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U.S. Exceptionalism and the Strengthening Process of the Inter-American Human Rights System

by Francisco J. Rivera Juaristi*

“Our refusal to join in the international implementation of the principles we so loudly and frequently proclaim cannot help but give the impression that we do not practice what we preach . . . [W]e seriously undermine our own case when we resist joining in the international endeavor to enforce these rights, which we ourselves had so much to do with launching.” (Charles Yost, former U.S. Ambassador to the United Nations)¹

INTRODUCTION

The current reform process of the Inter-American Human Rights System (IAHRS, System) has as much to do with evaluating the role of the Inter-American Commission on Human Rights (Commission, IACHR) in promoting and protecting human rights in the region as it does with criticizing and rejecting U.S. exceptionalism² in matters of regional human rights law. All of the Spanish-speaking Member States of the Organization of American States (OAS), as well as Brazil, Haiti, and several English-speaking Caribbean States, have at one point³ ratified the American Convention on Human Rights (American Convention).⁴ Most OAS Member States have ratified at least one or more additional regional human rights treaties.⁵ All OAS Member States, except two, have ratified the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Convention of *Belém do Pará*). The United States has not ratified any of the OAS regional human rights treaties. This lack of universal ratification of regional human rights treaties raises serious questions about the effectiveness and legitimacy of the System.

This article urges the United States to pay its true debt to the Inter-American Human Rights System by fully engaging the System and by finally ratifying the American Convention on Human Rights. First, the article addresses regional criticisms over U.S. exceptionalism within the Inter-American System.

Second, the article describes how this criticism has prompted increased support for the creation of alternatives to the Inter-American Human Rights System that would exclude U.S. participation. Third, it addresses the principal apprehensions to U.S. ratification of the American Convention and argues that such concerns are not insurmountable. Finally, the article concludes that ratification of the American Convention by the United States is necessary to prevent further erosion of the Inter-American Human Rights System and of U.S. leadership in the region.

REGIONAL CRITICISM OVER U.S. EXCEPTIONALISM WITHIN THE INTER-AMERICAN SYSTEM

Influential regional figures, such as Venezuelan President Hugo Chávez, Ecuadorean President Rafael Correa, and Bolivian President Evo Morales, have taken issue with the role the United

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States plays in the System. In a not-so-subtle jab at the United States, they have characterized the System as a tool used and manipulated by “imperial powers”⁶ who refuse to play by the same rules as other states in the region. Venezuela’s President Hugo Chávez justified the state’s decision to denounce the American Convention on grounds of reciprocity and lack of mutuality between all OAS Member

States. He questioned why Venezuela should continue to be bound by a treaty that does not bind all other OAS Member States. At the 2012 OAS General Assembly in Cochabamba, these States, as well as Nicaragua, publicly criticized the Inter-American Commission on Human Rights for allegedly turning a blind eye to human rights violations in the United States.⁷ In his opening speech at that General Assembly, Bolivian President Evo Morales said that the OAS had two options: “it either dies as a servant of the [U.S.] empire or revives to serve all of the nations of the Americas[.]”⁸ Ecuador’s President Rafael Correa echoed President Morales’ views.⁹

Although such rhetoric is uncharacteristic in modern diplomatic discourse, it has been well received by the strong popular bases that brought these presidents to power. For them, the underlying issues that feed the reform process are concerns about universality and mutuality of obligations within the Inter-American System. While mutuality and reciprocity arguments technically do not apply in the context of human rights treaties (because these treaties are not between two or more parties, but rather involve obligations between each State Party and those under its jurisdiction), such arguments are still very much

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persuasive in the court of public opinion. Who would not be offended by the idea that not all states are equal under the law; that — in the words of George Orwell — some are more equal than others? In fact, “imperialistic” and populist anti-yankee oratory aside, these presidents may be making a rather legitimate argument; namely, that if the System is to be effective for some Member States, it has to have legally binding authority over all states.

The United States defends itself against these criticisms by mentioning that the Commission has “jurisdiction” over human rights violations committed within the United States by virtue of the OAS Charter and in light of U.S. commitments under the American Declaration on the Rights and Duties of Man.¹⁰ But full membership in the System requires much more than that.¹¹ Participation in hearings before the Commission is not enough. The System has two main organs (the Commission and the Court) and five major human rights treaties (and a Protocol). The United States has not ratified any of these treaties and barely engages with only one of the System’s organs.

This idea that the United States must fully participate and be accountable before the Inter-American System on an equal footing with other OAS Member States is one that resonates with most observers, participants, and supporters of the System. Despite the fervent opposition that civil society organizations have displayed against the Venezuelan and Ecuadorean proposals during the current reform process, most — if not all — support their call in favor of U.S. ratification of the American Convention. CEJIL (an influential NGO in the region), for example, has been very critical of some of the proposals put forward by states like Venezuela and Ecuador that it considers may in fact “weaken” rather than “strengthen” the System, but it has also agreed with those states’ call in favor of universality and, more specifically, it has agreed with the need for the United States to ratify the American Convention. In every opportunity where the issue has come up, whether in forums organized by the Commission or by academic institutions like American University, or even in events organized by the OAS Permanent Council, there is widespread support for the universal ratification of the American Convention by all OAS Member States, but especially by the United States.

For example, hundreds of human rights defenders, including former presidents of Colombia, Peru, and Ecuador, have signed the Bogotá Declaration, which expresses support for the Inter-American System. This Declaration includes a demand that the “States of the region ratify the Inter-American conventions on human rights as a clear demonstration of their political will to support the [Inter-American System].” It also specifically urges “the government of the United States of America to ratify the American Convention on Human Rights.”¹²

The Inter-American Commission shares the concerns put forward by many Member States and users of the System concerning the lack of universal treaty ratification in the region.

What is certain is that [. . .] the current reform process of the Inter-American System is being fueled, at least in part, by the desire to limit U.S. influence over the System and by resentment against U.S. exceptionalism.

The Commission has established “universal acceptance of the regional human rights instruments” as one of its strategic objectives for 2011–15. Accordingly, the Commission has announced it will focus on promoting universal ratification of these instruments and that in 2013, it will write a report on the consequences of the fact that not all Member States, including the United States, have ratified the American Convention and other Inter-American human rights treaties.¹³

The call for U.S. ratification of the American Convention has gotten louder due to the current debate about the future of the Inter-American System. States, NGOs, individuals, academics, and the Inter-American Commission, are calling for universal ratification of the American Convention and other regional human rights treaties as a way of ensuring that the System is strong for all and not just for some. The absence

of U.S. leadership in this area has affected credibility and public confidence in the System.

PROPOSALS FOR THE CREATION OF ALTERNATIVES TO THE INTER-AMERICAN HUMAN RIGHTS SYSTEM THAT WOULD EXCLUDE U.S. PARTICIPATION

Criticism over U.S. exceptionalism in the region has included proposals that include not only modification of the current System,¹⁴ but also the creation of alternatives to the Inter-American Human Rights System that would exclude the United States (and Canada).¹⁵ Such efforts to exclude the United States from participating in regional organizations are currently underway.

For example, the Community of Latin American and Caribbean States (CELAC) was created in 2010 and has a membership of 33 Latin American and Caribbean states. It purposely excludes the United States and Canada.¹⁶ Despite CELAC being a newcomer in the region, Ecuador has suggested that all OAS functions be “absorbed by CELAC.”¹⁷

Ecuador has also suggested¹⁸ that a human rights supervisory organ be created under the auspices of the *Unión de Naciones Suramericanas* (Union of South American Nations, UNASUR).¹⁹ The influence of UNASUR in the current debate about the OAS should not be underestimated. During the November 2012 Meeting of UNASUR Heads of State, all twelve Member States,²⁰ with the exception of Venezuela,²¹ approved a proposal to request the OAS Secretary General to convoke a meeting of the 25 States Parties²² to the American Convention to be held prior to the upcoming March 2013 OAS Special General Assembly, with the purpose of discussing reforms to the Inter-American System.²³ That is, twelve influential OAS Member States agreed to exclude the United States from participating in a meeting about the System because the United States is not a State Party to the American Convention. Other regional initiatives that exclude the United States, such as the *Alianza Bolivariana para los Pueblos de Nuestra América* (Bolivarian Alliance for the Peoples of Our America, ALBA)²⁴

and the *Cumbres Iberoamericana de Jefes de Estado y de Gobierno* (Ibero-American Conference for Heads of States and Government),²⁵ are also gaining momentum.

It is unclear how or whether these new regional institutions will substitute the role the Inter-American Human Rights System has played in promoting and protecting human rights in the Americas. What is certain is that the creation of CELAC and ALBA, as well as the aforementioned initiatives within UNASUR, demonstrate that the current reform process of the Inter-American System is being fueled, at least in part, by the desire to limit U.S. influence over the System and by resentment against U.S. exceptionalism.²⁶

The United States should not underestimate the effects the current reform process of the Inter-American System may have on U.S. influence over the region. Unless the Obama Administration takes bold and comprehensive action to fully engage with the Inter-American System, the United States risks further erosion of its moral authority as a regional leader in the protection of human rights.

APPREHENSIONS REGARDING U.S. RATIFICATION OF THE AMERICAN CONVENTION

Former U.S. President Jimmy Carter recently raised the issue of universality in an op-ed stating: “[T]he universality of human rights could be achieved if all OAS Member States ratified the [American] Convention. Universal participation in our hemispheric human rights bodies would affirm and strengthen our democracies’ commitment to protect human rights.”²⁷

President Carter signed the American Convention in 1977. At the signing ceremony, he stated, “[T]his blank space on the page has been here for a long time, and it’s with a great deal of pleasure that I sign on behalf of the United States this Convention.”²⁸ President Carter then requested the U.S. Senate’s consent with the following statement:

By giving its advice and consent to ratification of [the American Convention], the Senate will confirm our country’s traditional commitment to the promotion and protection of human rights at home and abroad. I recommend that the Senate give prompt consideration to the treaties and advice and consent to their ratification.²⁹

In 1979, the Senate Foreign Relations Committee held hearings on this issue³⁰ but did not take any further action. Thirty-five years have passed since President Carter signed the American Convention, and the Senate still has not given its consent.³¹

Apprehensions about ratification of the American Convention can be divided into three categories.³² First, there are federalism concerns about how ratification could authorize federal encroachment into matters within the exclusive jurisdiction of states. Second, there are sovereignty concerns about whether international legal obligations may interfere with exclusively domestic affairs. Third, there are concerns about the interpretation of the right to life under the American Convention and its compatibility with U.S. laws on the death penalty and abortion.

The underlying problem with the first two concerns is the erroneous presumption that human rights are exclusively of state or domestic concern. Human rights are inherently of concern to the international community. International human rights law complements domestic norms and mechanisms where the latter inadequately protect or fail to guarantee human dignity. The purpose for the creation and development of international human rights law was precisely to ensure that basic human dignity would not be a subject matter of exclusive concern of governments, whether they are state, local, or federal in nature.

In any case, during the negotiation phase of the treaty drafting process the United States was able to include a federalism clause in Article 28 of the American Convention, which recognizes that some provisions of the Convention fall under the jurisdiction of the federal government and others fall under the jurisdiction of the “constituent units of the federal state.”³³ This clause addresses U.S. concerns about the “federalization” of issues of state concern from a domestic law perspective.³⁴

This clause, however, would not relieve the U.S. federal government from international responsibility that arises out of state and local conduct that is incompatible with the American Convention. General principles of international law establish that treaty obligations are binding on all government actors, including state and local officials in federalist forms of government.³⁵ Mexico, Argentina, Brazil, and Venezuela, for example, are all States Parties to the American Convention and they all have a federalist government structure.³⁶ The Inter-American Commission and the Court have declared all four of these federal states internationally responsible for violations of the American Convention for actions that involved state, provincial or local authorities. Federalism, therefore, does not shield the conduct of its “constituent units” from international responsibility.³⁷ Thus, U.S. ratification of the American Convention would not require a federalization of matters that fall under the exclusive jurisdiction of local states, but ratification of this treaty would indicate that state or federal conduct could give rise to the international liability of the United States.

It is worth noting that ratification of the American Convention would not automatically grant the Inter-American Court of Human Rights jurisdiction over the United States. Pursuant to Article 62 of the American Convention, the Inter-American Court can only exercise jurisdiction over those States Parties that have additionally recognized the Court’s jurisdiction. Thus, the United States can ratify the American Convention without necessarily having to recognize the Court’s jurisdiction. Nevertheless, although this additional step is completely voluntary in nature, U.S. recognition of the Court’s jurisdiction would not only be the right thing to do, but it would also send the right message to others states in the region.

The third category of concerns regarding U.S. ratification of the American Convention has to do with the interpretation of the right to life as recognized in Article 4 of the treaty. Specifically, issues involving the death penalty and abortion are the two main concerns that seem, at least at first glance, to be problematic. Nevertheless, a closer examination suggests that such concerns are also without merit.

Article 4 of the American Convention recognizes the right to life “in general, from the moment of conception.” This language raises concerns that ratification of this treaty could result in a prohibition of legal abortions in the United States. The “legislative” history and subsequent interpretation of this text suggests that ratification of this treaty would not affect the right to have an abortion, nor the right to life of the unborn as understood in the United States.

U.S. laws on abortion are compatible with the American Convention. In the “Baby Boy Case” against the United States, the Inter-American Commission on Human Rights clearly rejected the petitioners’ argument that the American Convention recognizes an absolute right to life from the moment of conception, but it also rejected the argument that the Convention recognizes an absolute right to have an abortion regardless of the circumstances.³⁸ The Commission highlighted that the phrase “in general” was included in the text of Article 4 of the Convention to accommodate those OAS Member States that, like the United States, allow abortions under certain circumstances.³⁹ Ratification of the American Convention, therefore, would not modify U.S. laws on abortion and, therefore, efforts to prevent ratification of the American Convention on the basis of this issue are misguided.

Objections to ratification of the American Convention based on concerns about the death penalty are equally misplaced. The American Convention does not prohibit the death penalty *per se*. There is an additional protocol to the American Convention⁴⁰ that OAS Member States can ratify if they want to show their binding commitment to the abolition of the death penalty, but the American Convention itself does not abolish the death penalty. Ratification of the American Convention would not require the U.S. to abolish the death penalty.

Those provisions of the American Convention limiting the application of the death penalty are essentially compatible with current U.S. law.⁴¹ These limitations include the following: the imposition of the death penalty only for “the most serious crimes and pursuant to a final judgment rendered by a competent court and in accordance with a law establishing such punishment, enacted prior to the commission of the crime;” a prohibition on extension of the death penalty to crimes to which it does not apply at the time of treaty ratification; a prohibition on the reestablishment of the death penalty once it has been abolished; a prohibition of its application to political offenses; a prohibition of the penalty’s application to persons under eighteen or over seventy at the time the crime was committed, and pregnant women; and a recognition of the right of every person condemned to death to apply for amnesty, pardon, or commutation of sentence. Nothing in this list of restrictions is incompatible with current U.S. federal or state law, especially since the U.S. Supreme Court decided in the 2005 *Roper v. Simmons* case that execution of juvenile offenders (those under the age of eighteen) was unconstitutional.

Should the United States choose to ratify the American Convention, it would not be the only State Party in which the death penalty is still legal. Guatemala, Jamaica, Barbados, Dominica, and Trinidad and Tobago all ratified the American Convention even though at the time of ratification the death penalty was a legal form of punishment in those states.⁴² Guatemala, Barbados, Dominica, and Trinidad and Tobago⁴³ included reservations to various aspects of Article 4 when they ratified the American Convention.

Both President Carter⁴⁴ and the American Bar Association⁴⁵ have suggested that the U.S. Senate give its consent to ratification of the American Convention subject to several reservations,⁴⁶ thus limiting the domestic effect of the most controversial aspects of the American Convention. Many other States Parties have added such reservations to their ratification documents.⁴⁷ The United States could similarly ratify the American Convention and include reservations⁴⁸ to Article 4 or to other articles thereof, so long as the reservations conform to the provisions of the Vienna Convention on the Law of Treaties.⁴⁹ That is, so long as the reservation is compatible with the object and purpose of the treaty.⁵⁰

In light of these considerations, continued apprehensions about U.S. ratification of the American Convention seem to be based on political reasons and a belief in U.S. exceptionalism, rather than on legal hurdles. Issues of federalism and self-execution⁵¹ of treaties pose no more legal obstacle to ratification of the American Convention than they did to ratification of the ICCPR. Thus, there seems to be no insurmountable legal objection for U.S. ratification of the American Convention.

EROSION OF REGIONAL U.S. LEADERSHIP IN HUMAN RIGHTS

The year 2013 marks the 44th anniversary of the adoption of the American Convention in 1969, and the 35th anniversary of its entry into force in 1978. The United States actively participated in the drafting process of the American Convention.⁵² It now needs to ratify it.

It is time to move past the lingering fears reminiscent of the Bricker Amendment era, when suspicion over international treaties moved us closer to international isolationism.⁵³ Human rights treaties are here to stay, and while most of the states in the region have moved with the tide of the times, the United States still needs to join them. The United States led the way in developing and defining those minimum standards and should consequently lead the way in adhering to them as well.

In a move reminiscent of Cold War-era paranoia, the U.S. Senate recently voted not to ratify the UN Convention on the Rights of Persons With Disabilities because conservatives were deeply suspicious of the United Nations and argued that the treaty could relinquish U.S. sovereignty to a UN committee.⁵⁴ By not ratifying even the most non-justiciable human rights

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treaties, such as the UN Convention on the Rights of Persons with Disabilities,⁵⁵ the United States is distancing itself from its own perceived image as a beacon of hope for human rights victims.

Ratification of the American Convention is consistent with U.S. foreign policy goals of promoting and protecting human rights.⁵⁶ Failure to ratify the American Convention signals to other states that the United States does not support compliance with that treaty. In a region where diplomacy and foreign relations are often based on misleading notions of reciprocity and mutuality, the message is clear: if the United States does not have to comply with the American Convention, neither should the rest of the region. Remarkably, most other states in the region have decided not to follow the example set by the United States. Most have ratified the American Convention and some have even modified their domestic law, even their constitutions, to incorporate the American Convention as fully binding and executable law in their domestic jurisdictions. The

United States must act now and engage the System on an equal footing with other OAS Member States.

CONCLUSION AND RECOMMENDATIONS

U.S. exceptionalism has left the Inter-American Human Rights System vulnerable to attacks aimed at undermining its legitimacy and credibility. The current reform process of the System presents an opportunity for the United States to take stronger actions to restore public confidence in the System (and in the OAS) and prevent the creation of parallel human rights supervisory organs that lack independence and autonomy. The United States should lead by example by engaging more actively with the Commission and by ratifying the American Convention on Human Rights and other regional human rights treaties.⁵⁷ Public confidence in the System depends on whether it can be seen as an effective body that supervises human rights violations in all OAS Member States, including the United States.

Endnotes

¹ *International Human Rights Treaties: Hearings Before the S. Comm. on Foreign Relations*, 96th Cong. (1979).

² Here, the term “U.S. exceptionalism” is used to define the belief that, unlike other states, the United States does not need to ratify international human rights treaties because its domestic legal system provides the same or better protections. See e.g. Stephen M. Walt, *The Myth of American Exceptionalism*, FOREIGN POL’Y, Nov. 2011, http://www.foreignpolicy.com/articles/2011/10/11/the_myth_of_american_exceptionalism?page=full.

³ Venezuela and Trinidad and Tobago had ratified the American Convention, but later denounced it. Pursuant to Article 78 of the American Convention, Venezuela’s denunciation will take effect on September 10, 2013.

⁴ See Organization of American States [OAS], American Convention on Human Rights, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123 [hereinafter American Convention].

⁵ See OAS, Inter-American Convention to Prevent and Punish Torture, Dec. 9, 1985, O.A.S.T.S. No. 67; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights, Nov. 17, 1988, O.A.S.T.S. No. 69; OAS, Protocol to the American Convention on Human Rights to Abolish the Death Penalty, June 8, 1990, O.A.S.T.S. No. 73 [hereinafter Death Penalty Protocol]; OAS, Inter-American Convention on the Forced Disappearance of Persons, Jun. 9, 1994, 22 I.L.M. 1429; OAS, Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, Jun. 09, 1994, 33 I.L.M. 1534.

⁶ *Rafael Correa se reunirá con Insulza entre críticas a la OEA*, LA PRENSA GRÁFICA, Nov. 28, 2012, <http://www.laprensagrafica.com/Rafael-Correa-se-reunira-con-Insulza-entre-criticas-a-la-OEA>. [hereinafter *Rafael Correa se reunirá con Insulza entre críticas a la OEA*]

⁷ President Evo Morales stated, “*Si no quiere velar los derechos humanos en Estados Unidos, mejor que desaparezca la Comisión Interamericana de Derechos Humanos*.” Andrés Oppenheimer, *La Ofensiva Contra los Derechos Humanos*, EL NUEVO HERALD, Jun. 7, 2012, <http://www.elnuevoherald.com/2012/06/06/1222182/andres-oppenheimer-ofensiva.html>.

⁸ José Gramunt de Moragas, *Renovarse o Morir*, LA RAZÓN, Jun. 6, 2012, http://www.la-razon.com/opinion/columnistas/Renovarse-morir_0_1627637222.html.

⁹ President Correa emphasized that “we cannot accept the double morality” of the Commission with regards to the United States. Andrés Oppenheimer, *La Ofensiva Contra los Derechos Humanos*, EL NUEVO HERALD, June 7, 2012, <http://www.elnuevoherald.com/2012/06/06/1222182/andres-oppenheimer-ofensiva.html>.

¹⁰ This is a recent change in U.S. policy, as historically the U.S. has argued that the American Declaration on the Rights and Duties of Man is a non-binding instrument that creates no binding obligations on the U.S.

¹¹ Although U.S. policy has significantly shifted in favor of increased engagement and compliance with Commission recommendations in cases against the U.S., this policy shift has not resulted in tangible or substantial fulfillment of its obligations. Better coordination between and among federal and state agencies has not resulted in actual compensation to human rights victims.

¹² *Bogota Declaration*, CEJIL (Sep. 11, 2012), <http://cejil.org/en/documentos/bogota-declaration>.

¹³ INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, REFORM PROCESS (2012), available at <http://www.oas.org/en/iachr/strengthening/docs/RespCPEn.pdf> (Reply of the Inter-American Commission on Human Rights to the Permanent Council of the Organization of American States regarding the recommendations contained in the Report of the Special Working Group to Reflect on the Workings of the IACHR with a View to Strengthening the Inter-American Human Rights System).

¹⁴ Ecuadorean Foreign Affairs Minister Ricardo Patiño has stated that the seat of the Inter-American Commission on Human Rights “should be transferred from Washington to another state that fully participates in the Inter-American System of Human Rights[.]” *Rafael Correa se reunirá con Insulza entre críticas a la OEA*, LA PRENSA GRÁFICA, Nov. 28, 2012, <http://www.laprensagrafica.com/Rafael-Correa-se-reunira-con-Insulza-entre-criticas-a-la-OEA>, *supra* note 6.

¹⁵ Tim Padgett, *Latin America’s CELAC Summit*, TIME WORLD, Dec. 2, 2011, <http://world.time.com/2011/12/02/latin-americas-celac-summit-a-definitive-rejection-of-the-u-s/#ixzz20uGty7Sg>.

¹⁶ See *Comunidad de Estados Latinoamericanos y Caribeños — CELAC*, PARLAMENTO LATINOAMERICANO (Feb. 7, 2013), <http://www.parlatino.org/en/proyecto-de-la-celac.html>.

¹⁷ *Rafael Correa se reunirá con Insulza entre críticas a la OEA*, *supra* note 6.

¹⁸ *UNASUR apoya a Ecuador para convocar a Conferencia de Estados parte de la Convención Americana de Derechos Humanos*, REPÚBLICA DEL ECUADOR (Nov. 29, 2012), <http://www.mmmree.gob.ec/2012/bol1334.asp>.

¹⁹ UNASUR is a regional organization aimed at the integration of South American countries.

²⁰ UNASUR is composed of the following 12 Member States: Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Guyana, Paraguay, Peru, Suriname, Uruguay, and Venezuela. See *Estados Miembros*, UNASUR, http://www.unasursg.org/index.php?option=com_content&view=article&id=397&Itemid=343 (last visited Feb. 9, 2012).

²¹ DECLARACIÓN VI REUNIÓN ORDINARIA, UNION OF SOUTH AMERICAN NATIONS (Nov. 30, 2012), at ¶ 1, *available at* http://www.unasursg.org/index.php?option=com_content&view=article&id=776:declaracion-vi-reunion-ordinaria-lima-30-de-noviembre-2012&catid=96:declaraciones [hereinafter *DÉCLARATION VI*]. Venezuela rejected this proposal because it supports the creation of a new regional human rights supervision mechanism under UNASUR, rather than under the OAS.

²² Ecuadorean President Rafael Correa questioned why non-State Parties to the American Convention should even participate in the debate about reforming the System. See *UNASUR y OEA buscan reunión para tratar reformas a CIDH*, EL TIEMPO, Dec. 1, 2012, <http://www.eltiempo.com.ec/noticias-cuenca/110834-unasur-y-oea-buscan-reunio-n-para-tratar-reformas-a-cidh>.

²³ DECLARACIÓN VI, *supra* note 21, ¶ 39.

²⁴ ALBA is a regional organization aimed at Latin American integration, which was originally founded by Venezuela and Cuba in 2004 and currently includes Bolivia, Nicaragua, Ecuador, Dominica, Saint Vincent and the Grenadines, and Antigua and Barbuda.

²⁵ See *Histórico*, CUMBRES IBEROAMERICANA DE JEFES DE ESTADO Y DE GOBIERNO, <http://www.cumbresiberoamericanas.com/historico> (last visited Feb. 10, 2013).

²⁶ Such proposals aimed at creating alternatives to the Inter-American Human Rights System within other regional structures such as ALBA, CELAC, or UNASUR, are particularly worrisome — not because they seek to diminish U.S. influence over the region but because such proposals are based on peer review mechanisms that lack independence. These new peer review proposals would require governments to supervise each other, just like at the UN Human Rights Council. There are no plans to create effective accountability mechanisms that would substitute the independent and autonomous roles played in the Inter-American System by the Commission and the Court.

²⁷ Jimmy Carter, *América puede liderar en derechos humanos*, OPINIÓN, Dec. 10, 2012, <http://opinion.infobae.com/jimmy-carter/2012/12/10/america-puede-liderar-en-derechos-humanos>.

²⁸ Jimmy Carter, *Human Rights Treaties Message to the Senate*, THE AMERICAN PRESIDENCY PROJECT (Feb. 23, 1978), <http://www.presidency.ucsb.edu/ws/?pid=30399>.

²⁹ *President Signs American Convention on Human Rights*, 77 DEP'T OF ST. BULL. NO. 1984, at 28, *available at* <http://ia700202.us.archive.org/21/items/departmentofstata7777unit/departmentofstata7777unit.pdf>.

³⁰ *International Human Rights Treaties: Hearings before the S. Comm. on Foreign Rel.*, 96th Cong. (1979).

³¹ See *Treaties Pending in the Senate*, U.S. DEP'T STATE (May 18, 2012), <http://www.state.gov/s/l/treaty/pending>.

³² Joseph Diab, Note, *United States Ratification of the American Convention on Human Rights*, 22 DUKE J. COMP & INT'L L. 323, 328 (1992).

³³ American Convention, *supra* note 4, at art. 28.

³⁴ See *United States: Report of the Delegation to the Inter-American Specialized Conference on Human Rights*, 9 INT'L L. MATERIALS 710, 733 (1970), *available at* <http://jstor.org/stable/20690650> (discussing of how the U.S. interprets the federalism clause in Article 28 of the American Convention) [hereinafter *Report of the Delegation to the Inter-American Specialized Conference*].

³⁵ See David Sloss, *The Federalist Society Online Debate Series: Medellín v. Texas*, FEDERALIST SOCIETY (Mar. 28, 2008), www.fed-soc.org/debates/dbtid.17/default.asp.

³⁶ See generally Ariel Dulitzky, *El Caso de la Convención Americana sobre Derechos Humanos y la República Argentina*, in ANUARIO MEXICANO DE DERECHO INTERNACIONAL 199 (2006), *available at* <http://www.utexas.edu/law/faculty/adulitzky/10-Federalismo-2006.pdf> (discussing how the American Convention applies in the context of federal forms of government).

³⁷ Nevertheless, there may be separate federalism questions that each State Party must address pursuant to its own domestic law concerning, for example, the determination of the proper governmental entity responsible for compensating victims once the federal state has been found internationally liable.

³⁸ *White and Potter v. United States*, Case 2141, Inter-Am. Comm'n H.R., Resolution 23/81, OAS/Ser.L/V/II.54, Doc 9, Rev. 1, 25–54 (1981).

³⁹ *Id.*

⁴⁰ Death Penalty Protocol, *supra* note 5.

⁴¹ See American Convention, *supra* note 4, at art. 4.

⁴² See *Basic Documents: Ratifications of the Convention*, INTER-AM. COMM'N. HUM. RTS., <http://www.cidh.oas.org/basicos/english/Basic4.Amer.Conv.Ratif.htm> (last visited Feb. 10, 2013) (listing States Parties to the American Convention on Human Rights and corresponding reservations) [hereinafter *Ratifications of the Convention*].

⁴³ In 1998, Trinidad and Tobago denounced the American Convention on Human Rights. *Id.*

⁴⁴ Jimmy Carter, *Human Rights Treaties Message to the Senate*, AM. PRESIDENCY PROJECT (Feb. 23, 1978), <http://www.presidency.ucsb.edu/ws/?pid=30399>.

⁴⁵ AMERICAN BAR ASSOCIATION, SECTION ON INTERNATIONAL LAW AND PRACTICE SECTION ON INDIVIDUAL RIGHTS AND RESPONSIBILITIES STANDING COMMITTEE ON WORLD ORDER UNDER LAW REPORT TO BOARD OF GOVERNORS 3–4, *available at* http://apps.americanbar.org/intlaw/policy/humanrights/American_Convention_RR_Adopted_by_Bd_6-94.pdf.

⁴⁶ Some of the reservations proposed by the Carter Administration in 1979 would certainly find no support today. For example, one reservation stated that equality of rights in marriage is a goal “to be achieved progressively, not immediately[.]”

⁴⁷ See *Ratifications of the Convention*, *supra* note 42.

⁴⁸ Nevertheless, universal ratification of human rights treaties, without resort to unnecessary reservations, is something the U.S. supported, at least in principle, when in 1993 it participated in the Vienna World Conference on Human Rights. The Vienna Declaration that came out of this conference, with the support of the U.S., contains a provision that states: “The World Conference on Human Rights welcomes the progress made in the codification of human rights instruments, which is a dynamic and evolving process, and urges the universal ratification of human rights treaties. All States are encouraged to accede to these international instruments; all States are encouraged to avoid, as far as possible, the resort to reservations.” World Conference on Human Rights, June 14–25,

1993, *Vienna Declaration and Programme of Action*, ¶ 26, U.N. Doc. A/CONF.157/23 (July 12, 1993).

⁴⁹ See American Convention, *supra* note 4, at art. 75.

⁵⁰ See Vienna Convention on the Law of Treaties art. 19(c), May 23, 1969, 1155 U.N.T.S. 331.

⁵¹ The U.S. has interpreted the American Convention to be a non-self-executing treaty that requires implementing legislation for the rights therein to be enforceable domestically. See Conferencia Especializada Interamericana Sobre Derechos Humanos, Nov. 7–22, 1969, *Actas y Documentos*, 146–47, OEA/SER.K/XVI/1.2 (1973) (providing the explanation by the U.S. delegation that United States law would not consider the Convention self-executing). Whether the American Convention is a self-executing treaty is debatable. See, e.g., Diab, *supra* note 32. (stating that the American Convention “does not call for implementing legislation before the rights and freedoms of the American Convention are applicable domestically”).

⁵² *Report of the Delegation to the Inter-American Specialized Conference on Human Rights*, *supra* note 34.

⁵³ Natalie Hevener Kaufman & David Whiteman, *Opposition to Human Rights Treaties in the United States Senate: The Legacy of the Bricker Amendment*, 10 HUM. RTS. Q. 309, 309–337, (1988).

⁵⁴ Rosalind S. Helderman, *Senate rejects treaty to protect disabled around the world*, WASH. POST, Dec. 4, 2012, http://articles.washingtonpost.com/2012-12-04/politics/35624605_1_treaty-disabled-children-americans-with-disabilities-act.

⁵⁵ Pursuant to Article 35 of this treaty, compliance with States Parties’ obligations is carried out through a reporting mechanism. A complaints procedure and an inquiry procedure are established through the Optional Protocol to the CRPD, which requires its own ratification process.

⁵⁶ See generally David Weissbrodt, *United States Ratification of the Human Rights Covenants*, 63 MINN. L. REV. 35 (1978).

⁵⁷ These include the following: the Inter-American Convention to Prevent and Punish Torture, *supra* note 5; Additional Protocol to the American Convention on Human Rights In the Area of Economic, Social, and Cultural Rights, *supra* note 5; the Inter-American Convention on the Forced Disappearance of Persons, *supra* note 5; the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, *supra* note 5; and the Inter-American Convention on the Elimination of all Forms of Discrimination Against Persons with Disabilities, AG/RES. 1608, June 7, 1999.