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Introduction

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Introduction

by Dean Claudio Grossman*

The *Human Rights Brief* has dedicated this issue to discuss the future of the Inter-American System of Human Rights (IASHR, the System). Most of the contributors to this edition participated in a special conference organized by American University Washington College of Law (WCL) and more than thirty of the most renowned schools and academic centers from around the world. The sponsoring institutions have contributed to the development and support of the IASHR through clinics, externships, research, and faculty activism.

The Inter-American System has played a crucial role in the promotion and protection of human rights in the region. Considering the historical context in which the System operates, we can identify three phases in its development. Noting, however, the existence of different realities in the region, there is no strict separation between these phases. Accordingly, elements of prior phases can still be found in some countries today.

In the first phase, which lasted until roughly the 1980s, the System primarily dealt with dictatorial regimes that were characterized by mass and gross violations of human rights. The Inter-American Commission on Human Rights (IACHR, the Commission) mostly responded to those situations by presenting and denouncing a country's practices and conditions, including, *inter alia*, torture, mass killings, and forced disappearances, through country reports.

The second phase is characterized by the existence of elected governments in all the countries of the region, with the exception of Cuba. Therefore, the role of the Commission centered on the



Courtesy WCL

rejection of the legacies of dictatorial regimes. In this new phase of democratic transition, the governments no longer pursued as state policy the practice of disappearances and arbitrary killings but rather announced their intention to improve human rights. However, the countries still had to deal with serious situations that resulted from the institutional and cultural legacies of the dictatorships. Most of the countries also participated in the system of individual petitions involving the Commission and/or the Inter-American Court of Human Rights (IACtHR, the Court) once the countries had declared their acceptance of the Court's jurisdiction. The System transitioned from country reports to a semi-judicial and judicial system of supervision. In this phase, the Court and Commission's decisions were crucial to rejecting impunity and declaring the incompatibility of amnesty laws with the American Convention on Human Rights.

Through these decisions, the System made important and significant contributions, including limiting the role of military tribunals in judging civilians and rejecting sweeping contempt laws, or *desacato* (as they are known in Spanish), that criminalized criticism of actions of individuals in the public domain. The Commission and Court's decisions during this period contributed to the further consolidation of the System's legitimacy as a promoter of fundamental rights and freedoms in the hemisphere.

The third and current phase presents the System with the challenge of further supporting states and the populations of the hemisphere, as well as ensuring states' full compliance with international obligations. Democracy is a dynamic political system that is perfectible, and its further development in the region includes ensuring freedom of expression, due process, the rejection of discrimination for any reason, and equal opportunity for all. Poverty, denial of the rights of indigenous peoples, and discrimination on the basis of gender, sexual orientation, or ethnicity are some of the issues of concern within the region, as they are incompatible with the obligations freely acquired by OAS Member States. In this new phase, the individual petitions remain the most important method of promoting compliance with international obligations in cases where individuals argue that rights have been violated. Additionally, special rapporteurs, studies, and general recommendations contribute to the formulation of public policy in specific areas, such as the rights

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of indigenous peoples, the rights of women, the rights of migrant workers and their families, freedom of expression, the rights of the child, the rights of persons deprived of liberty, and the rights of gay, transsexual, bisexual, and intersex persons.

In this current phase, there is, however, an important ideological struggle taking place concerning the role of human rights law, as defined by the Inter-American instruments, in the expansion of democracy and the achievement of a situation in which every individual's rights are protected. Some countries view classical notions of human rights law, such as an independent judiciary, separation of powers, and freedom of expression, as contrary to their political projects. Recently, Venezuela denounced the American Convention on Human Rights after a long period of noncompliance with the Court's binding decisions. Several other countries have also raised issues regarding the Commission, including its powers to adopt precautionary measures and its procedures in the case system; in these states' view, the Commission's procedures do not afford the Member States equal footing with petitioners. Still other countries have criticized Chapter IV of the Annual Report of the Commission, which identifies the most serious situations concerning violations of human rights in the Americas. Some have questioned the fact that the United States, Canada, and several Caribbean countries have not ratified the American Convention or declared acceptance of the Court's jurisdiction. Other criticisms address the Commission's decisions regarding the allocation of resources, specifically voluntary donations, which some countries protest are not evenly distributed among all rapporteurs.

Member States initiated a process of reform to modify the System and address what, in their view, are seen as issues of concern. However, civil society has protested this reform process and has argued it is an attempt to undermine, in particular, the power of the Commission to act as an independent supervisory organ. Civil society also has argued that it undermines the Commission's and the Court's ability to determine, through the organs' regulations, how to adapt the Convention to the needs of Member States and to promote and protect human rights. Additionally, civil society has taken issue with both the OAS Secretary General's attitude — which has been viewed as questioning the Commission's authority to issue provisional measures — as well as his role in seeking the termination of former Executive Secretary of the Commission Santiago Canton.

In order to contribute to the current discussion taking place within the OAS, WCL organized a conference to evaluate the System's challenges and needed reforms. The conference noted that the current discussion revolving around the strengthening and reforming of the IASHR is improperly focused: *e.g.*, it does not sufficiently seek to ensure compliance with decisions of the Commission and Court, to improve access to justice, or to reinforce the necessary independence and autonomy of the supervisory organs. Designed to contribute to the current debate, the conference highlighted the recommendations and perspectives of prominent academics and experts. An issue of this publication, focused on these same issues, was also planned by the *Brief* staff as another effort to enrich the discussion and expand the outreach of the conference.

Scholars and practitioners were offered the opportunity to submit articles to the *Brief*. In the first article, Santiago Canton,

former Executive Secretary of the Commission and WCL alumnus addresses needed structural reforms within the OAS that would strengthen the protection of human rights. The article first discusses the impacts of the IASHR in supporting and strengthening human rights within OAS Member States. Canton specifically addresses the System's impact in advancing democracy and strengthening the rule of law. The article then addresses needed reforms not only for the Commission, but for the OAS as a whole, with the goal of strengthening human rights and re-creating the OAS as a relevant regional organization.

Diego Rodríguez-Pinzón, Co-Director of the Academy on Human Rights and Humanitarian Law, Professorial Lecturer in Residence at WCL, and alumnus explores in his article the current legal status of precautionary measures and their importance within the Inter-American Commission. Rodríguez-Pinzón goes on to explain the binding nature of precautionary measures, the Commission's legal authority to issue them, and the manner in which other international legal bodies utilize precautionary or interim measures. In dealing with the current debate regarding reforms, the author argues that current concerns over the use of precautionary measures are unfounded and that the Commission has been deliberate and responsible in using these important tools.

The third article by Francisco Rivera Juaristi, Director of the International Human Rights Clinic at Santa Clara University Law School and WCL alumnus, outlines the impact that the failure of the United States to ratify the American Convention has had on the IASHR. The author addresses the need for the United States to ratify the American Convention and engage more fully with the Commission. Through his critique, Rivera explores alternatives to the OAS human rights system and discusses the historical erosion of U.S. leadership in protecting and promoting human rights in the region.

In the fourth article, Oswaldo Ruiz-Chiriboga, doctoral researcher at Ghent University and creator of the IACtHR blog, discusses the recent proposals by Ecuador relating to the function and role of the Special Rapporteurship on Freedom of Expression (SRFE). Ruiz-Chiriboga addresses the history of the SRFE, its process of creation, its mandate, and the controversial issues raised by Ecuador questioning the SRFE's role. The article concludes that although Ecuador had political motivations in presenting proposals to curtail the SRFE, many of the proposals had merit and the issue should be investigated further.

Three participants of the WCL conference also published their remarks in this edition. Mónica Pinto, Dean of the School of Law of the University of Buenos Aires, directly addresses the role of the Commission and Court in the protection of human rights. Through a general discussion of the Commission's history and the Court's key decisions, Pinto outlines the Inter-American System's achievements and weaknesses, as well as the current criticism it is facing. Pinto addresses specific challenges, including growing political opposition, and concludes that Member States should continue to fight vigorously for the survival of the OAS and its human rights system.

Viviana Krsticevic, Executive Director of the Center for Justice and International Law (CEJIL), addresses the topic of how to best strengthen the Inter-American Commission and Court. Her remarks focus on several key debates

regarding reform, including procedural reforms that will provide balance between promotion and protection of the System, access to victims, thematic rapporteurships, and general standards. The presentation then outlines general reforms needed within the System including, *inter alia*, funding and elections. Krsticevic's presentation concludes with a discussion on the role that states and the OAS play in geopolitics in the Americas, and its implications for the Inter-American System.

Finally, Jorge Taiana, currently General Director of San Martin University's International Centre for Political Studies and former Minister of Foreign Affairs of Argentina and Executive Secretary of the Inter-American Commission on Human Rights, makes a general evaluation of the Commission's contributions. Taiana begins his presentation discussing the three historical periods of the Commission. He goes on to discuss the key developments within the Commission and its impacts on human rights in the region, including strengthening the rule of law, gender equality, indigenous rights, and developing standards for truth, justice, and reparations for serious human rights violations. The presentation concludes by addressing the current challenges facing the IASHR moving forward.

Through the numerous articles submitted by leading experts in the field of human rights, this edition of the *Human Rights Brief*

addresses the real and substantial challenges the Inter-American System of Human Rights faces as it moves forward. American University Washington College of Law thanks the authors for their contributions, as well as the co-sponsoring institutions and panelists of the conference. We would like to make special note of the contributions of His Excellency Joel Antonio Hernández García, Ambassador and Permanent Representative of Mexico to the OAS, and His Excellency Walter Jorge Albán Peralta, Ambassador and Permanent Representative of Peru to the OAS. We appreciate the participation and dialogue that took place by the ambassadors while serving as panelists at the conference.

Prior efforts to reform the System have resulted in its strengthening. These reforms have included creating the system of individual petitions, the adoption of treaty law, and the right of victims to appear directly before the Inter-American Court. Those reforms were possible, to a great extent, due to contributions of civil society and academia in the context of a rich and fruitful dialogue with the OAS Member States. Civil society and academia greatly value that the OAS Member States created a system that, as a result of the commitment to important values of human dignity, even allows individuals to file petitions against those same states for failure to comply with international norms. To contribute to a real expansion of human rights in the region, the voices of all the stakeholders must continue to be considered. We hope that this publication will contribute to that result.