2004 report of the composition and activities of the Commission. Reviews the Commission's 2004 sessions, current petitions, cases before it, and country-based reports illustrating developments in the region. Includes a special study on the rapporteurship on migrant workers. Annex includes press releases and speeches.

Inter-American Commission on Human Rights. 2001. Rules of Procedure of the Inter-American Commission on Human Rights. <https://www.cidh.oas.org/Basicos/basic16.htm>

Inter-American Commission on Human Rights. 1971. Statute of the Inter-American Commission on Human Rights. <https://www.cidh.oas.org/Basicos/basic15.htm>.

Organization of American States. 1948. Charter of the Organization of American States. <http://www.oas.org/juridico/English/charter.html>.

Secondary Sources

Elizabeth Abi-Mershed and Marcelo Montecino. 1994. "Thirty-Five Years Defending Human Rights." *Americas*. 46(6): 50.

The article argues that the Commission's twofold role of promotion and protection of human rights reflects a dramatic development in its role from past to present. Uses the example of disappearances to illustrate that the Commission has challenged the gross and systematic human rights abuses in the region. Emphasizes the need for increased cooperation between the Commission and Court.

Tom Farer. 1997. "The Rise of the Inter-American Human Rights Regime: No Longer a Unicorn, Not yet an Ox." *Human Rights Quarterly*. 19(3): 510.

Traces Commission growth and prospects for the future, focusing specifically on the Commission's role in issuing country reports. The article looks to Panama, Nicaragua, and Argentina as illustrative of the reports' positive effects on violating governments and concludes that these reports must continue to be the Commission's central preoccupation.

Kimberly D. King-Hopkins. 2000. "Inter-American Commission on Human Rights: Is Its Bark Worse Than Its Bite in Resolving Human Rights Disputes?" *Tulsa Law Journal*. 421(Winter).

Discusses the background and framework of the Commission and explores enforcement mechanisms. The article focuses on four cases that illustrate the Commission in practice, commenting especially on the problems in the Commission's handling of petitions. Author concludes by emphasizing the need for institutional changes.

Lawrence J. Leblanc. 1977. *The OAS and the Promotion and Protection of Human Rights*. The Hague: Martinus Nijhoff.

Concentrates on the OAS and its developments in promoting human rights. Analyses the origins, organization, and role of the Commission and its activities before the American Convention and creation of the Court. Case studies illustrate the Commission's experience in processing petitions.

Tara Melish. 2002. Protecting Economic, Social and Cultural Rights in the Inter-American Human Rights System: A Manual Presenting Claims. New Haven; Ecuador: Center for International Human Rights, Yale Law School; Centro de Derechos Económicos y Sociales.

Analyzes the jurisprudence of the Commission and Court, in the context of creating more economic, social, and cultural rights claims. Helps the advocate of these rights to present an effective claim and offers approaches through which to do so. Considers additional procedural issues in preparing a case. Appendix contains forms and model petition.

Organization of American States: Inter-American Commission on Human Rights. 1979. *Handbook of Existing Rules Pertaining to Human Rights*. Washington, D.C.: General Secretariat, Organization of American States.

Reviews the OAS purpose, organs and agreements pertaining to human rights. Covers the creation and organization of the Commission and the expansion of its functions and powers. Appendix includes the founding texts, model complaint, and on-site observation information.

David Padilla. 1991. "Speaking with a Conscience: Inter-American Commission on Human Rights." *Americas (English Edition)*. 43(No. 5-6): 94.

Discusses the post-WWII evolution of the OAS and human rights, specifically the history of the Commission as the 'conscience of the Americas.' The development of its functions, efficacy of on-site visits and country reports in improving human rights in the region is illustrated using country specific examples.

David Padilla. 1999. "Special Perspectives on Human Rights." *Americas*. 51(6): 54.

Provides historical information on the Commission and discusses various innovations including a series of thematic rapporteurships. In the areas of indigenous persons, prisons and penal conditions, women and girls, migrant workers, displaced persons, children, and freedom of expression, this article examines how these rapporteurships have furthered the protection of their respective rights.

David Padilla. 1993. "The Inter-American Commission on Human Rights of the Organization of American States: A Case Study." *The American University Journal of International Law & Policy*. 9(95).

Offers a better understanding of the Commission as a complaint forum by private actors. This article discusses the functions performed by human rights NGOs involving petitions, investigations, hearings, on-site visits, settlements, and other provisional measures when availing themselves of the Commission's services. Provides examples of these functions using case studies.

W. Michael Reisman. 1995. "Practical Matters for Consideration in the Establishment of a Regional Human Rights Mechanism: Lessons from the Inter-American Experience." *Saint Louis-Warsaw Transatlantic Law Journal*.

Focuses on the Commission's organizational structure, jurisdiction, and activities and suggests the Inter-American human rights experience as being applicable to other regions. The author

offers models and considerations for establishing regional human rights mechanisms based on the Inter-American model.

Inter-American Court of Human Rights

This section is divided into Primary and Secondary sources.

Primary Sources

Inter-American Court of Human Rights. 2004. Annual Report of the Inter-American Court of Human Rights 2004. Inter-American Court of Human Rights. OEA/Ser.L/V/III.65. http://www.corteidh.or.cr/public_ing/info_04_ing.pdf.

The most up-to-date report of the Court's activities. Includes an official history of the court, record of recent jurisdictional and advisory activities, discussion of the Court's activities with the Commission, and a section on inter-institutional cooperation agreements.

Inter-American Court of Human Rights. 2000/2003. Rules of Procedure of the Inter-American Court of Human Rights. http://www.corteidh.or.cr/general_ing/rules.html.

Organization of American States. 1979. The American Convention on Human Rights. <http://www.oas.org/juridico/english/Treaties/b-32.htm>.

Organization of American States. 1979. Statute of the Inter-American Court of Human Rights. <http://www.cidh.org/Basicos/basic17.htm>.

Secondary Sources

Thomas Buergenthal. 1985. "The Advisory Practice of the Inter-American Human Rights Court." *The American Society of International Law*. 1.

This article examines the role and scope of the Court's advisory jurisdiction and selected procedural issues relative to the practice of this jurisdiction. Author suggests that advisory jurisdiction has positively contributed to human rights law and emerging concepts illustrate the continued usefulness of this process in implementing human rights obligations in the Americas.

Thomas Buergenthal. 1982. "The Inter-American Court of Human Rights." *The American Society of International Law*.

Provides an overview of the Court's institutional framework and a detailed description of the scope and application of contentious and advisory jurisdiction. Author discusses problematic issues within this framework and argues for the Commission to take the lead in engaging the Court by referring cases and requesting advisory opinions.

Thomas Buergenthal. 2005. "Remembering the Early Years of the Inter-American Court of Human Rights." *New York University Journal of International Law and Politics*. 37(259).

Reflection of a former Court judge on the early years of the Court and the problems facing the Court at that time. Discusses the initial election, early cases, frustrations with the Commission, and relations with the European Court of Human Rights. Concludes with present observations and suggestions for increased effectiveness.

Richard Burchill; David P. Forsythe and Patrice C. McMahon. 2003. "The Role of Democracy in the Protection of Human Rights: Lessons from the European and Inter-American Human Rights Systems." In *Human Rights and Diversity: Area Studies Revisited*. Lincoln: University of Nebraska Press.

Jorge Luis Delgado. 1999. "The Inter-American Court of Human Rights." *ILSA Journal of International & Comparative Law*. 541(Summer).

This article provides an overview of the authoritative instruments governing the Court and the organization of judges, President, Vice-President, Permanent Commission, and Secretariat. Also includes a discussion of the Court's contentious and advisory jurisdictions and the extent to which both reach.

Lynda E. Frost. 1992. "The Evolution of the Inter-American Court of Human Rights: Reflections of Present and Former Judges." *Human Rights Quarterly*. 14(2): 171.

This article recounts an interview with nine former and present judges, presenting their views on the evolution of the Inter-American Court. The judges respond to questions regarding the manner of operations, the problematic relationship with the Commission, and the changing role of the Court.

Jo M. Pasqualucci. 2002. "Advisory Practice of the Inter-American Court of Human Rights: Contributing to the Evolution of International Human Rights Law." *Stanford Journal of International Law*. 38(241).

Comprehensive study of the Court's advisory jurisdiction. Outlines the role and scope of this jurisdiction, and recommends a three-prong test in determining its use. Author sets forth proposals for refining and expanding, pushing for an even stronger and more effective advisory jurisdiction.

Jo M. Pasqualucci. 1995. "The Inter-American Human Rights System: Establishing Precedents and Procedure in Human Rights Law." *The University of Miami Inter-American Law Review*. 26(297).

Evaluates the Inter-American system's significant developments and limitations. Beginning with a general discussion of international human rights law, this article evaluates jurisprudential, procedural, and evidentiary precedents set by the Court. Author concludes with limitations on effectiveness and enforcement.

Jo M. Pasqualucci. 2003. *The Practice and Procedure of the Inter-American Court of Human Rights*. Cambridge, UK; New York, NY: Cambridge University Press.

Comprehensive look at the Court's advisory and contentious jurisdiction, provisional measure orders, procedural issues and recent changes to Rules of Procedure. Analyzing and critiquing the

practices and procedures, as well as the relationship between the Commission and Court, this book concludes with proposed changes to the Inter-American system.

Dinah Shelton. 1994. "The Jurisprudence of the Inter-American Court of Human Rights." *The American University Journal of International Law & Policy*. 10(333).

Analyzes the decisions and opinions of the Court to assess the accomplishments and limitations. Discusses the jurisdiction, procedure, evidentiary issues, and the normative texts binding the Court. Author concludes that the Court's jurisprudence has made significant contributions to the interpretation and application of human rights in the region.

Joint Venture of the Court and Commission

Christina M. Cerna. 2004. "The Inter-American System for the Protection of Human Rights." *Florida Journal of International Law*. 16: 195-212.

Examines the Inter-American system for human rights in a historical context to draw lessons from the past. Discusses the issue of state compliance with decisions set forth by the Commission and Court, specifically in Peru during the 1990s. Author gives her recommendations and urges increased education on the Inter-American system in the U.S..

Michael F. Cosgrove. 2000. "Protecting the Protectors: Preventing the Decline of the Inter-American System for the Protection of Human Rights." *Case Western Reserve Journal of International Law*. 32(1): 39.

Discusses the composition, tools, and function of the Commission and Court, their relationship to one another, and how their procedures create the potential for backlog and delay. This article analyzes the effects of several possible procedural reforms and suggests reform is necessary for the survival of the system.

Scott Davidson. 1997. The Inter-American Human Rights System. Aldershot, Hants, England; Brookfield, Vt.: Dartmouth.

Comprehensive account of the Inter-American human rights system. Discusses background, competence of Commission, and system of individual petitions. The author reviews the jurisprudence of both the Commission and Court and the contribution to international human rights law, concluding with an assessment of the system's overall effectiveness.

Claudio Grossman. 2000. "Moving toward Improved Human Rights Enforcement in the Americas." *Human Rights: Journal of the Section of Individual Rights & Responsibilities*. 27(3): 16.

Examines responsibilities of the Commission and Court in supervising human rights compliance, focusing on the Commission's visits in loco, referrals to the Court, special rapporteurs, and role of the case system. Discusses problems with enforcement but counters these issues with the impact the two organs have at domestic levels in the national courts.

Cecilia Medina. 1990. "The Inter-American Commission on Human Rights and the Inter-American Court of Human Rights: Reflections on a Joint Venture." *Human Rights Quarterly*. 12(4): 439.

Analyzes the Court's manner of operation and its introduction into the inter-American human rights system. Discussing how the Commission's role changed after the Court's introduction, the author concludes with an analysis of the limitations that may impede the system in the future.

Cecilia Medina. 1998. "Toward Effectiveness in the Protection of Human Rights in the Americas." *Transnational Law & Contemporary Problems*. 8(2): 337.

Author examines what she believes to be the main human rights issues in the region and what the OAS and its organs have done to address them. Looking at poverty, women, and indigenous people, the article concludes with suggestions for changes to the system, emphasizing the necessity for both promotion and protection efforts.

Sonia Picado. 2004. "The Evolution of Democracy and Human Rights in Latin America: A Ten Year Perspective." *Human Rights Brief*. <http://www.wcl.american.edu/hrbrief/11/3picado.cfm>.

In the context of democracy's relationship to human rights, this review focuses on the OAS in the last decade, looking to regional democratic initiatives and the work of the Commission and Court. Conclusion illustrates existing problems in both institutions and offers suggestions for remedy.

Victor Rodriguez Rescia and Marc David Seitles. 2000. "The Development of the Inter-American Human Rights System: A Historical Perspective and a Modern-Day Critique." *New York Law School Journal of Human Rights*. 593(Spring).

Reviews the historical development of human rights in the Americas through the international conferences and meetings that led to the Commission and Court's establishment. The conclusion illuminates structural, normative, and procedural problems and provides remedies.

Rhona K. M. Smith. 2005. "Chapter 8: The Organization of American States." *Textbook on International Human Rights*. Anonymous. Oxford: Oxford University Press.

John F. Stack Jr. and Mary L. Volcansek. 1997. "Human Rights in the Inter-American System: The Struggle for Emerging Legitimacy?" *Law above Nations: Supranational Courts and the Legalization of Politics*. Anonymous. Gainesville, FL: University Press of Florida.

Antonio Augusto Cancado Trindade. 2000. "Current State and Perspectives of the Inter-American System of Human Rights Protection at the Dawn of the New Century." *Tulane Journal of International and Comparative Law*.

After a detailed discussion of the Inter-American human rights system, authors present suggestions for strengthening the mechanisms of protection. Improved procedure, greater coordination between the Court and Commission, and follow-up procedures for verification and monitoring cases are among the recommendations for reassessing the system.