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RESEARCHING THE JURISPRUDENCE OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS: A LITIGATOR'S PERSPECTIVE

Richard J. Wilson**

INTRODUCTION

It is a great pleasure to see *The American University Journal of International Law and Policy* (the *Journal*) commit significant resources and space to publish a unique and comprehensive index¹ to the case reports² of the Inter-American Commission on Human Rights (the Commission). The project to create an index is a collaboration of the *Journal* and students or research assistants working in the International Human Rights Law Clinic (the Clinic).³ This brief introduction to the accompanying index is more than a recitation of its conception. Rather, it provides a background into the creation of the index, describes its contents, gives the reasons for the index, and identifies suggested directions to allow litigators wider access to the jurisprudence of the Inter-American human rights system.

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1. 10 AM. U. J. INT'L L. & POL'Y 19 (1994).

2. See Reports on Individuals Cases, INTER-AM. CT. H.R. 33, OEA/ser. L/V/II.79, doc.12 rev.1 (1991) (noting that the IACHR adopts "report" as the official term to refer to its individual case decisions in order to achieve consistency with the terminology used in the American Convention on Human Rights in the Velasquez Rodriguez case, INTER-AM. CT. H.R., June 26, 1987 (preliminary objections), at para. 67). The terms "reports" and "decisions" are used synonymously throughout this article.

3. The American's University's International Human Rights Law Clinic is a year-long clinical program open to second and third year J.D. students. Under my supervision, Clinic students gain experience litigating both human rights and political asylum cases.

The Washington College of Law opened the Clinic in the fall of 1990 with significant support from a federal grant through the U.S. Department of Education. At that time, I had ample experience as a clinical teacher and observer of Latin American legal systems, but I had no litigation experience in the field of international human rights law. Potential venues for the Clinic's human rights work included domestic political asylum cases and international litigation in various mechanisms of the United Nations and the Organization of American States. The Clinic's ultimate decision to focus much of the litigation work in the Commission stemmed from its location here in Washington, my past experience in Latin America, and the close historical ties between the law school and the Commission. Upon beginning, however, I quickly discovered the difficulty in researching the case decisions of the Commission.

Compilation of the index began during the summer of 1991 as a simple means to gain easier access to the Commission's published reports on individual complaints. The first step, albeit a daunting one, required a summer research assistant, Lydia Brashear, to review and briefly summarize every report of the Commission since they were first reported in 1968.⁴ The Clinic's primary goal was to create a basic tool for me and students to gain quicker access to the bulk of the Commission's substantive jurisprudence. With the generous assistance of the Commission librarian, the Clinic acquired a full set of "official reports," the annual reports of the Commission. With the pieces in place, it was time to begin the compilation.

Initially, the goal for the index was modest: the Clinic wanted a set of references to the pivotal provisions of the regional treaties on which the Commission relied when making its decisions, with a brief description of the facts of the case and its country of origin to further aid the researcher. It was therefore decided to organize the index simply by reference, matching the dispositional sections of the Commission's decisions with the relevant provisions of the American Declaration of the Rights and Duties of Man (Declaration)⁵ and the American Convention

4. See INTER-AMERICAN YEARBOOK ON HUMAN RIGHTS, 1968 25 (1973) (citing the first publicly reported decisions of the Commission in individual cases since 1968); THE ORGANIZATION OF AMERICAN STATES AND HUMAN RIGHTS 1960-1967 53 (1972) (noting that the Commission received 1,525 communications between 1960 and 1967 when it modified its regulations, and requested information from the Governments concerned in 498 of those cases).

5. American Declaration of the Rights and Duties of Man, adopted May 2, 1948, by the Ninth International Conference of American States, Bogota, Columbia

on Human Rights (Convention),⁶ and noting when the Commission found no violation of the provisions in these two documents.

The Clinic chose not to be overly ambitious and include references by the Commission to other sources of international human rights law in the initial draft of the index, nor index the important findings of the country reports of the Commission or the advisory or contentious decisions of the Inter-American Court of Human Rights (the Court). Neither was there an attempt to add reference to all discussion in decisions about articles of the Declaration and Convention which were raised but either not addressed or unresolved by the Commission. Finally, the Clinic rejected the idea to index procedural issues not addressed in either the Declaration or the Convention, such as the exhaustion of domestic remedies and other aspects of the Commission's statute or regulations like the issuance of precautionary measures.⁷ Again, the goal was to produce only the most simple reference to the most important documents.

The project continued the following summer with assistance from another research assistant, Bonnie Kustra. Her task proved not to be any easier. The two annual reports which she cataloged for the years 1990-1991 and 1991 contained many more decisions than any of the previous years' reports: a total of 105 for the two volumes.⁸ In the summer of 1993, the index was up-dated with the help of two research assistants, Claudia Martín and Sergio Ramírez. They added the decisions from the

[hereinafter Declaration], *reprinted in* BASIC DOCUMENTS PERTAINING TO HUMAN RIGHTS IN THE INTER-AMERICAN SYSTEM, OEA/ser. L/V/II.82, doc. 6 rev. 1 (1992) at 17 [hereinafter BASIC IACHR DOCUMENTS].

6. American Convention on Human Rights, Nov. 22, 1969, O.A.S.T.S. No. 36, OEA/ser. L/V/II.23, doc. 2 rev. 6, 1, O.A.S.O.R. OEA/ser. K/XVII.1, doc. 65 rev 1 corr. 2 (1970), *reprinted in* 9 I.L.M. 673 (1970), *also reprinted in* BASIC IACHR DOCUMENTS, *supra* note 5, at 27.

7. See Regulations of the Inter-American Commission on Human Rights, arts. 29, 37, 46.1(a) [hereinafter the Commission's Regulations], *reprinted in* HANDBOOK OF EXISTING RULES PERTAINING TO HUMAN RIGHTS IN THE INTER-AMERICAN SYSTEM, OEA/ser. L/V/II.65, doc. 6 rev. 1 (1985) (noting that the Commission, pursuant to Article 29 of its Regulations, issues the requirement of precautionary measures, and that only passing reference is made in Article 46.1(a) of the Convention to the requirement of exhaustion of domestic remedies with Article 37 of the Commission's Regulations providing for greater detail, to which no reference is made in this index).

8. Annual Report of the Inter-American Commission on Human Rights, 1990-1991, OEA/ser. L/V/II.79, doc. 12 rev.1 (February 22, 1991) at 33-39; Annual Report of the Inter-American Commission on Human Rights 1991, OEA/ser. L/V/II.81, doc. 6 rev. 1 (February 14, 1992) at 25-26.

1992-1993 annual report and provided some consistency to the previous authors' citation form. In the summer of 1994, Alejandro Ponce added the decisions of the last annual report and began work on the decisions of the Court. As work on the index progressed, numerous people involved in litigation at the Commission and, indeed, some of the Commission staff itself, showed an interest in the index. With the most recent version totaling 150 typewritten pages it became increasingly difficult to reproduce. It was then that we developed the idea of the possibility to reproduce the index, with some refinements, through the *Journal*. What follows is the result of that effort.

The *Journal's* staff has made some extremely useful additions to the formatting of the Index. Gabriel Eckstein, Brian Tittmore, Peter Hansen, and John Lowndes worked especially hard on these additions. First, they added more information about each individual entry and clarified the action taken by the Commission, cross-referencing each report under the relevant sections of the Convention or Declaration found to be violated. Second, they added a sub-index by country for each of the relevant sections of the Index. Third, they also developed a topical index to the decisions which should be extremely useful for research purposes.

I. THE REGIONAL HUMAN RIGHTS ENFORCEMENT REGIMES

Before discussing the issues involved in gaining research access to decisions of the Commission, it is useful to briefly describe the structure of the three regional systems for the protection of human rights. The Inter-American system operates with a Commission composed of seven members, each elected in their individual capacity as an independent expert on human rights by the membership of the Organization of American States (OAS). Their terms are for four years, and they may be re-elected once. The Commission, whose seat is in Washington, DC, is empowered not only to hear individual complaints but also to report, as it wishes, on general human rights situations in member states.⁹ It may also independently exercise the power to conduct on-site observations in particular countries, with that government's consent.¹⁰ One of the Commission's most important powers is using its discretion to refer contentious cases to the Court, which meets in San Jose, Costa Rica. The Court, which began its operations only in 1979, is also composed

9. Article 41(c), Convention, BASIC IACHR DOCUMENTS, *supra* note 5, at 40.

10. Article 18(g), Statute, BASIC IACHR DOCUMENTS, *supra* note 5, at 98.

of seven individuals chosen in their private capacity as experts in the field of human rights. The Court has powers to issue decisions of both an advisory nature as well as in contentious cases. The Court, whose jurisdiction must be agreed to by participating states, has heard and decided only a few contentious cases. As of January, 1994, sixteen of the thirty-five member states of the OAS had agreed to the Court's jurisdiction.¹¹ The principal sources of law for both the Commission and the Court are the Declaration and the Convention, mentioned above, and their prior decisions.

The regional systems of Europe and Africa each operate with a Commission system roughly analogous to the one used in the Americas. Although the African system, whose Commission became operational only in 1987, provides a means for consideration of individual complaints, it is considerably more inaccessible than its European and American predecessors, with no decisions reported as of the end of 1991.¹² Of the three regional systems, the European system has been operating the longest; its Commission has accepted over 16,000 individual complaints since shortly after the European Convention for the Protection of Human Rights and Fundamental Freedoms entered into force in 1953.¹³ The indexing and accessibility of the European system's case law is of both scholarly and practical interest to the litigator in the Inter-American system because over 300 cases have been referred to the European Court of Human Rights.¹⁴

11. Jean-Bernard Marie, *International Instruments Relating to Human Rights*, 15 HUM. RTS. L.J. 51, 57 (1994).

12. See generally Cees Flinterman & Evelyn Ankumah, *The African Charter on Human and Peoples' Rights*, in GUIDE TO INTERNATIONAL HUMAN RIGHTS PRACTICE 158, 163-65, 167 (Hurst Hannum ed., 2d ed. 1992) (noting that The African Commission published its first report in THE AFR. REV. HUM. RTS. (Oct. 1991). *Id.*, at 262).

13. Kevin Boyle, *Europe: The Council of Europe, the CSCE, and the European Community*, in GUIDE TO INTERNATIONAL HUMAN RIGHTS PRACTICE 133, 135 (Hurst Hannum ed., 2d ed. 1992).

14. The jurisprudence of the European human rights system is more widely available than that of the Inter-American system, but treatises analyzing European jurisprudence on human rights are difficult to find. The best analytical source I have found for both process and substance is P. van Dijk and G.J.H. van Hoof, *THEORY AND PRACTICE OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS* (2d ed. 1990). This treatise provides a good contextual treatment of the legal issues which have arisen under the European Convention. Much of the practice of the European system will be affected by the recent adoption of Protocol 11 to the European Convention, which creates a single European Court of Human Rights to replace the existing Commission and Court. An excellent analysis of the changes, which await full ratification, as well

II. A PANORAMIC OVERVIEW OF THE CONTENTS OF THE INDEX

Substantively, the largest number of index references where the Convention provisions controlled are in two broad areas: violations involving violence against the person (Article 4 - right to life; Article 5 - right to humane treatment; and Article 7 - right to personal liberty), and violations involving failure to provide procedural rights (Article 8 - right to a fair trial, and Article 25 - right to judicial protection). A great number of cases also rely, logically, on the Convention's broad provisions in Article 1.1, requiring the state to respect rights.¹⁵ The same is true when the Declaration is relied upon: the greatest number of references are to Article I - the right to life, liberty and personal security, and Articles XVIII and XXVI - protections of fair trial and due process, respectively.¹⁶ This should not be surprising, given the sordid history of gross and systematic human rights violations by Latin American and Caribbean military governments prior to the trend in democratization in the Americas during the last decade.

as their text, can be found in Andrew Drzemczewski & Jens Meyer-Ladewig, *Principal Characteristics of the New ECHR Control Mechanism, As Established by Protocol No. 11, Signed on 11 May 1994*, 15 HUM. RTS. L.J. 81 (1994).

A more general treatment of human rights law, covering the substantive jurisprudence of all of the major human rights bodies including the European and Inter-American Commissions, can be found in PAUL SIEGHART, *THE INTERNATIONAL LAW OF HUMAN RIGHTS* (1983), which is now out of date but is still a valuable resource for litigators.

15. See *The Velasquez Rodriguez case*, *supra* note 2, July 29, 1988 (merits), at paras. 161-86 (finding reliance on Article 1.1 as essential to its analysis of state obligations to prevent, investigate, identify and punish the guilty, and compensate the victims for violations of human rights law). There is little doubt that the large number of cases relying on Article 1.1 find their jurisprudential roots in the *Velasquez Rodriguez* decision, one of the first contentious cases decided by the Court. Virtually every citation is to a case decided after 1988, and the few previous citations include reference to the decisions in *Velasquez* and its companion cases at the Commission.

16. See BASIC IACHR DOCUMENTS, *supra* note 5 (observing the curiously large number of references to violations of Art. VIII of the Declaration, the right to residence and movement, which does not mirror the Convention's parallel provision, Article 22). The overwhelming number of such cases involved Chilean authorities' refusal to permit the return of citizens to their Chilean homeland. Chile did not ratify the American Convention until 1990, thus making reliance on the Declaration as the source of its obligation necessary. *Id.* at 53.

When examining the other areas in which the Commission has ruled, it appears that there is no particular pattern to the Commission's decision-making. Instead, the Commission addresses a montage of issues such as freedom from slavery (Article 6), rights to assembly and association (Articles 15 and 16), rights to property (Article 21) and rights to freedom of movement and residence (Article 22). Even more curious, however, is the large number of significant areas in which the Commission has never found a violation of certain provisions of the Convention. There are no decisions on freedom of religion (Article 12), freedom of speech (Articles 13 and 14), protection of family and privacy rights (Articles 11, 17, 18 and 19), and equal protection of the laws (Article 24). These areas, while frequently litigated now in the United States and often the subject of decisions in the European system, are not recognized in the more egregious category of violations which have confronted the Commission.

The same cannot be said about the Commission's decisions which rely on the Declaration. In contrast to the Commission's reports of violations of the Convention, the decisions are relatively well distributed among the Declaration's various articles, with no decisions under only a few articles. Interestingly enough, some of the rights omitted as violations of the Convention (equality, religion, speech and family) are the subject of decisions relying on the Declaration, and arise in countries like the United States, which has not ratified the Convention, or other countries, before ratification took place.

Although this index does not track the number of decisions by country of origin, a recent study found that of the 267 cases included in the Commission's annual reports between 1975 and 1989-90, the largest numbers come from Chile, Argentina, Nicaragua, Peru and Cuba, respectively, with ten or more decisions from Bolivia, Haiti, Guatemala, El Salvador and Paraguay.¹⁷ Conspicuously absent from this list are such prominent countries as Brazil, Colombia, Venezuela and Mexico, all countries with large populations, and all of which, save Brazil, have either ratified the Convention or also accepted the jurisdiction of the Court. These absences lend credence to the criticisms that the Commission is too sensitive to politics.

17. Instituto Latinoamericano de Servicios Legales Alternativos (ILSA), *El Sistema Interamericano para la Protección de los Derechos Humanos: sus Logros y Limitaciones*, Chapter 5 (February 20, 1992) (unpublished manuscript, on file with the author).

III. INTER-AMERICAN COMMISSION ON HUMAN RIGHTS: OTHER CURRENT SOURCES OF INFORMATION ON INDIVIDUAL CASE DECISIONS

A. AUTOMATED DATABASES

Automated databases enable a researcher to search by terms which might appear anywhere in a given document. This unique feature provides the researcher with ready access to the specific passage sought. For example, LEXIS offers access to the jurisprudence of the European system through the "INTLAW" library, under the file "ECCASE".¹⁸ While WESTLAW's database does not, as of 1994, contain decisions of the European human rights system, it does offer access, under the term "INT-ICJ," to the often useful decisions of the International Court of Justice since 1947, an important area not found in LEXIS.

As of present, there is no comprehensive database containing the decisions of the Inter-American Commission. Important recent decisions of both the Commission and the Court, however, are often reported in *INTERNATIONAL LEGAL MATERIALS*, a publication of the American Society of International Law. LEXIS provides access to this document under the "INTLAW" or "LAWREV" libraries, "ILM" file, however, as of now, WESTLAW does not provide this service.

B. COMPILATIONS OF DECISIONS

The Commission's official publications are its annual reports, which provide the most current and accurate compilation of decisions, and specific, separately-published country reports. The Commission publishes the annual reports in both English (green) and Spanish (blue) soft-cover volumes about six months into the year, following the year on which they report. The reports suffer, however, from two glaring shortcomings: First, there is no comprehensive, cumulative index to the decisions anywhere in the official reports, and second, the reports themselves tend to bury the individual decisions by their placement within the document itself. Until recently, for example, the reports contained no table of contents to the decisions at the beginning of the section in which they

18. Although not a comprehensive compilation from official sources, LEXIS' database contains the *EUROPEAN HUMAN RIGHTS REPORT*, an unofficial monthly report of the decisions of the European Commission and Court, since 1960, as well as unreported cases from October, 1980.

were published. Thus, searching for a decision required the researcher to leaf through every page of the section to find the relevant decisions and its internal references to topics of interest.

In addition to the Commission's annual reports, there exist two other major sources of information on decisions; the INTER-AMERICAN YEARBOOK ON HUMAN RIGHTS,¹⁹ and Buergenthal & Norris' HUMAN RIGHTS: THE INTER-AMERICAN SYSTEM.²⁰ The YEARBOOK's out-of-date character makes it of limited utility to the litigator, particularly given the Commission's recent upswing in case dispositions and the fact that the YEARBOOK contains essentially the same information as the annual reports.

While the Buergenthal and Norris compilation recently added significant supplemental material, since its initial publication in 1982, its publisher, Oceana updates the set on a sporadic and unpredictable basis. Moreover, from personal experience, the entire set is difficult to use and its indices have limited benefit.

The organization of Buergenthal & Norris' entire six volumes is ungainly. The volumes are presented in a series of looseleaf pamphlets with a numbering system for each pamphlet which relates neither to the binder in which the pamphlet is found nor to the internally organized "Parts" of the set. To illustrate, volume 6 of the recently supplemented set contains Appendices following Part 4. The first of these Appendices contains a number of indices to the decisions and resolutions of the Inter-American Commission arranged by: Case Number, Country, Rights Consecrated in the Declaration, Rights Protected in the Convention, Other Articles of the Convention, Special Topics, and Name of Victim. In addition, the index references the Commission's Statute and Regulations, including eleven revisions.²¹ As the indices themselves are usually esoteric sets of numerical references, without explanation, they automatically require cross-reference to other volumes of the set and other indices in those volumes. Appendix G, "Index by Special Topic" is

19. INTER-AMER. Y.B. ON HUM. RTS. [hereinafter YEARBOOK]. As of 1992, the YEARBOOK, published privately by Martinus Nijhoff in The Netherlands, contains the last available volume which they published in 1992.

20. 1-6 THOMAS BUERGENTHAL & ROBERT NORRIS, HUMAN RIGHTS: THE INTER-AMERICAN SYSTEM (1993) [hereinafter BUERGENTHAL & NORRIS].

21. 6 BUERGENTHAL & NORRIS, 1 app. (1993). At the top of the Table of Contents to Appendix 1, there is a typographical error which refers to the appendix as "Release 9/39," while the cover page correctly refers to the appendix as "Release 93-1, Issued September 1993". Such errors do not inspire confidence in the index itself, which utilizes only numbers as referents.

perhaps the most useful because it contains five pages of reference to specific topic areas such as exhaustion of remedies, inadmissibility, and closing of files, areas not fully documented in the index published here.²²

The final means by which the Commission's case decisions and procedures can be systematically researched are treatises,²³ casebooks,²⁴ and articles.²⁵ Such sources discuss the jurisprudence of and litigation before the Commission. The Commission itself provides a narrative annotated index of its early jurisprudence.²⁶ In addition, legal bibliographies on human rights research offer helpful access to these and other materials.²⁷

22. *Id.* at 25. Likewise, App. I - L, which reference the Commission's statute and Regulations, are also omitted in the index published here.

23. See generally SCOTT DAVIDSON, *THE INTER-AMERICAN COURT OF HUMAN RIGHTS* (1992) (providing the best, most recent treatise on the Court in my view, given that there is no comprehensive treatise on the decisions of the Commission).

24. See THOMAS BURGENTHAL ET AL., *PROTECTING HUMAN RIGHTS IN THE AMERICAS: SELECTED PROBLEMS* (3d ed. 1990) (dedicated exclusively to the Inter-American human rights system, and published for use at the International Institute of Human Rights in Strasbourg, France); see also FRANK NEWMAN & DAVID WEISSBRODT, *INTERNATIONAL HUMAN RIGHTS: LAW, POLICY AND PROCESS* (1990), and RICHARD B. LILICH, *INTERNATIONAL HUMAN RIGHTS: PROBLEMS OF LAW, POLICY AND PRACTICE* (2d ed. 1991) (providing extensive treatment of the Inter-American system in a topical problem context).

25. See Robert E. Norris, *Bringing Human Rights Petitions Before the Inter-American Commission*, 20 SANTA CLARA L. REV. 733 (1980) (still the leading article on practice and procedure in the Commission, though somewhat dated); see also William M. Walker, *A Litigator's Look at the Inter-American Commission on Human Rights*, 2 ACLU INT'L CIVIL LIBERTIES REPORT 38 (1993) (offering a more recent yet less thorough treatment of the practice and procedure in the Commission); Juan E. Mendez & Jose Miguel Vivanco, *Disappearances and the Inter-American Court: Reflections on a Litigation Experience*, 13 HAMLINE L. REV. 507 (1990) (providing an excellent summary of a litigation experience in the Court).

26. See INTER-AM. C.H.R., *TEN YEARS OF ACTIVITIES, 1971-1981* 315 (1982). This excellent and comprehensive annotated index to the first ten years of the Commission's jurisprudence is entitled "Doctrine of the Inter-American Commission on Human Rights."

27. See MORRIS L. COHEN ET AL., *HOW TO FIND THE LAW* (9th ed. 1989). From this source, clinic students are assigned to read the chapters on *International Law* and *Foreign and Comparative Law*. See also the comprehensive and current volume published by Harvard Law School, JACK TOBIN & JENNIFER GREEN, *GUIDE TO HUMAN RIGHTS RESEARCH* (1994), as well as Steven C. Perkins, *Guide to Researching International Human Rights Law*, 24 CASE W. RES. J. INT'L L. 379 (1992); J.A. ANDREWS AND W.D. HINES, *KEYGUIDE TO INFORMATION SOURCES ON THE INTERNATIONAL PROTECTION OF HUMAN RIGHTS* (1987) and EDWARD STANEK, *A BIBLIOGRAPHY OF PERIODICALS AND OTHER SERIALS ON HUMAN RIGHTS* (1991); Diana Vincent-

IV. POSSIBLE EXPLANATIONS FOR DIFFICULTY IN RESEARCHING DECISIONS OF THE INTER-AMERICAN COMMISSION

Why are the hard-copy sources for the Commission's decisions so sparse, and why are the few existing sources so difficult to access? There are a number of alternative explanations, all of which are probably true to some extent. Following are six potential reasons for the difficulty in researching the Commission's decisions: relative newness; lack of internal resources at the Commission for dissemination; different perceptions of the value of legal precedent in the civil law systems of Central and South America; lack of rigor or substance in the decisions; the possibility of intentionally political motives to hide the decisions from public view; and the general obscurity of international case law decisions in the United States "mainstream" legal research databases due to the lack of commercial interest.

The individual decisions of the Commission began roughly twenty-five years ago. One could argue that these decisions have not been well-cataloged because the human rights institutions themselves are relatively new. This argument, however, seems less persuasive when one considers that the European system's jurisprudence, also in its early stages in the world scene, has been much more widely disseminated and therefore more accessible.²⁸

A second reason why the Commission's decisions are difficult to research pertains to the Commission's lack of necessary resources to disseminate its annual reports. Undoubtedly, this is true; the Commission operates with a limited budget, only a small portion of which it allocates to publishing its reports. Even if requested, not all domestic law libraries could obtain copies of the reports. Without the availability of original sources, research is impossible.

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 (1981), and Diana Vincent-Daviss, *Human Rights Law: A Research Guide to the Literature-Part II: International Protection of Refugees and Humanitarian Law*. 14 N.Y.U. J. INT'L L. & POL. 487 (1982) (contributing more out-dated but still comprehensive bibliographic materials); and John W. Williams, *Guide to International Legal Research* vols. 1 & 2, 20 GEO. WASH. J. INT'L L. & ECON. (1986) (offering the best general guide to information in international law).

28. See *supra* note 14 (explaining the procedures and practices of the European Commission).

Third, there is a significant difference in the value attached to judicial decision-making, and to the use of cases as legal precedent in general, in the civil law systems prevalent in Central and South America. This perceptual distinction provides a strong potential variance in the corresponding sense of need to widely disseminate case reports. As direct descendants of the European civil law system, Central and South America's primary sources of law derive from codes and administrative rules and regulations. There legislatures supply the law, and have the authority and the ability to discern accurate and objective rules of conduct. Judges interpret the codes, and their reading of nuances in interpreting statutes is neither sanctioned nor encouraged. From personal experience and many visits to law offices in Latin America, I have found that practicing lawyers seldom keep copies of court decisions. When asked questions about law, the lawyer usually refers to an oftendogedared (and often amended) copy of the code controlling the particular area of practice in question.

As the referent to law in Latin America usually is the code, case annotations to codes are unknown. In fact, in the hierarchy of legal sources, the views of legal scholars are given precedence over those of judges.²⁹ If the decisions have no precedential value, their publication is less likely. This observation, however, weakens if one considers the numerous times the Commission itself cites to its prior decisions; the Inter-American Court cites to other jurisdictions; and the European Commission and Court, also products of the civil law tradition, cite to their own and other jurisdictions' prior jurisprudence.

Another possible explanation for difficulty in researching the Commission's decisions is their lack of intellectual rigor. This could also result in large part because the decisions are either routinely formalistic or poorly reasoned when they are substantive, or both.

Many of the Commission's decisions, especially in its initial years, had little precedential worth because they involved presumptive findings by the Commission under Article 42 of its Regulations³⁰ when the gov-

29. See generally Richard J. Wilson, *Criminal Justice in Revolutionary Nicaragua: Intimations of the Adversarial in Socialist and Civil Law Traditions* 23 U. MIAMI INTER-AM. L. REV. 269, 313-317 (1991-92); JOHN HENRY MERRYMAN, *THE CIVIL LAW TRADITION* (2d ed. 1985).

30. Article 42 of the Commission's Regulations provides, in full, as follows: The facts reported in the petition whose pertinent parts have been transmitted to the government of the State in reference shall be presumed to be true if, during the maximum period set by the Commission under the provisions of Article 34 paragraph 5, the government has not provided the pertinent information, as

ernment involved made no response to the allegations against it. These decisions have little scholarly value because the issues are never truly joined. The decisions themselves merely add weight to arguments that a country has engaged in a consistent pattern of human rights abuses; which in itself is no small matter, but limits the decision's significance. Moreover, the critical literature on the Commission's decisions, particularly involving claims against the United States, suggests that they are "poorly reasoned and confusing."³¹ When the decisions lack rigor, their legal precedence is diminished and they will not be diligently sought out by advocates.

A fifth reason the Commission's decisions are not more widely disseminated results from their political impact: they politically embarrass the countries against which the decisions are rendered, and those countries pay the bills for dissemination. Internally, the Commission staff feels enormous political pressure not to publish certain reports, or to "bury" the published decisions adverse to the interests of the OAS member states. The staff, undoubtedly responsive to criticisms in order to maintain political viability within the OAS, responds by placing individual case reports in the middle of the annual reports and publishing only a few copies of those decisions.

Some Commission staff argue the converse; that the decisions are not published specifically because of their political sensitivity. They argue that governments are more responsive to proposals such as friendly settlement and payment of damages when they are not pressured by the parties or the Commission to respond in the bright light of public attention. Litigators, however, generally should be unpersuaded by this argument and urge the opposite: the more light the better. In the clinic's

long as other evidence does not lead to another conclusion.

BASIC IACHR DOCUMENTS, *supra* note 5, at 118.

Thus, this section creates what might be termed a "default judgment" option for the Commission.

31. E.g., Dinah Shelton, *Improving Human Rights Protections: Recommendations for Enhancing the Effectiveness of the Inter-American Commission and Inter-American Court of Human Rights*, 3 AM. U. J. INT'L L. & POL. 323, 332 (1988); J. Lauchlan Wash et al., *Conference Report, The Inter-American Human Rights System: Into the 1990's and Beyond*, 3 AM. U. J. INT'L L. & POL. 517, 551-556 (1988); Claudio Grossman, *Proposals to Strengthen the Inter-American System of Human Rights*, 32 GERMAN Y.B. INT'L L. 264, 274 (1990); The Inter-American Commission on Human Rights: A Promise Unfulfilled, Report by the Committee on International Human Rights, A.B.A. New York City (February 1993) (on file with author) (suggesting ways to improve the operations of the Inter-American Commission).

past experience, often clients wish to spread information about the complaint and the Commission's process as widely as possible precisely in order to bring pressure to bear on the government involved and on the Commission.

Finally, the Commission's decisions may be obscure because of the perception that they lack commercial value in the legal world. Likewise, this can be asserted about the decisions of international human rights tribunals in general. At best, the Commission's recommendations have moral force, and are often ignored or disdained by governments. The Commission focuses its findings of wrongdoing on governments, not businesses. Therefore, neither lawyers nor businesses stand to lose large revenues because of the Commission's judgments. Most published decisions found in both hard-bound and computer databases are driven by commercial considerations on the frequency and facility of use. Difficulty in access to the Commission's jurisprudence is, without doubt, due in some measure to the fact that the decisions do not stand to generate revenues for their users.

V. FUTURE DIRECTIONS: THE NEED FOR A COMPREHENSIVE INDEX

Regardless of the reasons for difficulty in accessing to the Commission's decisions, the current trend is for wider access to the reports, greater understanding of the Commission's operations, and expanded intellectual rigor and frequency in decided cases. To some measure, this index is an attempt to widen the access which is needed to encourage better decision-making by the Commission.

The index is a long overdue forward step, but is it enough? In short, the answer is obviously no. There remains much more work to access the jurisprudence of the Commission. The following areas have not been comprehensively indexed, and will need to be developed in the near future to guarantee a comprehensive picture of human rights law in the Americas:

1. The decisions of the Inter-American Court of Human Rights must be indexed. Although not currently extensive, this source is growing incrementally each year. At present, the Court has 14 published advisory opinions, and 6 final decisions on the merits in contentious cases. An additional index would come easily and could refer to the pleadings filed in the Court as those documents must be published along with the deci-

sions on the merits under Article 49.1(b) of the Regulations of the Court.³²

2. The Commission's country or topical reports are an important source of jurisprudence, as they often incorporate the Commission's views on a government's compliance with certain provisions of the Declaration and the Convention. The country reports are contained in both separate volumes and selectively in the Commission's annual reports. The separate country reports tend to focus on particular countries. For example, of the 35 reports published at the end of 1992, seven focused on Cuba and five on Haiti.³³

3. A future index should also include procedural aspects on practice before the Commission, as well as a compilation of references to the substantive violations of the Declaration and Convention. Again, this could be achieved easily by references to the Commission's and the Court's enabling statutes and regulations. In the European system, only about ten percent of all cases survive the initial hurdle of admissibility.³⁴ While such figures are unparalleled in the Americas, the procedural aspects of admissibility, especially the issue of exhaustion of domestic remedies, are critical to any comprehensive index. Procedural topics might also include, but should not be limited to, the following: other bars to admissibility like the six-month time limit under Article 38 of the Commission's Regulations³⁵ and "manifest inadmissibility" or lack of "grounds" as provide under Article 35;³⁶ issuance of precautionary measures by the Commis-

32. BASIC IACHR DOCUMENTS, *supra* note 5, at 145, 164.

33. BASIC IACHR DOCUMENTS, *supra* note 5, at 171-73.

34. *Supra* note 14.

35. Article 38 of the Commission's Regulations states, in full, as follows:

Article 38. Deadline for Presentation of Petitions

1. The Commission shall refrain from taking up those petitions that are lodged after the six-month period following the date on which the party whose rights have allegedly been violated has been notified of the final ruling in cases where the remedies under domestic law have been exhausted.

2. In the circumstances set forth in Article 34 (2) of these Regulations, the deadline for presentation of a petition to the Commission shall be within a reasonable period of time, in the Commission's judgment, as from the date on which the alleged violation of rights has occurred, considering the circumstances of each specific case.

BASIC IACHR DOCUMENTS, *supra* note 5, at 116-17.

36. Article 35 of the Commission's Regulations states, in full, as follows:

The Commission shall proceed to examine the case and decide on the following matters:

- a. whether the remedies under domestic law have been exhausted, and it may determine any measures it considers necessary to clarify any remain-

sion and preventive measures by the Court; standing of parties and joinder of petitions; and questions of burdens of proof and the admissibility of evidence.

4. Any comprehensive index should refer to the substantive provisions of all additional conventions and protocols to the American Convention. There are currently five such instruments.³⁷ Additionally, when the Commission or Court relies on the provisions of other international human rights instruments or discusses the evolution of standards of customary international human rights law, such reference should also be indexed.

5. Finally, the current index only refers to instances where the Commission decided a case based on particular provisions of the Declaration and the Convention. A comprehensive index should refer to any argument of the parties, routinely included in the case reports, which raises an issue of violation though not specifically addressed by the Commission. Such references would provide a sense of the Commission's approach to deciding the elements important to disposition. Likewise, it would allow what is seen by parties as an opportunity to understand the Commission's process in determining the areas important to their claims, and provide the public with a general knowledge of the types of arguments the Commission believes were unacceptable in the past but ripe for future consideration.

The current index takes a giant step forward in cataloging the jurisprudence of the Commission. It provides the litigator with an invaluable research tool, assuming that the litigator has access to copies of the

ing doubts;

b. other questions related to the admissibility of the petition or its manifest inadmissibility based upon the record or submission of the parties;

c. whether grounds for the petition exist or subsist, and if not, to order the file closed.

BASIC IACHR DOCUMENTS, *supra* note 5, at 115-16.

37. The five instruments are: 1) Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador" (signed at San Salvador, El Salvador, on November 17, 1988); 2) Protocol to the American Convention on Human Rights to Abolish the Death Penalty (approved at Asuncoon, Paraguay, on June 8, 1990); 3) Inter-American Convention to Prevent and Punish Torture (signed at Cartagena de Indias, Columbia, on December 9, 1985). Annual Report of IACHR, 1992-1993, at 328-30; 4) Inter-American Convention on the Forced Disappearance of Persons (Done at Belém, Brazil, June 9, 1994) 33 I.L.M. 1429 (1994); and 5) Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women ("Convention of Belém do Pará") (Done at Belém do Pará, June 9, 1994), 33 I.L.M. 1534 (1994). There is also a draft underway on the future Inter-American Legal Instrument on the Rights of Indigenous Populations. *Id.* at 263-312.

Commission's annual and other reports. Funds should be budgeted to make those reports more widely available to the practicing bars of the Americas, preferably through computerized, searchable databases, or through wider distribution of hard-bound editions. This distribution could fulfill one of the Commission's most important mandates: educating the bar and public regarding human rights law in the Americas. This index is a pivotal leap in that educational process.