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NOTES AND COMMENTS

THE DEATH OF DR. HUGO SPADAFORA: HUMAN RIGHTS INVESTIGATIVE RESPONSIBILITY IS PAST DUE

Judith K. Furukawa*

INTRODUCTION

Dr. Hugo Spadafora Franco, a prominent Panamanian political leader,¹ was brutally tortured and slain in September of 1985.² Witnesses last saw him alive in the custody of Panamanian Defense Force (PDF) guards,³ but Spadafora's decapitated body was discovered in

* J.D., 1989, Washington College of Law, The American University.

1. Case 9726, INTER-AM. C.H.R. 174, 175, OEA/ser. L./V/II.74, doc. 10 rev. 1 (1988); Supplemental Petition to the Inter-American Commission on Human Rights, Violations of the Human Rights of Hugo Spadafora by the Republic of Panama, Case 9726, INTER-AM. C.H.R. 11 (Sept. 25, 1986) [hereinafter Supplemental Petition]. Hugo Spadafora, a citizen of Panama, was a medical doctor who served as director of the Integrated Health System and later as Vice-Minister of Health until 1978 under the military government of General Omar Torrijos, then head of state in Panama. *Id.* at 11-12. From 1980 until the time of his death, Spadafora made public accusations against General Manuel Antonio Noriega, the current *de facto* head of state in Panama, charging him with corruption, drug trafficking, and other illegal activities. *Id.* at 12; *Ejecutan a Spadafora* (Spadafora Executed), La Prensa (Panama), Sept. 17, 1985, at 1.

2. Case 9726, INTER-AM. C.H.R. 174, 176, OEA/ser. L./V/II.74, doc. 10 rev. 1 (1988); DEP'T. OF ST., 99TH CONG., 2D SESS., REPORT TO THE HOUSE COMM. ON FOREIGN AFFAIRS AND THE SENATE COMM. ON FOREIGN RELATIONS 640 (Comm. Print 1986) [hereinafter ST. DEP'T REP.]; Supplemental Petition, *supra* note 1, at 29; *Ejecutan a Spadafora*, *supra* note 1, at 1; *En Pocas Palabras* (In a Few Words), La Prensa, Sept. 17, 1985. A farmer found Spadafora's decapitated body in Costa Rica on September 14, 1985. *Id.*

3. ST. DEP'T REP., *supra* note 2, at 640. The Panamanian Defense Force (PDF), previously called the National Guard, is the military force that runs Panama despite the appearance of a civilian government. *Id.*; *Human Rights and Political Developments in Panama: Hearings Before the Subcomm. on Human Rights and International Organizations of the House of Representatives, and the Subcomm. on Western Hemisphere Affairs of the Comm. on Foreign Affairs*, 100th Cong., 1st Sess. 7-8 (1986) [hereinafter *Human Rights Subcomm.*] (statement of Jack Hood Vaughn, former

Costa Rica.⁴ The governments of both Costa Rica and Panama investigated, but with ambiguous results.⁵ Dissatisfied with the investigation of the Panamanian government, Winston Spadafora presented the case to the Inter-American Commission on Human Rights (Commission) on behalf of his brother.⁶

The case of Dr. Spadafora brings to light the problem of investigative responsibility of states involved in individual torture cases. The Commission,⁷ an organ of the Organization of American States (OAS),⁸ promotes the respect for and defense of human rights as its

United States Ambassador to the Republic of Panama). Vaughn characterizes the PDF as "teflon troops" that are gaining greater influence while becoming more corrupt. *Id.* at 8; see Supplemental Petition, *supra* note 1, at 6 (describing the victory of the PDF candidate in the 1984 presidential election, even though early returns indicated a victory for the opposition); Hersh, *Panama General Reported to Rig Election in 1984*, N.Y. Times, June 22, 1986, at 1 [hereinafter *Panama General Reported to Rig Election*] (describing PDF intervention in the 1984 presidential elections).

4. Supplemental Petition, *supra* note 1, at 29; "Melo" Spadafora acusa a Noriega y Ow Young ("Melo" Spadafora accuses Noriega and Ow Young), *La Prensa*, Sept. 17, 1985, at 1; *En Pocas Palabras*, *supra* note 2; *Ejecutan a Spadafora*, *supra* note 1, at 1.

5. Case 9726, INTER-AM. C.H.R. 174, 176-81, OEA/ser. L./V/II.74, doc. 10 rev. 1 (1988); Supplemental Petition, *supra* note 1, at 30-36. The Costa Rican Public Ministry investigation concluded that Spadafora died in Panama. *Id.* at 31. Further investigation was therefore limited. *Id.* The Panamanian government investigation was not free from PDF influence. *Id.* at 36.

6. Case 9726, INTER-AM. C.H.R. 174, 174, OEA/ser. L./V/II.74, doc. 10 rev. 1 (1988); Case 9726, INTER-AM. C.H.R. 110, 110 OEA/ser. L./V/II.71, doc. 9 rev. 1 (1987); Supplemental Petition, *supra* note 1, at 1.

7. American Convention on Human Rights, Nov. 22, 1969, O.A.S.T.S. No. 36, at 1, OEA/ser. L./V/II.23, doc. rev. 6, 1, O.A.S.O.R. OEA/ser. K./XVI/I.1, doc. 65 rev. 1 corr. 2 (1970), reprinted in 9 I.L.M. 673 (1970), also reprinted in BASIC DOCUMENTS PERTAINING TO HUMAN RIGHTS IN THE INTER-AMERICAN SYSTEM 25, OEA/ser. L./V/II.71, doc. 6 rev. 1 (1987) [hereinafter American Convention]. Article 33 of the American Convention establishes the Inter-American Commission on Human Rights as a competent organ of the Organization of American States. *Id.* art. 33. Articles 34 through 40 describe the organization of the Commission. *Id.* arts. 34-40. Articles 41 through 43 describe the functions of the Commission. *Id.* arts. 41-43. Articles 44 through 47 describe competence, or those parties able to present a petition to the Commission. *Id.* arts. 44-47. Finally, articles 48 through 51 describe the procedures that the Commission follows. *Id.* arts. 48-51; Charter of the Organization of American States, Apr. 30, 1948, 2 U.S.T. 2416, T.I.A.S. No. 2361, 119 U.N.T.S. 3, protocol of Amend. Feb. 27, 1967, 21 U.S.T. 607, T.I.A.S. No. 6847 [hereinafter OAS Charter]. Article 51 of the Protocol of Buenos Aires of 1967 amended the OAS Charter to include the Inter-American Commission on Human Rights (Commission) as an organ of the OAS. *Id.* The amendment took effect in 1970. *Id.*

8. OAS Charter, *supra* note 7. The Organization of American States, established in 1948, is a regional international organization created to achieve peace and solidarity, as well as maintain sovereignty, territorial integrity, and independence within the region of the American States. BASIC DOCUMENTS PERTAINING TO HUMAN RIGHTS IN THE INTER-AMERICAN SYSTEM 1-2, OEA/ser. L./V/II.71, doc. 6 rev. 1 (1987). States that have ratified the OAS Charter are as follows: Antigua and Barbuda, Argentina, The Bahamas, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Domi-

primary function.⁹ Responsibilities include investigation of claims alleging violations of the American Convention on Human Rights¹⁰ and the American Declaration of Human Rights¹¹ brought before the Commission.¹² When states fail to respond to informational inquiries, or perform inadequate investigations, they fail to fulfill their international responsibility under customary international law.¹³ In the *Spadafora*

nica, the Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, México, Nicaragua, Panamá, Paraguay, Perú, Saint Christopher and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, the United States of America, Uruguay, and Venezuela. *Id.* at inside back cover.

9. American Convention, *supra* note 7, art. 41. The functions of the Commission are to nurture an awareness of human rights, to assist countries to frame domestic law and practice in favor of human rights, to study and investigate human rights issues and practices, to respond to and advise courses of action pursuant to requests and petitions, and to submit annual reports to the Organization of American States. *Id.*; American Convention on Human Rights (summary) in BASIC DOCUMENTS PERTAINING TO HUMAN RIGHTS IN THE INTER-AMERICAN SYSTEM 10-11, OEA/ser. L./V/II.71. doc. 6 rev. 1 (1987) [hereinafter American Convention (summary)].

The American Convention establishes obligations of states parties to protect the rights and freedoms defined. *Id.* Concentration is on civil and political rights; economic, social, and cultural rights are protected to the extent of the rights implicit in the OAS Charter. *Id.* Part II of the Convention establishes the OAS organs designed to protect the rights, such as the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. *Id.*; see also American Declaration, *infra* note 11 (enumerating the civil and political rights declared fundamental in the American States).

10. American Convention, *supra* note 7, at 27; American Convention (summary), *supra* note 9, at 11; INTER-AMERICAN COMMISSION ON HUMAN RIGHTS: TEN YEARS OF ACTIVITIES, 1971-1981, 7-8 (1982) [hereinafter IACHR: TEN YEARS]. The OAS views the adoption of the American Convention in 1969, and implementation in 1978, as a strengthening of the OAS commitment to promote human rights and responsibilities in the Americas. American Convention (summary), *supra* note 9, at 11. Signatory countries to the American Convention are as follows: Argentina, Barbados, Bolivia, Chile, Colombia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, México, Nicaragua, Panamá, Paraguay, Perú, Suriname United States, Uruguay, and Venezuela. American Convention, *supra* note 7, at 63. Chile, Paraguay, and the United States have not ratified the American Convention. *Id.*

11. American Declaration of the Rights and Duties of Man, adopted May 2, 1948, by the Ninth International Conference of American States, Bogotá, Colombia, reprinted in BASIC DOCUMENTS PERTAINING TO HUMAN RIGHTS IN THE INTER-AMERICAN SYSTEM 17, OEA/ser. L./V/II.71. doc. 6 rev. 1 (1987) [hereinafter American Declaration]; IACHR: TEN YEARS, *supra* note 10, at 5. The American Declaration is an OAS document which includes a preamble and thirty-eight articles that define the rights and duties of man that are attributes of human personality. *Id.*

12. American Convention, *supra* note 7, art. 41(f); see also *supra* note 9 and accompanying text (noting the power of the Commission, through article 41, to take action on petitions pursuant to American Convention articles 44 through 51).

13. Sepúlveda, *El Panorama de los Derechos Humanos en la América Latina. Actualidad y Perspectiva* (Panorama of Human Rights in Latin America: Actuality and Perspective), 45 BOLETÍN MEXICANO DE DERECHO COMPARADO 1053, 1054 (1982). In terms of customary international law and the international declarations and conven-

case, the Panamanian government interpreted its constitution in such a way as to avoid a thorough investigation into the death.¹⁴ This raises two issues. First, does this interpretation alleviate Panama from any further responsibility? Second, under these circumstances, does the Costa Rican government have the obligation to reopen its investigation?

Part I of this Comment describes the procedure for presenting cases to the Commission, with reference to the presentation of individual petitions, the investigative procedures in use, the current expectation of state responsibility, and the limitations inherent in the doctrine of state responsibility. Part II discusses past problems with the failure of different states to adequately investigate violations of human rights under Commission norms, centering on the previous investigations in Panama. Part III discusses the specifics of Commission Case 9726 of Hugo Spadafora. Part IV analyzes the problem of investigative responsibility that the Spadafora case presents. Part V presents recommendations for setting an international standard of investigative responsibility through an interpretation of articles 24,¹⁵ 48(1),¹⁶ and 50¹⁷ of the American

tions that exist and are developing, the state involved in a possible human rights violation has the responsibility to thoroughly investigate the case. *Id.*; Vassilenko, *Functioning of International Law and International Sanctions*, 24 INDIAN J. INT'L L. 77, 80 (1984).

14. ST. DEP'T. REP., *supra* note 2, at 641. President Eric del Valle claimed that the Panamanian constitution did not empower him with the independent authority to appoint an investigative body. *Id.*; Supplemental Petition, *supra* note 1, at 34.

15. American Convention, *supra* note 7, art. 24. Article 24 states that all persons are equal before the law and are thus entitled to equal protection of the law without discrimination. *Id.*; IACHR: TEN YEARS, *supra* note 10, at 320. The Commission states that the accused has the right to full protection, independent counsel, and due process. *Id.*

16. American Convention, *supra* note 7, art. 48(1). Article 48(1) instructs a course of action for the Commission when it receives a petition or communication alleging violation of any protected right. *Id.*

Article 44 of the Regulations of the Inter-American Commission on Human Rights restates the authority given to the IACHR to perform on-site visits. Regulations of the Inter-American Commission on Human Rights, *approved* Apr. 8, 1980, *amended* Mar. 7, 1985, *reprinted in* BASIC DOCUMENTS PERTAINING TO HUMAN RIGHTS IN THE INTER-AMERICAN SYSTEM 75, 90-91 OEA/ser. L./V/II.71. doc. 6 rev. 1 (1987) [hereinafter IACHR Regulations]; *see also* Norris, *Observations In Loco: Practice and Procedure of the Inter-American Commission on Human Rights*, 15 TEX. INT'L L.J. 46, 48-95 (1980) [hereinafter Norris, *In Loco*] (describing the background, implementation, and the growing importance of the observation *in loco*, or on-site visit).

17. American Convention, *supra* note 7, art. 50. Article 50 directs the Commission to report to the concerned states its findings, conclusions, proposals, and recommendations, along with the party's statements and separate opinions. *Id.* The states, however, are not permitted to publish the transmittal. *Id.*; *see also* IACHR: TEN YEARS, *supra* note 10, at 338 (observing that the IACHR doctrine on state responsibility mandates state recognition of the fundamental duty to protect human rights).

Convention that can be supported through an advisory opinion¹⁸ of the Inter-American Court of Human Rights.¹⁹

I. PROCEDURE FOR PRESENTING A CASE TO THE COMMISSION

A. THE INDIVIDUAL PETITION PROCEDURE

An individual petition brought before the Commission is subject to the procedure described in articles 44 through 47 of the American Convention.²⁰ The procedure contains liberal standing restrictions,²¹ and petitions can refer to individual violations or those that are general or collective in nature.²² Petitioners must exhaust all domestic re-

18. American Convention, *supra* note 7, art. 64. Article 64 gives the Inter-American Court of Human Rights the authority to issue advisory opinions regarding the interpretation of the American Convention and other applicable treaties addressing the protection of human rights. *Id.*; see generally Buergenthal, *The Advisory Practice of the Inter-American Human Rights Court*, 79 AM. J. INT'L L. 1 (1985) [hereinafter Buergenthal, *Advisory Practice*] (discussing the Inter-American Court procedure for issuing advisory opinions).

19. See American Convention, *supra* note 7, arts. 52-69 (the framework of the Inter-American Court of Human Rights and noting its establishment with the ratification of the American Convention).

20. American Convention, *supra* note 7, arts. 44-47. Article 44 addresses proper petitioners before the Commission. *Id.* art. 44. Article 45 examines the issue of standing. *Id.* art. 45. Article 46 specifies requirements pertaining to prior exhaustion of remedies, statute of limitations, finality of collateral proceedings, and information contained on the petition. *Id.* art. 46. It also recognizes exceptions if remedies or due process do not exist under domestic law. *Id.* Article 47 renders any incomplete, groundless, or previously addressed petition inadmissible. *Id.* art. 47; see Norris, *The Individual Petition Procedure of the Inter-American System for the Protection of Human Rights*, in GUIDE TO INTERNATIONAL HUMAN RIGHTS PRACTICE 108, 108-16 (H. Hannum ed. 1986) [hereinafter Norris, *Individual Procedure*] (explaining in detail the individual petition procedure outlined in articles 44 through 51 of the American Convention).

21. American Convention, *supra* note 7, art. 44. Any person, group of persons, or nongovernmental organization that at least one member state of the OAS legally recognizes can present a petition to the IACHR. *Id.* The petition must contain either a denunciation or a complaint of the convention by a state party. *Id.*; Norris, *Individual Procedure*, *supra* note 20, at 112.

22. Norris, *Individual Procedure*, *supra* note 20, at 112. Collective petitions refer to multiple victims and violations supported by cases with certain common elements that enable them to be treated as collective rather than several individual cases. *Id.* General petitions allege widespread or general disrespect for human rights not limited to a particular group or to a single fact situation. *Id.*; see, e.g., Case 9265, INTER-AM. C.H.R. 113, 113, OEA/ser. L./V/II.66, doc. 10 rev. 1 (1985) (treating eleven cases of reported human rights violations in Suriname as collective in nature because those arrested were allegedly involved in a plot to overthrow the government); IACHR: TEN YEARS, *supra* note 10, at 237-41 (describing case 4425 in which labor union leaders allegedly were killed or kidnapped for trying to organize Coca-Cola Company workers in Guatemala); Cases 1702, 1748, and 1755, INTER-AM. C.H.R. OEA/ser. L./V/II.32, doc. 21 rev. 1 (1974), reprinted in IACHR: TEN YEARS, *supra* note 10, at 128-34

medies, before the Commission will admit the petition.²³ The technical requirements of the procedure include the identification of the petitioner,²⁴ a statement of facts,²⁵ a timely filing within six months of the final ruling of the domestic court,²⁶ and that the case is not pending in any other intergovernmental organization or tribunal.²⁷

(demonstrating the Commission's consideration of three cases from Guatemala as a general petition because of alleged general arbitrary arrests and deaths); Cases 1758, 1759, 1762, and 1763, INTER-AM. C.H.R. OEA/ser. L./V/II.31, doc. 42 rev. 1 (1973), reprinted in IACHR: TEN YEARS, *supra* note 10, at 140-41 (demonstrating a general petition for alleged lack of due process and arbitrary arrest violations in Paraguay).

23. American Convention, *supra* note 7, art. 46(1)(a); IACHR Regulations, *supra* note 16, art. 37; Norris, *Individual Procedure*, *supra* note 20, at 113-14. The petitioner is required to seek all available domestic remedies, including appeals, before presenting a case to the IACHR. IACHR Regulations, *supra* note 16, art. 37; but see American Convention, *supra* note 7, art. 46(2) (listing exceptions to the requirement to exhaust domestic remedies before admitting a case); IACHR Regulations, *supra* note 16, art. 37 (placing the burden upon the accused government to prove that local remedies remain available unless evident from previously provided background information that the petitioner alleges an inability to exhaust domestic remedies because of the lack of due process in domestic legislation, denial of access to the courts, or an unwarranted delay in the rendering of a final judgment); Norris, *Individual Procedure*, *supra* note 20, at 116 (outlining the exception if another organization to which the petition has been submitted is limited to a general examination and if no specific decision of the facts submitted to the Commission is made or would settle the situation in question).

24. American Convention, *supra* note 7, art. 46(1)(d); The petitioner must include his or her name, nationality, profession, domicile, and signature. *Id.* If the petition is made on behalf of the victim, the Commission may require a notarized power of attorney or other proof of authorization. Norris, *Individual Procedure*, *supra* note 20, at 114.

25. American Convention, *supra* note 7, art. 44. The statement of facts must include the date and place of the alleged violation, a complete detailed account of the violation, and the connection between the government and the violation. Norris, *Individual Procedure*, *supra* note 20, at 114-15. If the accusation is against private persons, the Commission can only examine the case if they were acting under the authority of the state. *Id.*

26. American Convention, *supra* note 7, art. 46(1)(b). But see Norris, *Individual Procedure*, *supra* note 20, at 115 (delineating the exceptions provided in cases when victims are unable to file due to imprisonment without freedom of communication, infirmity while imprisoned, or endangerment of life should they file); IACHR Regulations, *supra* note 16, art. 38 (stating that the Commission will review the circumstances of each individual case to determine filing requirements).

27. American Convention, *supra* note 7, art. 46(1)(c). The Commission will not hear a case if it is pending in another international governmental organization or if it duplicates a petition pending before the Commission or one that already was decided. IACHR Regulations, *supra* note 16, art. 39(1). But see *id.* art. 39(2) (stating that the IACHR will consider a case if the other governmental organization made no specific decision on the facts of the case, or if the petitioner in the other proceeding is a third party without the authorization of the victim or a family member to present the petition); Norris, *Individual Procedure*, *supra* note 20, at 116 (stipulating the circumstances in which exceptions are made).

B. INVESTIGATIVE PROCEDURES

Once the Commission deems the petition admissible,²⁸ it opens the case and transmits the pertinent information to the government accused of the human rights violation.²⁹ Unless the government requests a justifiable delay of no more than sixty days, the Commission expects a reply within 120 days of the date that the information was sent.³⁰ The Commission will communicate with the government through the most direct means when it is believed that an imminent threat or danger to a person's life or physical integrity exists.³¹ If the government fails to respond, consideration of the petition continues according to the normal procedure, and the government is now on notice that the Commission has the case under examination.³²

The Commission may presume the allegations are true if the government fails to respond to the information or produce evidence disproving them.³³ When the Commission receives the government's response, the

28. See Norris, *Individual Procedure*, *supra* note 20, at 116-17 (noting that the admissibility procedure is informal). A staff attorney determines whether the petition meets the *prima facie* requirements of admissibility. *Id.* at 117. If the petition is not complete, the attorney may ask the petitioner for more information. *Id.* Unless the Secretariat of the OAS or the concerned government raises objections, the Commission does not make formal decisions on admissibility, but rather proceeds to the merits of the case. *Id.*; see also Case 9726, INTER-AM. C.H.R. 110, OEA/ser. L./V/II.71, doc. 9 rev. 1 (1987) (describing the procedure and correspondence through which the IACHR declared admissible the petition of Winston Spadafora, acting on behalf of his brother, Hugo).

29. American Convention, *supra* note 7, art. 48(1)(a). To help safeguard the petitioner, the IACHR staff attorney edits the information in the complaint and supplies the government with the relevant facts without identifying the author of the petition. Norris, *Individual Procedure*, *supra* note 20, at 117.

30. American Convention, *supra* note 7, art. 51(1); Norris, *Individual Procedure*, *supra* note 20, at 118.

31. American Convention, *supra* note 7, art. 48(2). A telephone call and telegram or detailed cablegram are employed as faster means of communication than the mail system to save the victim from a potential life-threatening situation. Norris, *Individual Procedure*, *supra* note 20, at 119.

32. Norris, *Individual Procedure*, *supra* note 20, at 119. Even if the government does not respond to the telephone call or cablegram sent by the Commission, by putting the government on notice that the IACHR is investigating the situation may save the victim from immediate danger. *Id.*

33. IACHR Regulations, *supra* note 16, art. 42. Article 42 states that transmittals to a government are regarded as true if the government fails to respond with pertinent information or other evidence. *Id.* The Commission jurisprudence addresses state responsibility by declaring that a presumption forms that the government is responsible if the arrests are not reported immediately, if those arrested are taken to unofficial places, and the military or paramilitary groups conduct the operations and interrogations. Report on the Situation of Human Rights in Bolivia 38, OEA/ser. L./V/II.53, doc. 6 (1981); see, e.g., Case 9437, INTER-AM. C.H.R. 43, 44, OEA/ser. L./V/II.66, doc. 10 rev. 1 (1985) (citing the failure of the government of Chile to respond under article 42 as one consideration in finding against the government); Case 9472, INTER-AM. C.H.R.

petitioner may reply to it.³⁴ This process of reply and rejoinder continues as long as necessary to establish the facts of the case.³⁵ Hearings are another way to gather information about cases before the Commission.³⁶ The Commission may request a hearing at any time.³⁷ Either party may present oral or written statements, but the hearing is not necessarily adversarial in nature.³⁸

A final way for the Commission to investigate is *in loco*,³⁹ or on-site visit, which is used for investigating an individual case or for studying the general condition of human rights in a member state.⁴⁰ Unlike non-signatories, parties to the Convention are obligated to provide the necessary facilities for the investigation.⁴¹ The ability to make on-site visits has developed through precedent and statutory interpretation of article 48 of the American Convention.⁴² The Commission started to make these visits in 1961,⁴³ with a view to investigating the then existing human rights conditions in the Dominican Republic. The OAS member states now accept this practice, and its importance to member states has also grown.⁴⁴

46, 47, OEA/ser. L./V/II.66, doc. 10 rev. 1 (1985) (citing the government of Chile's failure to respond under article 42 as a negative factor while finding the government in violation); Case 6724, INTER-AM. C.H.R. 79, 81, OEA/ser. L./V/II.66, doc. 10 rev. 1 (1985) (recognizing that the government of El Salvador's failure to respond under article 42 affected the holding against the government).

34. Norris, *Individual Procedure*, *supra* note 20, at 118.

35. *Id.*

36. IACHR Regulations, *supra* note 16, art. 43; Norris, *Individual Procedure*, *supra* note 20, at 119. The Commission may request a hearing if it perceives a need for pertinent written or oral information. IACHR Regulations, *supra* note 16, art. 43.

37. American Convention, *supra* note 7, art. 48(1)(e).

38. Norris, *Individual Procedure*, *supra* note 20, at 118.

39. American Convention, *supra* note 7, art. 48(1)(d); Norris, *Individual Procedure*, *supra* note 20, at 119. The original mandate of the IACHR did not give specific authority for conducting on-site visits. Norris, *In Loco*, *supra* note 16, at 48. This power was not expressly prohibited; thus, its competence was developed through statutory interpretation and precedent. *Id.* at 49.

40. American Convention, *supra* note 7, art. 48(1)(d); Norris, *Individual Procedure*, *supra* note 20, at 119; see Norris, *In Loco*, *supra* note 16, at 76 (acknowledging that the request to study the human rights situation of a country may come through an invitation from the state, from a third party such as a complainant or member state, or from an absolute majority vote of the Commission requesting permission).

41. American Convention, *supra* note 7, art. 48(1)(d); Norris, *Individual Procedure*, *supra* note 20, at 119.

42. See Norris, *In Loco*, *supra* note 16, at 49 (describing the progress and development of the on-site visit through a chronology of visits made from 1961 through 1979).

43. *Id.* at 50. The visit of the Commission to the Dominican Republic expanded its activities beyond receiving testimony to visiting high officials, traveling the interior of the country, and visiting the sites of alleged violations. *Id.*

44. *Id.* at 47 (enunciating events of the June 1977 General Assembly of the OAS, when the United States revitalized the on-site visit through support of an increased budget for the IACHR and giving permission for free access to the United States terri-

C. STATE AND INVESTIGATIVE RESPONSIBILITY

The Commission views the state as responsible to guarantee the safety of its inhabitants.⁴⁵ Under the theory of state responsibility, the duty to guarantee safety extends to aliens within a state.⁴⁶ According to the Commission, the state should do everything possible to effectively protect human rights of both aliens and its nationals.⁴⁷ A state can fail in its duty through action, condonation of an illegal practice,⁴⁸ or omission or failure to stop an administrative practice that violates human rights.⁴⁹

tory for visits when deemed necessary); *see also* Statute of the Inter-American Commission on Human Rights, *approved* Oct. 1979, *reprinted in* BASIC DOCUMENTS PERTAINING TO HUMAN RIGHTS IN THE INTER-AMERICAN SYSTEM, 64, 70, OEA/ser. L./V/II.71, doc. 6 rev. 1 (1987) (giving the text of article 18 of the statute that broadens the powers of the Commission to include on-site visits to investigate human rights situations in member states).

45. IACHR: TEN YEARS, *supra* note 10, at 338. The statement of the IACHR concerning state responsibility provides:

One source of concern to the Commission is the concept that the government will be responsible only for violations attributable to their officials or agents and could sit back and do nothing in the face of the threats to these rights that result from the armed conflict between enemy groups. The duty of the state is to guarantee the safety of its inhabitants, and it can fail in its duty both by action and by omission. The state cannot disqualify itself on so fundamental a matter and should do everything possible to effectively protect these rights.

Id.

46. Convention on the Rights and Duties of States, Dec. 26, 1933, 165 L.N.T.S. 19, art. 9; U.N. CHARTER arts. 55- 56; International Covenant on Civil and Political Rights, art. 2, *opened for signature* Dec. 19, 1966, Annex to G.A. Res. 2200A, 21 U.N. GAOR Supp. (No. 16), U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3 [hereinafter Covenant on Civil and Political Rights]. State responsibility to injured aliens, if the act or omission is attributable to the state, is a norm codified in a number of international treaties. U.N. CHARTER arts. 55, 56.

47. IACHR: TEN YEARS, *supra* note 10, at 338; American Convention, *supra* note 7, art. 1. Article 1 of the American Convention describes the obligations of the parties with respect to the rights and freedoms of people within the state's jurisdiction. *Id.* Article 2.3 declares that state parties should ensure effective remedies for violations of an individual's rights and freedoms. Covenant on Civil and Political Rights, *supra* note 46, art. 2.3.

48. *See* Case 4326, INTER-AM. C.H.R. 23, OEA/ser. L./V/II.57, doc. 6 rev. 1 (1982) (describing the efforts of a father trying to discover the fate of his daughter, who disappeared while in the custody of Argentine authorities); Case 9265, INTER-AM. C.H.R. 113, OEA/ser. L./V/II.66, doc. 10 rev. 1 (1985) (describing the complaints of widespread human rights violations in Suriname).

49. Greek Case, 12 Eur. Comm'n H.R. 194 (1969). The European Commission on Human Rights defined administrative practice as the official tolerance of the repetition of acts which are incompatible with the European Convention on Human Rights. *Id.*; *see* Case 4573, INTER-AM. C.H.R. 52, OEA/ser. L./V/II.57, doc. 6 rev. 1 (1982) (resolving a case in which Chilean military police tortured a victim who subsequently died); Case 7473, INTER-AM. C.H.R. 34, OEA/ser. L./V/II.57, doc. 6 rev. 1 (1982) (outlining a case in which a Bolivian lawyer was subject to arbitrary detention and torture); Case 6724, INTER-AM. C.H.R. 79, OEA/ser. L./V/II.66, doc. 10 rev. 1

Alien's rights are protected under state responsibility norms,⁵⁰ but those of the state's nationals are considered a domestic matter.⁵¹ The idea of extending state responsibility expectations to all human rights investigations conducted by the state is in the development stage.⁵² The Minnesota Protocol⁵³ is a draft of procedures to implement such an idea in the area of extra-legal, arbitrary, and summary executions.⁵⁴ Recommendations are consistent with the Second Draft of the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.⁵⁵ The recommendations could apply in a regional system such as the OAS that already has a human rights declaration and convention.⁵⁶

(1985) (describing a case in which Salvadoran army members kidnapped civilians who were later found dead).

50. RESTATEMENT (SECOND) OF FOREIGN RELATIONS LAW OF THE UNITED STATES § 164 (1965) [hereinafter RESTATEMENT]. Restatement § 164(1) declares that a state is responsible under international law for injury to an alien caused by conduct subject to its jurisdiction if the conduct is both attributable to the state and wrongful under international law. *Id.*

51. *Id.* § 165. Both the International Law Commission and the United Nations Charter provide for the protection of human rights. *Id.*

52. MINNESOTA LAWYERS INTERNATIONAL HUMAN RIGHTS COMMITTEE, REPORT OF THE MINNESOTA CONFERENCE: PROMOTING HUMAN RIGHTS THROUGH ADEQUATE INQUIRY PROCEDURES (Oct. 21-23, 1987) 1 [hereinafter MINNESOTA CONF. REP.]. The Minnesota Conference was held to discuss and draft possible ways to give meaning to article 6 of the International Covenant on Civil and Political Rights. *Id.* Article 6 provides for the right to life and freedom from arbitrary deprivation of life. *Id.* The Conference participants were challenged to develop impartial internationally recognizable standards for judging investigations of suspicious deaths. *Id.*; see Covenant on Civil and Political Rights, *supra* note 46, art. 6 (stating that everyone has the right to life and forbidding arbitrary deprivations of life).

The Covenant on Civil and Political Rights establishes the Human Rights Committee of the United Nations. Covenant on Civil and Political Rights, *supra* note 46, art. 6. This Committee considers reports submitted by state parties under article 40. *Id.* The Committee also receives and considers individual claims of violations by states if the state is a party to the Optional Protocol to the International Covenant on Civil and Political Rights. L. HENKIN, R. PUGH, O. SCHACHTER, & H. SMIT, INTERNATIONAL LAW CASES AND MATERIALS, 1012 (1986).

53. MINNESOTA CONF. REP., *supra* note 52, at 5. The full name given to the draft principles developed and revised by the conference participants is Minnesota Protocol: Preventing Arbitrary Killing through an Adequate Death Investigation and Autopsy. *Id.*

54. *Id.* at 6.

55. *Id.* at 1.

56. See *supra* notes 7 and 9 and accompanying text (describing the contents of the American Convention and the American Declaration).

II. PAST INVESTIGATIVE RESULTS

A. CASES REVEALING A STATE'S FAILURE TO ADEQUATELY INVESTIGATE

States often fail to investigate alleged violations despite direct Commission inquiries.⁵⁷ The governments may either fail to respond to the inquiry, or may provide very little information.⁵⁸ For example, the government of Chile failed to respond to the Commission in Case 4573⁵⁹ in which a man died from injuries inflicted while in the custody of the Chilean military police.⁶⁰ In Case 7473,⁶¹ the Bolivian government failed to respond to two separate Commission requests for information about an alleged arbitrary arrest and torture.⁶² The Commission allowed the government of El Salvador four years to answer information requests in Case 6724,⁶³ that involved military detainees, but received no response. Failure to respond was one of the bases for the decision

57. See Case 4573, INTER-AM. C.H.R. 52, 55, OEA/ser. L./V/II.57, doc. 6 rev. 1 (1982) (noting the failure of the Chilean government to answer IACHR inquiries into a torture case); Case 7473, INTER-AM. C.H.R. 34, 35, OEA/ser. L./V/II.57, doc. 6 rev. 1 (1982) (describing a Bolivian case in which the government failed to answer IACHR inquiries about the arbitrary detention of a lawyer).

58. See, e.g., Case 4326, INTER-AM. C.H.R. 23, 23-25, OEA/ser. L./V/II.57, doc. 6 rev. 1 (1982) (raising the inconsistencies in information supplied to the IACHR by the Argentine government and the petitioner); Case 7951, INTER-AM. C.H.R. 84, 101-04, OEA/ser. L./V/II.66, doc. 10 rev. 1 (1985) (assessing conflicting information that the government of Honduras provided to the IACHR); Case 9265, INTER-AM. C.H.R. 113, 121, OEA/ser. L./V/II.66, doc. 10 rev. 1 (1985) (criticizing the inadequacy of the investigation by the Suriname government into allegations of widespread human rights abuses).

59. Case 4573, INTER-AM. C.H.R. 52, OEA/ser. L./V/II.57, doc. 6 rev. 1 (1982).

60. *Id.* Chilean military police held a Chilean professor, Federico Alvarez Santibañez, incommunicado for six days at the National Investigations Center. *Id.* at 53. Afterwards, security personnel took him to the penitentiary infirmary where he died. *Id.* His medical report indicated that he died because of torture and severe beating. *Id.* at 54. The civilian investigator that looked into the matter reported that those involved in the investigation were affiliated with the military and therefore could not take the case further. *Id.* at 53.

The Commission received a petition inquiring into the case on September 24, 1979. *Id.* at 52. The IACHR requested information from the Chilean government on October 16, 1979, and again on August 10, 1980. *Id.* at 53-54. The Government of Chile failed to respond both times, and a report of the case was eventually published by the Commission. *Id.* at 52-55.

61. Case 7473, INTER-AM. C.H.R. 34, OEA/ser. L./V/II.57, doc. 6 rev. 1 (1982).

62. *Id.* A Bolivian attorney, Flaviano Unzueta, was arbitrarily detained and tortured by Bolivian authorities. *Id.* at 34. The Commission learned of the case on August 14, 1980. *Id.* In an attempt to confirm the facts, the IACHR sent requests for information on both August 19, 1980 and December 16, 1980. *Id.* at 35. No reply from the Bolivian government came to either request, and the Commission found that the Bolivian government's actions violated Mr. Unzueta's human rights. *Id.*

63. Case 6724, INTER-AM. C.H.R. 79, OEA/ser. L./V/II.66, doc. 10 rev. 1 (1984).

against the government.⁶⁴

In other instances, states have conducted inadequate or unreliable investigations. Authorities of the Argentine government detained a suspected anti-government activist in Case 4326.⁶⁵ After her arrest, the government provided no further information to her family despite efforts to locate her.⁶⁶ Although the Commission received an initial response from the government,⁶⁷ subsequent Commission inquiries submitted to the Argentine government for more complete information went unanswered.⁶⁸ In Case 7951,⁶⁹ filed against the government of Honduras, two Costa Rican nationals disappeared while traveling through Central America. The first reports submitted by the governments of the states named on the travel itinerary indicated that the Costa Ricans left Nicaragua,⁷⁰ but did not enter Honduras.⁷¹ Subsequent correspondence reported that they entered Honduras, but immediately left for Guatemala and traveled on to El Salvador.⁷² The Com-

64. *Id.* The Salvadoran Armed Forces took three civilian citizens of El Salvador into custody after a military invasion of a village. *Id.* at 79-80. Their dead bodies were discovered shortly thereafter. *Id.* On March 6, 1980, the Commission received the complaint, and contacted the Government of El Salvador on March 31, 1980 to request more information. *Id.* The Commission made subsequent requests on May 31, 1983, December 5, 1983, and on June 20, 1984. *Id.* The government of El Salvador did not respond to any of the requests, and the Commission subsequently made a resolution against the government. *Id.*

65. Case 4326, INTER-AM. C.H.R. 23, OEA/ser. L./V/II.57, doc. 6 rev. 1 (1980). Naval forces in Buenos Aires, Argentina, detained Inés Ollero, a young worker and biology student, on July 19, 1977. *Id.* at 25. Her father notified the Commission of his complaint on April 28, 1979. *Id.* at 23.

66. *Id.* at 26. The authorities originally denied that there was a detention, even though the arrest was on a police precinct record. *Id.* at 23. On October 9, 1980, the Commission sent a request for information to the Argentine government. *Id.* The government reply indicated that she was previously detained, but was no longer in custody. *Id.* at 24.

67. *Id.* at 31. The government reply suggested that the student was in hiding because of her suspected militant anti-government activities. *Id.* at 33. It also stated that her father had not exhausted his domestic remedies in the Argentine judicial system. *Id.* at 32.

68. *Id.* at 25. No further communication was received from Argentine officials despite a request by the Commission on December 11, 1980. *Id.*

69. Case 7951, INTER-AM. C.H.R. 84, OEA/ser. L./V/II.66, doc. 10 rev. 1 (1985). Two Costa Rican nationals disappeared in Honduras on December 11, 1981, while on a trip to Mexico. *Id.* The Commission received the complaint on January 14, 1982. *Id.*

70. *Id.* at 88. Nicaraguan border officials had record of them leaving Nicaragua. *Id.*

71. *Id.* at 91. The report from the Honduran government said no record existed indicating that the two entered Honduras. *Id.*

72. *Id.* at 101. The report from Guatemala stated that no record of an entry into Guatemala existed. *Id.* Further inquiry produced reports that conflicted with the initial information from both the Honduran and Guatemalan governments. *Id.* These reports indicated that the Costa Ricans entered and passed through Honduras, entered Guatemala, and went on to El Salvador. *Id.* at 102. Nothing in Salvadoran immigration

mission found the government of Honduras responsible for the disappearances⁷³ despite the investigation.

Inadequate government investigation was also apparent in Case 9265,⁷⁴ despite Suriname's efforts to change an earlier Commission decision. The government promptly responded to the petition alleging torture and due process violations.⁷⁵ Reports of human rights violations continued,⁷⁶ causing the Commission to send a committee to Suriname to make an on-site visit.⁷⁷ The committee, through evidence and testimony obtained on the visit, verified the allegations and found Suriname in violation of the human rights of its citizens.⁷⁸ The government requested a reconsideration of the decision,⁷⁹ but the Commission affirmed its earlier resolution because the government failed to provide new evidence of improving conditions in the country.⁸⁰

B. PREVIOUS INVESTIGATIONS IN PANAMA

A Commission rapporteur made the first on-site visit to Panama in 1969⁸¹ to investigate alleged violations of human rights after the over-

records indicated that they had ever entered the country. *Id.*

73. *Id.* at 104. Honduras presented unsigned type-written emigration cards to prove that the two left its territory. *Id.* at 103. These cards are customarily filled out by hand, and thus did not provide convincing evidence for the Commission. *Id.* The Commission published its findings in the 1984-1985 annual report. *Id.* at 104.

The Inter-American Court of Human Rights rejected preliminary objections by the government of Honduras to the Court's hearing of the case on June 26, 1987. ANNUAL REPORT OF THE INTER-AM. COURT OF HUMAN RIGHTS, 57, 79, OEA/ser. L./V/III.17, doc. 13 (1987). The Court has jurisdiction based on Honduras' status as a party to the American Convention and on the Court's contentious jurisdiction. *Id.* at 64.

74. Case 9265, INTER-AM. C.H.R. 113, OEA/ser. L./V/II.66, doc. 10 rev. 1 (1985). On December 6, 1983, the Commission received the first of a number of complaints against the government of Suriname for arbitrary arrest and torture of its citizens. *Id.*

75. *Id.* at 114. On March 20, 1984, the IACHR received a response from the Suriname government denying the allegations and representing the insinuations as attempts to discredit the government with the Commission. *Id.* at 114-15.

76. *Id.* at 115. The complaints continued, and the IACHR requested more information on the situation. *Id.* The government responded, sending information about nine of the individuals whom the government detained. *Id.*

77. *Id.* at 117.

78. *Id.* at 118. Interviews of civilians and recovered physical evidence corroborated the original complaints. *Id.* at 118-19.

79. *Id.* at 119. The Government appealed the resolution of the Committee, which found violations of articles I, XVIII, XXV and XXVI of the American Declaration of the Rights and Duties of Man. *Id.*

80. *See id.* at 121 (affirming its earlier resolution by relying on evidence obtained during the on-site visit and the lack of proof from the government that the violations had not occurred).

81. Norris, *In Loco*, *supra* note 16, at 64.

throw of the government of Arnulfo Arias in 1968.⁸² After a second request, the government of Panama approved the visit of the Commission rapporteur.⁸³ The rapporteur and a staff lawyer went to Panama in December of 1969 and held interviews with government officials, the Archbishop of Panama, media representatives, and private individuals.⁸⁴ The government also provided three memoranda on relevant topics.⁸⁵ The rapporteur recommended closing the cases because the government demonstrated a respect for human rights of persons in its custody.⁸⁶

The next visit was significant for several reasons. In 1977, the Panamanian head of state, General Torrijos, personally invited the committee to Panama for an investigation.⁸⁷ It was the first one conducted under the Commission's resolution on observations *in loco* which enumerated the privileges of the Commission and the government's responsibilities during such a visit.⁸⁸ The government also provided an unprecedented quantity of documentation both during and after the visit, demonstrating an extremely high level of cooperation.⁸⁹

82. *Human Rights Subcomm.*, *supra* note 3, at 40 (statement of Jack Hood Vaughn, former United States Ambassador to the Republic of Panama). Colonel Omar Torrijos and Colonel Martínez led the coup that overthrew the Arias government. *Id.* at 41. Colonel Torrijos eventually became the sole head of the government. *Id.*

83. Norris, *In Loco*, *supra* note 16, at 64.

84. *Id.*

85. *Id.* at 64-65.

86. *Id.*

87. *Id.* at 72 n.95. In the invitation General Torrijos stated as follows:

[W]e would welcome a report and a visit of the Inter-American Commission on Human Rights in order that they be made aware of the reality of our policy with regard to human rights. We invite them to travel to any part of Panama, to speak to anyone, and to inform the world.

I believe the role of the Commission should not only be to investigate violations of human rights, but also to disprove unfounded charges. Only in this way can the hemisphere be free of injustice, for here they will find neither oppressors nor oppressed.

Id.; see *Human Rights Subcomm.*, *supra* note 3, at 76 (testimony of Adelaide Eisenman, Washington representative, Panamanian Committee for Human Rights) (describing Torrijos as "the consummate politician"). Torrijos wanted to undercut the opponents of the Panama Canal Treaty that was under negotiation. *Id.*; see also Norris, *In Loco*, *supra* note 16, at 71 (stating that investigators discovered more human rights violations than expected, but the report was published too late to affect the negotiations).

88. Norris, *In Loco*, *supra* note 16, at 72.

89. *Id.* at 72-73. The government went beyond what was requested, allowing the opportunity to examine the criminal justice system of Panama, as well as the relationship between its constitution and the right to participate in government. *Id.*

III. THE CURRENT SITUATION IN PANAMA AND CASE 9726

Since the overthrow of Arnulfo Arias in the Republic of Panama in October of 1968, the military has run the government.⁹⁰ As of May 1988, Manuel Solís Palma is the civilian president,⁹¹ but the *de facto* head of state is Panamanian Defense Force (PDF) leader, General Manuel Antonio Noriega.⁹² During 1985, the human rights conditions in Panama worsened and political tensions increased.⁹³

90. See *Human Rights Subcomm.*, *supra* note 3, at 40-41 (describing the takeover of Panama by its military); see also *id.* at 40 (testimony of Jack Hood Vaughn, former U.S. Ambassador to the Republic of Panama) (stating that the Panama Canal Treaty should be called the "Torrijos-Carter Treaty" as Torrijos, not the elected Panamanian legislature, negotiated it). The Panamanian military established its power under Torrijos, and this policy continues today. *Id.*

91. *Panama's President in Hiding*, Wash. Post, Feb. 28, 1988, at A26. In February of 1988, Eric del Valle tried to oust General Noriega as the head of the PDF, but Noriega replaced him with a new president, and forced del Valle into hiding. *Id.* at 1. Eric del Valle replaced Nicolás Barletta as president of Panama when it appeared that the latter planned to more thoroughly investigate the Spadafora murder. *Id.*; Hersh, *Panama Strongman Said to Trade in Drugs, Arms and Illicit Money*, N.Y. Times, June 12, 1986, at A1, A14 [hereinafter *Strongman Said to Trade in Drugs*].

A presidential election was held in Panama on May 7, 1989. Branigan, *Opposition Cites Fraud in Panama*, Wash. Post, May 8, 1989, at A1. Although official Panamanian government results gave the election to Carlos Duque, the candidate backed by General Noriega, the Panamanian opposition and international election observers claimed massive election fraud. Branigan, *Panama Offers First Vote Result*, Wash. Post, May 10, 1989, at A1; Branigan, *Carter Says Noriega is Stealing Election*, Wash. Post, May 9, 1989, at A1. PDF and paramilitary forces conducted a brutal public assault on the opposition party candidate, Guillermo Endara, and his running mates during a motorcade to protest the election fraud. Branigan, *Noriega's Forces Attack, Club Opposition Candidates*, Wash. Post, May 11, 1989, at A1. The Panamanian government voided the election results on May 11, 1989. *National Public Radio Morning Edition* (NPR broadcast, May 11, 1989) (transcript available from NPR).

92. *Strongman Said to Trade in Drugs*, *supra* note 91, at A14. United States intelligence sources link General Noriega with drug trafficking, money laundering, and supplying arms to the M-19, a pro-Cuban guerrilla group whose goal is to overthrow the democratic government in Colombia. *Id.* See STUDY MISSION TO SE ASIA, SO. AM., CENT. AM., AND THE CARIBBEAN, 99TH CONG., 1ST SESS., U.S. NARCOTICS CONTROL PROGRAMS OVERSEAS: AN ASSESSMENT 32 (Comm. Print 1985) (assessing Panama's role as a transshipment point for chemicals used in the manufacture of illegal narcotics moving south and marijuana and cocaine moving north); see also Babcock & Woodward, *Report on Panama General Poses Predicament for U.S.*, Wash. Post, June 13, 1986, at 1 (describing Reagan administration reaction to Gen. Noriega's reported links to smuggling drugs and weapons); Herbers, *Panama General Accused by Helms*, N.Y. Times, June 23, 1986, at A3 (quoting Sen. Jesse Helms describing General Noriega as the "head of the biggest drug trafficking operation in the Western Hemisphere"); Le-Moyne, *Panama's Strongman Tries to Ride Out the Storm*, N.Y. Times, June 25, 1986, at A2 (detailing Gen. Noriega's denial of allegations of his illicit activities).

93. ST. DEP'T. REP., *supra* note 2, at 641; *Reconstrucción del secuestro del Dr. Zúñiga revela nuevos detalles*, (Reconstruction of the kidnapping of Dr. Zúñiga reveals new details), La Prensa (Panamá), Sept. 8, 1985 at 14A. Political leader, Mauro Zúñiga, had been kidnapped and beaten only weeks before Spadafora was

A. COMMISSION CASE 9726

Dr. Hugo Spadafora⁹⁴ was a major critic of General Noriega.⁹⁵ Though he received several threats because of his criticism of the PDF chief,⁹⁶ Spadafora decided to return to Panama from Costa Rica to publicly oppose Noriega.⁹⁷ He left his home in Costa Rica on September 13, 1985, on his regular route to Panama.⁹⁸ Witnesses saw a guard taking him off a bus in Concepción, Panamá and accompanying him to the PDF station in Concepción.⁹⁹ On September 14, 1985, a Costa Ri-

killed. *Id.*; *Strongman Said to Trade in Drugs*, *supra* note 91, at A14; Supplemental Petition, *supra* note 1, at 34. President Nicolás Barletta resigned under pressure from the PDF after promising to appoint a special commission to investigate the murder of Spadafora. Case 9726, INTER-AM. C.H.R. 174, 176, OEA/ser. L./V/II.74, doc. 10 rev. 1 (1988); Supplemental Petition, *supra* note 1, at 34.

94. See Case 9726, INTER-AM C.H.R. 174, 175, OEA/ser. L./V/II.74, doc. 10 rev. 1 (1988); Supplemental Petition, *supra* note 1, at 11 and accompanying text (describing the public offices that Hugo Spadafora previously held).

95. *Id.* at 12; *Strongman Said to Trade in Drugs*, *supra* note 91, at A14; ST. DEP'T. REP., *supra* note 2, at 640; *Rare Violence Hits Quiet Province; Fire-Bombings, Beheading Plague Panama Area*, Miami Herald, July 23, 1986, at 6A. From 1980 until the time of his death, Spadafora made public accusations against General Noriega, charging him with corruption, drug trafficking, and other illegal activities. ST. DEP'T. REP., *supra* note 2, at 640.

96. Supplemental Petition, *supra* note 1, at 13. Spadafora revealed in a radio interview on January 18, 1982 that General Noriega sent several threats to him through friends and relatives. *Id.* These included that the PDF "was looking for him," "any day now, he could die," that he had been "tried and sentenced," and he already "had one foot in the grave." *Id.*; see *Spadafora fue víctima de eje narco-político* (Spadafora was a victim of a narco-political organization), La Nación (Costa Rica), Nov. 25, 1986 at 9A (discussing the possible connection of Spadafora's death with an investigation of drug trafficking in Central America). The Judicial Investigation Office (OIJ) of the Costa Rican government taped the telephone conversations of suspected drug traffickers. *Id.* The tapes included references which could be construed as threats on Spadafora's life. *Id.*

97. Supplemental Petition, *supra* note 1, at 15. Spadafora planned to collect evidence against Noriega and the PDF to give to his lawyer, Alvin Weeden Gamboa, who was to provide it to the Panamanian tribunals as well as make it public information. *Noriega ordenó el asesinato* (Noriega ordered the assassination), Rumbo Centroamericano (Costa Rica), Sept. 26, 1985, at 14. Weeden Gamboa confirmed that he had agreed to meet with Spadafora when he arrived in Panama. *Id.*

98. Supplemental Petition, *supra* note 1, at 17. In a three to four month period prior to his death, Spadafora returned to Panama City using the same travel itinerary. *Id.*

99. *En Pocas Palabras*, *supra* note 2. Witnesses reported that after being escorted from the bus, Spadafora walked down the street showing his national identity card to everyone he passed. *Id.* He also orally identified himself saying, "I am Dr. Hugo Spadafora and they are detaining me." *Id.*; see Decision of Fourth Superior Court of the Third Judicial District (David, Panama) Feb. 7, 1986 (Almendral, Mag., dissenting) at 46, reprinted in Appendix to Supplemental Petition, Violations of the Human Rights of Hugo Spadafora by the Republic of Panama (IACHR Case 9726), sec. 43, at 46 (1986) [hereinafter 4th Sup. Ct. (Panama)] (criticizing the failure to investigate the claims of witnesses who saw Spadafora enter the PDF station at Concepción).

can citizen discovered a headless body lying under a bridge in Quebrada el Roblito, Laurel, Costa Rica, a town located several hundred meters east of the border of Panama.¹⁰⁰

The Costa Rican government ordered a thorough investigation of the murder.¹⁰¹ The autopsy indicated that Spadafora was tortured for four to six hours and was still alive when beheaded.¹⁰² After interviewing members of the Spadafora family, witnesses who saw Spadafora in Panamanian territory, and people who saw PDF vehicles in the area where his body was discovered, Costa Rican authorities concluded that the killing took place in Panama.¹⁰³

On September 18, 1985, in a televised speech, Panamanian President Nicolás Barletta ordered military and civilian authorities with jurisdiction over the case to conduct an investigation.¹⁰⁴ The Public Ministry,

100. Supplemental Petition, *supra* note 1, at 29; 4th Sup. Ct. (Panama), *supra* note 99 at 35. Costa Rican authorities identified the body as that of Spadafora, initially because of a scar on the right leg, and later through fingerprints. 4th Sup. Ct. (Panama), *supra* note 99, at 35. The head was never found. 4th Sup. Ct. (Panama), *supra* note 96, at 35; *Spadafora fue víctima de eje narco-político*, *supra* note 96, at 8A.

101. Supplemental Petition, *supra* note 1, at 30; see *Spadafora fue víctima de eje narco-político*, *supra* note 96, at 1 (describing the outcome of the murder investigation as part of a plot to discourage those who try to interfere with the illegal drug trade in Central America).

102. Supplemental Petition, *supra* note 1, at 29. The autopsy also noted that "F-8" was scratched on Spadafora's back. *Id.* This symbol is linked to an Army unit named "F-7," a pro-government group active during 1984. *Id.*; see also STATE DEPT. REP., *supra* note 2, at 641 (confirming that both Spadafora and Mauro Zúñiga, an opposition leader who was kidnapped a month before, were found with the "F-8" inscription); Case 9726, INTER-AM C.H.R. 174, 176, OEA/ser. L./V/II.74, doc. 10 rev. 1 (1988) (stating the Panamanian government's intent to investigate Spadafora's death). Upon his return from New York, President Nicolás Barletta saw "F-8" scratched on one of the windows of his plane. *Id.* He was forced to resign shortly thereafter. *Id.*

103. STATE DEPT. REP., *supra* note 2, at 31; see Affidavit of Ivan González Justavino, Sept. 24, 1985 (stating that Spadafora ate lunch at his restaurant, Café Los Mellos, located on the Panamanian side of the border); Affidavit of Edwin Guerra, Sept. 25, 1985 (stating that Spadafora boarded his bus that goes to David, Panama); Affidavit of Santos López Lobón, Sept. 17, 1985 (stating that he saw Spadafora at a PDF checkpoint in Jacú, Panamá); Affidavit of Ricaute Esquivel Rodríguez, September 17, 1985 (stating that he saw Spadafora at a PDF checkpoint in Jacú, Panamá); Affidavit of José Asdrúbal Ramírez Chavarría, Sept. 1985 (stating that he saw vehicles like the ones used by the PDF driving in Quebrada el Roblito, Laurel, Panama the night of Sept. 13, 1985). The affidavits of numerous witnesses who saw Spadafora in Panama support the Costa Rican government's finding that Spadafora entered Panama, although there was no record of his entry in the Panamanian immigration records; see also Supplemental Petition, *supra* note 1, at 17. Spadafora crossed into Panama on foot from Paso Canoas. *Id.* at 19. Because of the informality of this crossing, many pass back and forth between the two territories without record from either Panamanian or Costa Rican immigration authorities. *Id.*

104. Statement by President Nicolás Ardito Barletta (Panama City Circuito RPC Television broadcast, Sept. 18, 1985); see Statement by General Staff of the Defense Forces (Panama City Televisora Nacional Television broadcast, Sept. 18, 1985) (disclaiming any PDF involvement in the death). The statement also included references to

headed by the Attorney General, initially detained three members of the PDF.¹⁰⁵ The Fourth Superior Court of the Third Judicial District (David) dismissed the charges.¹⁰⁶

On September 25, 1985, a number of prominent Panamanian organizations announced their support of the demand by the Spadafora family for an independent investigation.¹⁰⁷ Barletta announced that he would appoint a commission that was free of PDF influence, but under pressure from the PDF, he resigned before making any appointments.¹⁰⁸ His successor, Eric Arturo del Valle, claimed he could not appoint an independent commission under the Panamanian constitu-

Spadafora's "adventurous lifestyle" and "strong political differences with various ideological sectors that color the revolutionary spectrum of Central America and other areas." *Id.*; *Assembly Condemns Assassination*, La Prensa (Panamá), Sept. 18, 1985, at 1 (reporting the National Assembly's denunciation of the killing). The Legislative Assembly issued a resolution condemning the assassination as "abominable and treacherous" and "incompatible with the basic character of the Panamanian people." *Id.* The resolution passed twenty-three to two with fifteen abstentions after a heated six-hour debate. *Id.* Primera Fiscalía Superior del Tercer Distrito Judicial, Sept. 17, 1985, reprinted in Appendix to Supplemental Petition, Violations of the Human Rights of Hugo Spadafora by the Republic of Panama (IACHR Case 9726), sec. 29, 1-3 (1986) (specifying the inclusion of necessary information in the investigation of Spadafora's death).

105. Case 9726, INTER-AM. C.H.R. 174, 177, OEA/ser. L./V/II.74, doc. 10 rev. 1 (1988); Supplemental Petition, *supra* note 1, at 35. See 4th Sup. Ct. (Panama), *supra* note 99 (citing the sworn statements of the three men implicated in the Spadafora killing).

106. Case 9726, INTER-AM. C.H.R. 174, 177, OEA/ser. L./V/II.74, doc. 10 rev. 1 (1988); 4th Sup. Ct. (Panama), *supra* note 99, at 42. Francisco González Bonilla, Omar Vega Miranda, and Eliecer Ramos have been completely absolved from any connection in the death of Spadafora. *Id.* Contra 4th Sup. Ct. (Panama) (Almendral, Mag. dissenting), *supra* note 99, at 44 (noting a lack of evidence and inconsistencies in the investigation). In his dissent, Judge Almendral criticizes the lack of investigation. *Id.* at 46. The detainees could account for their whereabouts during part of the day, but not during the time which the autopsy reported as the time of death. *Id.* at 47. The Panamanian Public Ministry also failed to corroborate the whereabouts of the suspects after their statements were made. *Id.* at 45. The magistrate dissents on the grounds that the evidence does not clearly support the suspects' claims of innocence, nor was the quality of the investigation satisfactory. *Id.*

107. Supplemental Petition, *supra* note 1, at 33; ST. DEPT. REP., *supra* note 2, at 641; *Los empresarios piden a Barletta atiende pedido de los Spadafora* (Businessmen ask Barletta to attend to the request of the Spadafora family), La Prensa (Panamá), Sept. 25, 1985, at 1. Organizations calling for the independent investigation included Consejo Nacional de la Empresa Privada (CONEP, the National Council of Private Enterprise), the Panamanian Chamber of Commerce, Industry and Agriculture, the Panamanian Association of Business Executives, and the Catholic Church. *Id.*

108. Case 9726, INTER-AM. C.H.R. 174, 176, OEA/ser. L./V/II.74, doc. 10 rev. 1 (1988); Supplemental Petition, *supra* note 1, at 34. Barletta made the announcement regarding the investigation before leaving on a trip to the United Nations, but was forced to resign the day after his return. *Id.*; *Panama's Strongman Tries to Ride Out the Storm*, *supra* note 92, at A2; ST. DEPT. REP., *supra* note 2, at 641; *Strongman Said to Trade in Drugs*, *supra* note 91, at A14; *Panama General Reported to Rig Election*, *supra* note 3, at 12.

tion.¹⁰⁹ No further action was taken in the case until June 1986, when the Supreme Court of Panama declared that the case was closed and that it would not hear an appeal.¹¹⁰

B. PRESENTATION OF THE CASE TO THE COMMISSION

Winston Spadafora filed a petition with the Commission on May 7, 1986,¹¹¹ accusing the Panamanian government of violating the human rights of his brother.¹¹² The petition called for a thorough and independent investigation of the murder with no interference from the PDF.¹¹³ The Commission admitted the petition in October 1986.¹¹⁴ Lawyers representing Winston Spadafora submitted comments on the response of the Panamanian government on April 17, 1987.¹¹⁵ The Commission resolved the case on September 23, 1987, finding that the government of Panama failed to thoroughly investigate the Spadafora murder.¹¹⁶ The government of Panama had sixty days to respond to the Commission's resolution,¹¹⁷ but the response was not filed until January 25,

109. Supplemental Petition, *supra* note 1, at 34. See ST. DEP'T. REP., *supra* note 2, at 641 (quoting an earlier statement by Barletta that he had no constitutional power to appoint an independent investigative commission).

110. Case 9726, INTER-AM. C.H.R. 110, 110-11, OEA/ser. L./V/II.71, doc. 9 rev. 1 (1987); Supplemental Petition, *supra* note 1, at 36.

111. Case 9726, INTER-AM. C.H.R. 174, 175, OEA/ser. L./V/II.74, doc. 10 rev. 1 (1988); Case 9726, INTER-AM. C.H.R. 110, 110, OEA/ser. L./V/II.71, doc. 9 rev. 1 (1987); Supplemental Petition, *supra* note 1, at 1.

112. Case 9726, INTER-AM. C.H.R. 174, 174, OEA/ser. L./V/II.74, doc. 10 rev. 1 (1988); Case 9726, INTER-AM. C.H.R. 110, 110, OEA/ser. L./V/II.71, doc. 9 rev. 1 (1987); Supplemental Petition, *supra* note 1, at 4. Winston Spadafora alleged human rights violations that included arbitrary deprivation of life and liberty, inhumane treatment, denial of freedom of thought and expression, and the lack of judicial protection. American Convention, *supra* note 7, arts. 4, 5, 7, 13, 25.

113. Case 9726, INTER-AM. C.H.R. 174, 174, OEA/ser. L./V/II.74, doc. 10 rev. 1 (1988); Supplemental Petition, *supra* note 1, at 53-54.

114. Case 9726, INTER-AM. C.H.R. 110, 111, OEA/ser. L./V/II.71, doc. 9 rev. 1 (1987).

115. Case 9726, INTER-AM. C.H.R. 174, 190, OEA/ser. L./V/II.74, doc. 10 rev. 1 (1988); LAW GROUP DOCKET, *Inter-American Commission on Human Rights*, (Summer 1987) at 6. The International Human Rights Law Group filed a Supplemental Petition and had a hearing with the Commission in September 1986. *Id.* It had further hearings with the Commission in March and June, 1987. *Id.*

116. Case 9726, INTER-AM. C.H.R. 174, 234, OEA/ser. L./V/II.74, doc. 10 rev. 1 (1988). The Commission agreed with the dissent of Judge Almendral, who believed the investigation was inadequate and full of contradictions. *Id.* at 179-81. The Commission recommended that the government of Panama conduct an exhaustive investigation into the Spadafora homicide. *Id.* at 234; Dorsey, *Commission Scores Panama on Killing, Wants Inquiry*, Wash. Times, Oct. 6, 1987, at A6.

117. Case 9726, INTER-AM. C.H.R. 174, 234, OEA/ser. L./V/II.74, doc. 10 (1988); *Commission Scores Panama on Killing, Wants Inquiry*, *supra* note 116, at A6; American Convention, *supra* note 7, art. 51 (granting the Commission the power to make recommendations to any state to remedy a situation within a prescribed time

1988.¹¹⁸ In the petition for reconsideration, the Panamanian government attempted to refute the Commission's findings.¹¹⁹

IV. ANALYSIS

The Commission and other international organizations have established expectations for state responsibility.¹²⁰ What is still lacking is a standard for investigation in torture and arbitrary death cases, such as the Spadafora case, in which the victim is a citizen of the state conducting the investigation. The quality of the investigation may fluctuate for a number of reasons including lack of cooperation by the investigating authorities, discovery of evidence, medical expertise and available facilities, and the independence of the judiciary.¹²¹ No uniform international standard of investigative responsibility exists for the protection of both alien and non-alien victims.¹²²

A. THE NEED FOR A DEFINED INTERNATIONAL STANDARD OF RESPONSIBILITY

The situation in Panama exemplifies the need for guidelines outlining investigative responsibility on an international level. The government of Panama avoided making an independent investigation of the Spadafora case by interpreting its constitution accordingly.¹²³ The government of Costa Rica completed its investigation, concluding that Spadafora died in Panama, and provided this information to the government of Pan-

period).

118. Petition by the Panamanian government to the IACHR for Reconsideration of Resolution 25/87 of Case 9726 (Jan. 25, 1988) (on file with the American University Journal of International Law and Policy).

119. *Id.* In the three part, 137 page petition for reconsideration, the government of Panama describes itself as a victim of misinformation and contradictory statements made by a number of officials and citizens aiming to destabilize the country. *Id.*

120. See *supra* note 13 and accompanying text (describing the international norm of state responsibility in investigations); Farer, *Human Rights and Human Wrongs: Is the Liberal Model Sufficient?*, 7 HUM. RTS. Q. 189, 193 (1985) [hereinafter Farer, *Human Rights and Wrongs*] (maintaining that the Commission repeatedly affirms that governments have a duty to maintain the degree of order needed for the practical realization of human rights).

121. See *infra* notes 146-54 and accompanying text (discussing problems faced in human rights investigations).

122. See *supra* notes 50-52 and accompanying text (citing international norms for state responsibility, none for international investigative norms).

123. Case 9726, INTER-AM. C.H.R. 174, 177, OEA/ser. L./V/II.74, doc. 10 rev. 1 (1988); Supplemental Petition, *supra* note 1, at 34. President del Valle refused to appoint an independent investigating commission despite a letter signed by over 120 lawyers and the National Association of Lawyers (Panama), denying any alleged unconstitutionality. *Id.*; see *supra* note 107 and accompanying text (describing that Panamanian businesses and organizations supported an independent investigation).

ama.¹²⁴ The Panamanian Fourth Judicial District, in its decision to release the suspects in the case, relied in part on the Costa Rican findings and rejected other information including affidavits of witnesses contained in the same report.¹²⁵ Even after the Costa Rican report was released, the government of Panama continued its refusal to investigate, denying Spadafora's family the opportunity to reopen the case.¹²⁶ This selective interpretation of investigative responsibility not only attempts to pass the investigative responsibility back to Costa Rica, but also indicates that Panama confines the duty to protect its citizens to its political boundaries.

It is important to note the difference between investigations and sanctions. In the case of the Commission, publishing the resolution of a case in its annual report is the sanction.¹²⁷ Sanctions are not part of the investigatory process, but arise from it.¹²⁸ They are externally imposed on the state after it is found in violation of the human rights of groups or individuals.¹²⁹ The sanction imposed reflects the international reaction to the violation, the expression of the rights of the injured parties, and the condemnation of such actions.¹³⁰

In the absence of an international standard for investigation, the responsibility is left to the individual state.¹³¹ In theory, each state will assume the responsibility of thoroughly investigating a case and punish-

124. See Supplemental Petition, *supra* note 1, at 30-31 (observing that the Costa Rican Public Ministry's findings included a recommendation for a thorough investigation by the Government of Panama); see also 4th Sup. Ct. (Panama), *supra* note 99 (basing its conclusions on the Costa Rican report).

125. See 4th Sup. Ct. (Panama) (Almendral, Mag., dissenting), *supra* note 99, at 45 (dissenting on the grounds that the evidence was not conclusive and that the other judges selectively evaluated the facts).

126. Supplemental Petition, *supra* note 1, at 36. See Case 9726, INTER-AM. C.H.R. 110, 111, OEA/ser. L./V/II.71, doc. 9 rev. 1 (1986) (confirming that all domestic remedies were exhausted in Panama).

127. See American Convention, *supra* note 7, art. 51(3) (articulating the power of the Commission to publish a report if the state has not taken appropriate measures). Article 51(3) provides, "[w]hen the prescribed period has expired, the Commission shall decide by the vote of an absolute majority of its members whether the state has taken adequate measures and whether to publish its report." *Id.*

128. Vassilenko, *supra* note 13, at 82. The author makes a distinction between the framework of international law and sanctions and coercive measures applied to secure compliance with international law norms. *Id.* at 81-82.

129. *Id.* at 81.

130. *Id.* at 81-82.

131. Chueca Sancho, *Los Derechos Humanos Protegidos en la Convención Americana de San José de 1969* (Human Rights Protected in the American Convention of San Jose of 1969), 32 REV. ESPAÑOLA DE DERECHO INTERNACIONAL 33, 38 (1980). But see Farer, *Human Rights and Wrongs*, *supra* note 120, at 191 (demonstrating, through an investigation in Argentina during the "guerra sucia," or dirty war, the problems surrounding government investigations when the government is involved in the human rights abuses).

ing the offending party.¹³² The assumed responsibility varies among states. The investigation is then the product of internal or external public opinion and pressure that often results in frustrated efforts and unanswered questions for human rights organizations.¹³³

B. STATE SOVEREIGNTY AND INTERNATIONAL RESPONSIBILITY

Problems with the interpretation of investigative duty arise from the ambiguous standard of investigative responsibility.¹³⁴ The ambiguity is deliberate because nations are reluctant to limit their state sovereignty.¹³⁵ By assuming the responsibility of an investigation, the state relinquishes a certain amount of its sovereignty.¹³⁶

Countries historically have sought to protect their rights and limit the interference of other states in their internal affairs.¹³⁷ Largely for

132. RESTATEMENT, *supra* note 50, § 164; Chueca Sancho, *supra* note 131, at 38.

133. See INTER-AM. C.H.R. 99, OEA/ser. L./V/II.68, doc. 8 rev. 1 (1986) (citing failures to respond to IACHR inquiries in cases 9144, 9295, 9289, 9367, 9170, 9296, 9341, 9344, and 9284, as noted in their resolutions). The Commission cited inadequate responses in two other published cases. *Id.*; see also AMNESTY INTERNATIONAL, 1987 REPORT (reporting the organization's findings on the human rights situations of many countries). Amnesty International, a non-governmental organization (NGO), publishes an annual report on the human rights conditions in well over 100 countries. *Id.* at 1. Its findings of the twenty-seven countries listed in its Americas section have closing statements, including one declaring that Amnesty International is not aware of "any steps taken to clarify the 'disappearances' and bring to justice those responsible" in the Dominican Republic. *Id.* at 156. Another statement, about Haiti, reveals that Amnesty is not aware of "any inquiry being ordered, or any general measures being taken to prevent the ill-treatment of detainees". *Id.* at 177. Finally, in its investigation in Cuba, it "repeatedly asked the government (without any reply) as to the whereabouts of these two prisoners." *Id.* at 154.

134. See Mullerson, *Functioning of International Laws and Internal Law of States*, 24 INDIAN J. INT'L L. 40, 48 (1984) (attributing distorted applications of international law to the different ways that states govern their internal relations). Mullerson states that international and municipal law must interact with each other to regulate different, more encompassing social systems. *Id.* at 52.

135. See *id.* at 41 (supporting the distinction between the legal system of a state and the independent realm of international law).

136. Vassilenko, *supra* note 13, at 81.

137. Briggs, *The United States and the International Court of Justice: A Re-examination*, in INTERNATIONAL LAW IN THE TWENTIETH CENTURY 904 (L. Gross ed. 1969). Briggs cites the reservation made by the United States while accepting the jurisdiction of the International Court of Justice. *Id.* The reservation states that matters essentially within the domestic jurisdiction of the United States are determined by United States courts. *Id.*; see Cabranes, *The Protection of Human Rights by the Organization of American States*, 62 AM. J. INT'L L. 889, 906 (1968) (expressing the concern over foreseeable conflicts between the OAS and member states in human rights investigations because of their characteristics as interveners in the internal affairs of a member state); see also García Rendón, *La Protección de los Derechos Humanos en el Plano Universal* (The Protection of Human Rights in the Universal Plane), 24 REVISTA DE JURISPRUDENCIA PERUANA 1000, 1001 (1966) (describing the concerns of states before adopting the United Nations Universal Declaration of Human

this reason, the United States, although a signatory to several human rights conventions, has failed to ratify them.¹³⁸ Another example is the Calvo Doctrine,¹³⁹ which the majority of American states adopted as an attempt to guard the right to limit protection extended to foreign nationals.¹⁴⁰

Investigations are now conducted according to the standards existing in each country. The then President of Panama, Eric Arturo del Valle, claimed that constitutional limitations constrained him in the Spadafora case.¹⁴¹ Another example revealing the problem of maintaining state sovereignty in an arbitrary death situation is the case of four churchwomen who were raped and murdered in El Salvador in December of 1980.¹⁴² El Salvadoran government officials, in violation of do-

Rights); Mullerson, *supra* note 134, at 40 (discussing the interaction of state law with international law).

138. Sepúlveda, *supra* note 13, at 1058. César Sepúlveda, a former member of the Commission, sees the lack of participation by the United States as a protectionist and regressive tactic that is lamentable from a country that could lead the cause of human rights. *Id.*; see Schoultz, *The Carter Administration and Human Rights in HUMAN RIGHTS AND BASIC NEEDS IN THE AMERICAS*, 301, 302 (M. Crahan ed. 1982) (describing the high profile that human rights took in United States foreign policy during the Carter administration). The human rights policy of the Reagan administration concentrates on ideological adversaries, and any attention given to the human rights policies of countries such as El Salvador and Chile is dealt with quiet diplomacy. *Id.* at 334.

139. RESTATEMENT, *supra* note 50, § 202.

140. *Id.* The Calvo Clause, presently known as the Calvo Doctrine, was named after Carlos Calvo, an Argentine diplomat and publicist. *Id.* at 603. He published a treatise in 1868 proposing that free and independent sovereign states enjoy the right, on the basis of equality, to be free of any sort of interference, and that aliens are entitled only to the rights that are accorded to nationals. *Id.*; Wells, *The Institutional Framework of Inter-American Relations*, 13 CAL. W. INT'L L.J. 223, 227-28 (1983) [hereinafter *Institutional Framework*]. At the first International Conference of American States, all of the Latin American countries but one voted for a declaration based on the Doctrine. *Id.* at 228. The United States, however, blocked further discussion of it at the next five consecutive meetings. *Id.* The First International Conference of American States, a forerunner of the Organization of American States, met in Washington, D.C. in 1889. *Id.* at 223. The nations represented at that conference were as follows: Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Haiti, Honduras, México, Nicaragua, Paraguay, Perú, Uruguay, and Venezuela. *Id.* at n.1.

141. See Case 9726, INTER-AM. C.H.R. 174, 177, OEA/ser. L./V/II.74, doc. 10 rev. 1 (1988) (viewing President del Valle as uninterested in investigating Spadafora's death). President del Valle said that he was not able to appoint an investigative committee. *Id.*; Supplemental Petition, *supra* note 1, at 34 (describing President del Valle's contention that the Panamanian constitution does not give him the power to appoint an independent investigative committee).

142. THE LAWYERS COMMITTEE FOR INTERNATIONAL HUMAN RIGHTS, UPDATE: THE CASE OF FOUR U.S. CHURCHWOMEN MURDERED IN EL SALVADOR IN DECEMBER 1980 8 (1984) [hereinafter Rep. on El Salvador]. On December 2, 1980, Salvadoran National Guardsmen raped and killed three Maryknoll nuns, and a church worker in El Salvador. *Id.* at 10. Villagers discovered the bodies the following day, and Salvadoran officials conducted investigations without notifying authorities in the United States.

mestic laws, attempted to thwart investigation of the crime.¹⁴³ Dissatisfied with El Salvador's investigative efforts,¹⁴⁴ United States authorities conducted laboratory tests to help identify the suspects.¹⁴⁵ Salvadoran domestic trial laws, however, only admit evidence obtained within Salvadoran territory.¹⁴⁶ While some of the evidence was duplicated in El Salvador under the supervision of a Salvadoran judge, it was not possible to reproduce all of the evidence.¹⁴⁷

In the Spadafora case, an autopsy performed in Costa Rica was accepted by the Panamanian court.¹⁴⁸ This is an exception, rather than the rule because of the varying medical standards and facilities in different countries.¹⁴⁹ Dr. Jorgen Thomsen,¹⁵⁰ a Danish physician who has observed autopsies in other countries, believes that existing model autopsy reports provide good checklists, but they do not address the specifics of human rights injuries.¹⁵¹ He also considers examining photos taken at autopsies inconclusive as evidence of torture.¹⁵²

Standards for the discovery and maintenance of evidence are difficult to establish. As demonstrated in the case of the churchwomen murdered in El Salvador, officials may mishandle or store evidence in such

Id. at 11-12. A priest who worked with the women discovered their burned out van. *Id.* at 12. The Vicar of the San Vicente diocese notified the United States Embassy of the burial. *Id.*; *Bodies of Four American Women are Found in El Salvador*, N.Y. Times, Dec. 5, 1980, at A3; DeOnis, *U.S. Suspends New Aid to Salvador Until American Deaths are Clarified*, N.Y. Times, Dec. 6, 1980, at A1.

143. Rep. on El Salvador, *supra* note 142, at 22-23.

144. *Id.* at 16.

145. *Id.* at 17. The FBI conducted ballistics tests that connected shell casings found at the murder scene with weapons belonging to the National Guard. *Id.*

146. *Id.* at 18. According to Judge Bernardo Rauda Murcia, evidence would not be admitted at trial if it was obtained outside Salvadoran territory and without his supervision. *Id.* The confession of Dagoberto Martínez and the ballistics tests were therefore repeated in El Salvador, and thus became admissible. *Id.*

147. *Id.* at 18-19. A thumbprint of one of the suspects was found on the churchwomen's van, but the test could not be reproduced because the van was stored in an open lot, thus exposing all evidence that could have been obtained from it. *Id.* To make an investigation more difficult, guards involved in the murder were transferred from their posts, and their weapons were switched to make detection more difficult. *Id.* at 22.

148. 4th Dist. Sup. Ct. (Panama), *supra* note 99, at 35.

149. MINNESOTA CONF. REP., *supra* note 52, at 2. After a 1983 Amnesty International mission to El Salvador, a forensic pathologist noted a lack of forensic expertise necessary to detect serious crimes. *Id.* Another physician described autopsies he observed in the Philippines as crude and unsophisticated. *Id.*

150. *Id.* Dr. Thomsen spoke of the problems of conducting autopsies and other forensic medical tests in countries where facilities or expertise of the local doctors are not sophisticated enough to identify causes of death that may have resulted from torture. *Id.*

151. *Id.*

152. *Id.*

a manner that it is rendered useless.¹⁵³ It is both ineffective and difficult to impound evidence obtained in torture cases unless the investigators can act almost immediately.¹⁵⁴ Statements from witnesses concerning torture, arbitrary death, and detention cases are indispensable, but it is difficult, if not impossible, to offer witness protection.¹⁵⁵ Prosecution and harassment of these witnesses is well documented.¹⁵⁶ Family members who pursue cases, as well as actual witnesses, are subjected to these methods.¹⁵⁷

The independence and impartiality of the judiciary from other branches of the government is an additional concern.¹⁵⁸ The courts of a state are responsible for rendering impartial decisions.¹⁵⁹ The current

153. See *supra* notes 138-143 and accompanying text (summarizing the case of the murdered churchwomen and the problems encountered with the handling of the evidence).

154. MINNESOTA CONF. REP., *supra* note 52, at 3. While recognizing the difficulty experienced in most human rights cases of impounding weapons, Professor Paul Chevigny, a conferee, emphasized that it was nonetheless important. *Id.*

155. *Id.* at 4. Although not an optimistic suggestion, Professor Chevigny reiterated the importance of having witnesses testify voluntarily. *Id.* See Grossman, *Prosecuting Human Rights Cases in Latin America: Can It Be Done Without Backlash?*, Los Angeles Daily Journal, April 11, 1988, at 4 (discussing the problem of witnesses being killed as in the case of those who were called to testify against the government of Honduras in a case before the Inter-American Court of Human Rights).

156. MINNESOTA CONF. REP., *supra* note 52, at 3. In Brazil, at least sixteen people interviewed in a death squad investigation were killed, and literally thousands more fear for their lives. *Id.*; *Spadafora Case Witness Murdered in Chiriqui*, Extra (Panama), Oct. 7, 1985, at 1, reprinted in Appendix to Supplemental Petition, Violations of the Human Rights of Hugo Spadafora by the Republic of Panama (IACHR Case 9726), at 32 (1986). A woman who witnessed PDF members arresting Hugo Spadafora died in a brutal, but unsolved murder. *Id.*

157. *Contrapunto: Persecución imbécil e inútil* (Counterpoint: Stupid and useless persecution), La Prensa (Panama), Aug. 23, 1986, reprinted in Appendix to Supplemental Petition, Violations of the Human Rights of Hugo Spadafora by the Republic of Panama (IACHR Case 9726), at 42 (1986). The members of Hugo Spadafora's family have become the targets of public and private intimidation. *Id.* In this article, Winston Spadafora describes his frustration and anger at the persecution of his family. *Id.* *Carmenza Mata a Niña de 14 Años* (Carmenza Kills a 14 Year-old Girl), Crítica (Panama), at 1, reprinted in Appendix to Supplemental Petition, Violations of the Human Rights of Hugo Spadafora by the Republic of Panama (IACHR Case 9726), at 35 (1986). This article describes a car accident involving Carmenza Spadafora. *Id.* It describes her as "a killer" at the wheel. *Id.*

158. See Supplemental Petition, *supra* note 1, at 37 (discussing the view that the court system would not implicate the PDF in any wrongdoing concerning Spadafora); Case 9201, INTER-AM. C.H.R. 57, 65-74, OEA/ser. L./V/II.68, doc. 8 rev. 1 (1986) (precluding an administrative settlement of the case because of the denial of a fair trial by the Nicaraguan government).

159. *The Administration of Justice and the Human Rights of Detainees: Study on the Independence and Impartiality of the Judiciary, Jurors and Assessors and the Independence of Lawyers*, 38 U.N. ESCOR at 1, U.N. Doc. E/CN.4/Sub.2/18 (Agenda Item 9(c) at 27) (1985) [hereinafter *Impartiality of the Judiciary*]. The sub-commission gave the following summary of the traditional theory and practice of state

standards of state responsibility extend only to aliens in state courts when denial of justice is alleged.¹⁶⁰ The dissent in the Spadafora case asserts that the Panamanian government failed to conduct a thorough investigation.¹⁶¹ Panama relied on the doctrine of state responsibility and placed the burden on Costa Rica of conducting an investigation in Costa Rica; the investigation took place, and the report of the findings was made public.¹⁶² The issue, therefore, is not whether a state failed to fulfill its responsibility towards an alien, but the formulation of the appropriate standard when a state apparently fails to adequately investigate a case concerning one of its nationals. The same standard for an alien can be used for the protection of its nationals through a change of

responsibility for denial of justice to aliens:

- (a) the existence of identifiable norms of civilized society in respect of an adequate, effective and reasonably expeditious machinery for the administration of justice;
- (b) independence, impartiality, objectivity, integrity, probity and honesty of judges and tribunals;
- (c) an adherence to and respect for international law, treaty obligations, and duties of the State;
- (d) reasonably, easy and equal access to the justice system for nationals and aliens alike; and
- (e) responsibility of a State for any miscarriage or denial of justice in international law attributable to any branch or organ of the state.

Id.; RESTATEMENT, *supra* note 50 § 165 (1965). The Restatement (Second) considers a denial of justice in procedural terms. *Id.* Conduct causing injury to an alien is treatment that departs from the generally accepted norms of conduct of legal proceedings, and/or the failure to provide the alien with an adequate remedy in the administration of justice. *Id.*; see Maiorano, *Responsibilidad del Estado por los errores judiciales: otra forma de proteger los derechos humanos* (Responsibility of the State for judicial error: another form of protecting human rights), REVISTA JURÍDICA ARGENTINA, LA LEY 983, 983 (1984) (proposing a type of judicial review as one method of correcting judicial error in criminal cases).

160. Impartiality of the Judiciary, *supra* note 159, at 22. The Institute of International Law adopted the following principle in 1927 of state responsibility for denial of justice:

V. The State is responsible on the score of denial of justice:

- 1. When the tribunals necessary to assure protection to foreigners do not exist or do not function.
- 2. When the tribunals are not accessible to foreigners.
- 3. When the tribunals do not offer the guarantees which are indispensable to the proper administration of justice.

VI. The State is likewise responsible if the procedure or the judgement is manifestly unjust, especially if they have been inspired by ill-will toward foreigners, as such, or as citizens of a particular State.

Id. at 21-22, quoting 22 AM. J. INT'L L. 330, 331 (1928). A denial of justice may occur both when courts refuse redress to an alien, and when the court perpetrates the injustice. *Id.* at 23. It is defined as an international wrong or delinquency that implies an international obligation on the part of the State. *Id.* at 24-25.

161. 4th Sup. Ct. (Panama) (Almendral, Mag., dissenting), *supra* note 99, at 44-50.

162. 4th Sup. Ct. (Panama), *supra* note 99, at 7-8.

the definition of state responsibility, from the protection of "aliens" to that of "individuals," thereby eliminating the distinction in human rights documents.¹⁶³

The concerns over state sovereignty must not preclude the setting of an effective standard of investigative responsibility. As parties to the OAS Charter,¹⁶⁴ the majority of countries of the Western Hemisphere recognize the need for international norms. The Commission must define its expectations for both member parties¹⁶⁵ and non-parties alike.¹⁶⁶ A guideline setting specific expectations for conducting a human rights investigation will help eliminate some inconsistencies that have plagued human rights investigations for years.¹⁶⁷

VI. RECOMMENDATION

A. A DEFINED INTERPRETATION OF ARTICLES 24, 48, AND 50 OF THE AMERICAN CONVENTION

A stricter interpretation of American Convention articles would provide the most effective means to implement a more defined standard of responsibility for states in the Inter-American system. Many Latin American nations already have a constitutional provision stating that they adhere to international law.¹⁶⁸ While such a provision is not essential in the formulation of a standard of responsibility, it could aid in

163. Impartiality of the Judiciary, *supra* note 159, at 26. Professor Phillip Jessup observed that by changing the responsibility of states from "aliens" to "individuals," the scope of human rights law would greatly increase. *Id.* (citing *A Modern Law of Nations*, 97 (1948); see U.N. CHARTER, *supra* note 46, art. 1(3) (including the promotion of human rights and fundamental freedoms for all as a primary goal).

164. See *supra* notes 7-8 and accompanying text (describing the OAS and naming the member states).

165. See American Convention, *supra* note 7, art. 51 (prescribing recommendations and remedies to member states when appropriate).

166. See *supra* note 10 and accompanying text (naming the OAS states that have or have not ratified the American Convention).

167. See *supra* notes 55-59 and accompanying text (citing past cases where the state failed to investigate or answer inquiries about human rights violations).

168. Krishnamurthy, *Functioning of International Law and Internal Law of States - Postures, Practices and Perspectives*, 24 INDIAN J. INT'L L. 25, 31 (1984). In 1916, the American Institute of International Law stated in the following its declaration of the rights and duties of nations:

International law is at one and the same time, both national and international; national in the sense that it is a law of the land and applicable as such to the decision of all questions involving its principles; international in the sense that it is law of the society and the nations and applicable as such to all questions between and among the members of the societies of nations involving its members. *Id.* quoting article VI of the Declaration, 10 AMER. J. INT'L L. 124 (1916). See CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE PANAMÁ art. 4 (Panama) (stating that "The Republic of Panama respects norms of international law").

enforcement.

The Commission, as an organ of the OAS,¹⁶⁹ may request the Inter-American Court on Human Rights¹⁷⁰ (Court) to issue an advisory opinion.¹⁷¹ The Court's opinion, while not binding on the parties to the OAS Charter,¹⁷² will set the groundwork for the Commission's more defined interpretation of the convention articles. Using the Court's opinion, the Commission could interpret more decisively the investigative responsibility of the state.

A more defined interpretation of some articles of the American Convention would assist in defining the investigative responsibility standard. In article 24 concerning equal protection,¹⁷³ the Court could clarify the meaning of equal protection in terms of investigative responsibility to its citizens. States have an obligation to protect their nationals.¹⁷⁴ The Commission should specifically address whether this provision applies only when the citizen is within the territory of the state, or outside as well. Equal treatment of each individual case during the investigation, as well as a uniform format of investigative requirements, is necessary if the violation occurs outside the territory of the accused state. The Court should maintain a realistic level of expectation in certain technical aspects of the investigation, such as the availability of laboratory facilities and the training of physicians in specific kinds of physical and forensic pathology.¹⁷⁵

With regard to procedure and initial investigations as set forth in

169. See OAS Charter, *supra* note 7, ch. X, (d) (listing the IACHR as an organ of the OAS).

170. American Convention, *supra* note 7, arts. 52-69.

171. *Id.* art. 64; see Buergethal, *Advisory Practice*, *supra* note 18, at 1 (discussing the Inter-American Court procedure for issuing advisory opinions); Alzamora, *Protección de los Derechos Humanos en el Sistema Inter-americano*, 34 REVISTA DE DERECHO Y CIENCIAS POLÍTICAS 13, 27 (1970) (indicating the function of the advisory opinion); Lockwood, *Advisory Options of the Inter-American Court of Human Rights*, 13 DEN. J. INT'L L. & POL. 245, 245-46 (1984) [hereinafter Lockwood, *Advisory Options*] (describing the advisory opinion as an important step forward for the protection of human rights); Note, "Other Treaties": *The Inter-American Court of Human Rights Defines its Advisory Jurisdiction*, 33 AM. U.L. REV. 211, 213-15 (1983) (examining the use and practice of the Court's advisory opinion process).

172. See Buergethal, *Advisory Practice*, *supra* note 18, at 79 (indicating that the advisory opinion process is not a formal proceeding, but instead provides a judicial interpretation for OAS member states and OAS organs).

173. American Convention, *supra* note 7.

174. RESTATEMENT, *supra* note 50, § 165. The international standard for state responsibility to its own nationals is suggested by the United Nations Charter which states a goal of respect for human rights and fundamental freedoms for all. U.N. CHARTER art. 1(3).

175. MINNESOTA CONF. REP., *supra* note 52, at 2.

article 48 of the American Convention,¹⁷⁶ the Court could create a provision to increase the number of on-site visits and conduct as many follow-up visits as deemed necessary. Local investigative authorities would have the duty to perform a thorough and impartial investigation and provide the Commission with any information that it requests. If it appears that some sort of irregularity exists, the Commission could require an independent investigation when the circumstances indicate that the government of the state is a party to the alleged violation. If the state investigation appears inadequate, the Commission would then make its own inquiry. States that have ratified the convention must permit these visits.¹⁷⁷ Non-party states, while not required to allow these visits, would receive a request to allow them. If the non-party state is aware of the investigation requirements, it may allow the visit more readily.

The Court could interpret article 50 concerning procedure and evaluation¹⁷⁸ to require a minimum standard of information necessary to evaluate an alleged violation. This standard would include the type of investigation conducted, who conducted the investigation, specific findings on the case, and a report filed within a specific period of time. These requirements provide the framework of the investigative expectations of the Commission. The interpretation should also include specific requirements, similar to proposals of the Minnesota Conference participants, including power to conduct the investigations, power to grant immunity in order to obtain testimony, witness protection, and legal proceedings.¹⁷⁹ Though it is impossible for the Court's advisory opinion to enumerate every opportunity for a thorough investigation, it can set out many of the requirements.

If these proposed interpretations were implemented at the time of Spadafora's death, they could have thwarted any attempt of the Panamanian government to avoid the investigation. Panama, as a signatory to the Convention, is under an obligation to follow rules and procedures.¹⁸⁰ Under the equal protection interpretation of article 24, the

176. See American Convention, *supra* note 7, art. 48(1) (reviewing article 48(1) of the American Convention).

177. See *id.* art. 48(1)(d) (requiring member states to permit on-site visits).

178. American Convention, *supra* note 7, art. 50.

179. MINNESOTA CONF. REP., *supra* note 52, at app. C. The conference participants put forward 17 principles in the categories of prevention, investigation, and legal proceedings. *Id.* The principles address the areas of general prohibitions against arbitrary killing, protection of potential victims, detainee protection, the investigation through regular investigative agencies, power to conduct the investigation, protection of witnesses, family and public access to the report findings, commissions of inquiry, immunity, following the orders of superiors, and legal proceedings. *Id.*

180. See OAS Charter, *supra* note 7 and accompanying text (listing Panama as

responsibility of Panama to investigate the death of one of its nationals would attain international status. The Panamanian constitution explicitly states that the country respects international law.¹⁸¹

B. POSSIBLE NEGATIVE REACTIONS

A defined interpretation does not guarantee compliance by states involved.¹⁸² States may feel that their laws adequately protect their nationals, thereby eliminating the need for an international standard.¹⁸³ The American Convention on Human Rights already allows for the preservation of domestic laws that provide a higher level of protection.¹⁸⁴ The Commission, however, does not accept the existence of a domestic law with a higher standard as valid for failure to respond or to investigate a case.¹⁸⁵

States are protective of the manner in which they conduct internal matters. The extent to which the Commission would enforce this new level of investigative responsibility remains to be seen. Whether the standard would apply to only serious crimes, such as murder, or less serious crimes as well, like a street mugging, is a question still open for discussion. International law, although an integral part of domestic law,¹⁸⁶ does not dominate the domestic legal system of any state. It is generally accepted that domestic laws adequately protect citizens of the state. All states do not have identical laws and standards of investigation. As previously mentioned, the advisory opinion is not binding, although it does have credibility, and is an interpretation of a rule or point of law in international law adjudications.

one of the OAS member states).

181. CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE PANAMÁ, art. 4.

182. See Lockwood, *Advisory Options*, *supra* note 171, at 250-51 (indicating that the Court believes its advisory jurisdiction is permissive, not mandatory).

183. See *supra* note 137 and accompanying text (enumerating the concerns of states over sovereign protection).

184. American Convention, *supra* note 7, art. 29; see *Miranda v. Arizona*, 384 U.S. 436, 457 (1966) (exemplifying the reading of one's constitutional rights at the time of arrest as a higher standard of protection than provided in many countries).

185. See *supra* note 133 and accompanying text (citing a number of IACHR resolutions in which the lack of state response was a factor); see also IACHR: TEN YEARS, *supra* note 10, at 342-343 (stating the concern over continuing complaints of torture and lack of state action to prevent it).

186. Krishnamurthy, *supra* note 168, at 25; see *The Paquete Habana*, 175 U.S. 677, 700 (1900) (emphasizing that international law is an important part of United States domestic law).

C. BENEFITS OF THE DEFINED GUIDELINE

When a petition brought before the Commission requires an investigation, a uniform standard will benefit the petitioner, the state accused of the human rights violations, and the Commission. The expectations outlined in an advisory opinion issued by the Court would provide a much clearer interpretation than existing rules, resulting in a universal benefit.

The defined interpretation would provide a greater protection for petitioners who bring cases before the Commission. They will not only have the assurance of a thorough investigation of the case at hand, but also of those cases that are brought in the future. The standard will survive despite any change in state government. This consistency is of extreme importance to countries in Latin America where the change of governments takes place frequently because government ideology controls the limits of investigation.¹⁸⁷

The states will also benefit from the defined standard because they will know what is expected in the answer to the inquiry. Submission of the answer would generally fulfill the investigatory obligation. The states may remain parties to the process if the petitioner answers the response.¹⁸⁸ In cases involving more than one country, the uniform investigation will provide consistency when a conflict of laws might otherwise arise.

The establishment of standards for investigation will strengthen the work of the Commission. As noted by the Minnesota Lawyers International Human Rights Committee, it is an area in the field of human rights that is currently in the developmental stage.¹⁸⁹ If the Commission initiates the establishment of a standard, it would progress at the same time as the international standard. This could influence international as well as regional development.

CONCLUSION

This Comment focuses on the lack of an international standard of investigative responsibility for human rights cases, a problem facing the Inter-American Commission on Human Rights. The case of Hugo

187. See AMNESTY INTERNATIONAL, 1987 REPORT, *supra* note 133, at 129-32 (discussing, in part, the effects of the changes of governments on the human rights situations in Argentina); *Id.* at 173-77 (articulating the effects of political upheaval in Haiti on the human rights conditions).

188. See Norris, *Individual Procedure*, *supra* note 20, at 118 (stating that the petitioner or Commission may request additional action from the state).

189. See MINNESOTA CONF. REP., *supra* note 52, at 1.

Spadafora exemplifies the problems with the existing standard, or lack of a standard. The facts of the Spadafora case go beyond the standard of state responsibility because of the indication that he died in his own country. The Panamanian government has yet to thoroughly investigate the death using its domestic standard of investigation.

A possible solution for the Commission is found in the existing American Convention on Human Rights. An interpretation by the Court of articles 24, 48(1), and 50 can provide a list of expectations that serve the needs of both the Commission and the state accused of violation. Using these guidelines, the Commission can develop a much needed international standard and influence both regional and international jurisprudence.