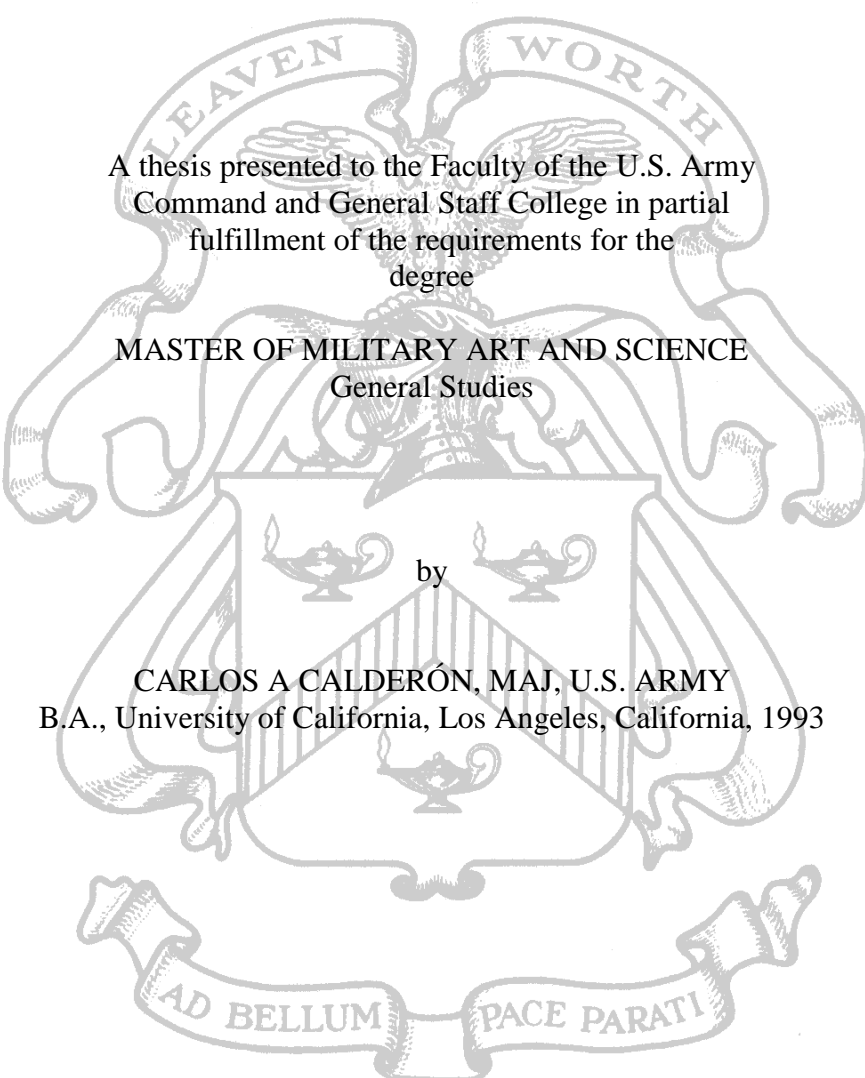


THE INTER-AMERICAN HUMAN RIGHTS COURT; SOME RECENT DECISIONS
AFFECTING THE INDEPENDENCE OF PARTNER NATIONS' MILITARY
JUSTICE SYSTEMS, AND THEIR IMPACT ON THE FUTURE OF
HUMAN RIGHTS



A thesis presented to the Faculty of the U.S. Army
Command and General Staff College in partial
fulfillment of the requirements for the
degree

MASTER OF MILITARY ART AND SCIENCE
General Studies

by

CARLOS A CALDERÓN, MAJ, U.S. ARMY
B.A., University of California, Los Angeles, California, 1993

WHINSEC
2017

Approved for public release; distribution is unlimited. Fair use determination or copyright permission has been obtained for the inclusion of pictures, maps, graphics, and any other works incorporated into this manuscript. A work of the United States Government is not subject to copyright, however further publication or sale of copyrighted images is not permissible.

REPORT DOCUMENTATION PAGE			<i>Form Approved</i> <i>OMB No. 0704-0188</i>		
Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing this collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Department of Defense, Washington Headquarters Services, Directorate for Information Operations and Reports (0704-0188), 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number. PLEASE DO NOT RETURN YOUR FORM TO THE ABOVE ADDRESS.					
1. REPORT DATE (DD-MM-YYYY) 23-05-2017		2. REPORT TYPE Master's Thesis		3. DATES COVERED (From - To) AUG 2016 – MAY 2017	
4. TITLE AND SUBTITLE The Inter-American Human Rights Court; Some Recent Decisions Affecting the Independence of Partner Nations' Military Justice Systems, and Their Impact on the Future of Human Rights			5a. CONTRACT NUMBER		
			5b. GRANT NUMBER		
			5c. PROGRAM ELEMENT NUMBER		
6. AUTHOR(S) Carlos A. Calderón, Major, USA			5d. PROJECT NUMBER		
			5e. TASK NUMBER		
			5f. WORK UNIT NUMBER		
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) U.S. Army Command and General Staff College ATTN: ATZL-SWD-GD Fort Leavenworth, KS 66027-2301			8. PERFORMING ORG REPORT NUMBER		
9. SPONSORING / MONITORING AGENCY NAME(S) AND ADDRESS(ES)			10. SPONSOR/MONITOR'S ACRONYM(S)		
			11. SPONSOR/MONITOR'S REPORT NUMBER(S)		
12. DISTRIBUTION / AVAILABILITY STATEMENT Approved for Public Release; Distribution is Unlimited					
13. SUPPLEMENTARY NOTES					
14. ABSTRACT This paper consists of a brief historical background on Human Rights Law in the Americas, then quickly narrows to regional instruments and specifically the Inter-American System of Human Rights. The Inter-American Court of Human Rights is then focused on, along with the role it has played in regional governance. The decisions of this Court and the impact it has had on some countries are studied, particularly as to the impact that it might have on government institutions and specifically the military. The potential for the Court's continued influence in the region are assessed. Efforts are made to answer the central question: What is the true impact that this Court's recent opinions have had on regional governance and specifically on the mostly independent military justice systems? It is hoped that this work will raise interest and provide, at a minimum, a starting point of awareness on these types of regional systems. Their worthy goal of defending and protecting the integrity of human beings should be better understood; yet, among jurists but particularly military practitioners, the function of the Court and even its mere existence are poorly understood. In order to appreciate the contributions already made and, most important, the potential for future positive influence, this work will attempt to survey not just where we are and where we come from but also surmise to where we are heading.					
15. SUBJECT TERMS International Public Law; Inter-American Human Rights; Inter-American Human Rights Court; Inter-American Human Rights Commission; Human Rights;					
16. SECURITY CLASSIFICATION OF:			17. LIMITATION OF ABSTRACT	18. NUMBER OF PAGES	19a. NAME OF RESPONSIBLE PERSON
a. REPORT	b. ABSTRACT	c. THIS PAGE			19b. PHONE NUMBER (include area code)
(U)	(U)	(U)	(U)	99	

Standard Form 298 (Rev. 8-98)
Prescribed by ANSI Std. Z39.18

MASTER OF MILITARY ART AND SCIENCE

THESIS APPROVAL PAGE

Name of Candidate: Major Carlos A. Calderón

Thesis Title: The Inter-American Human Rights Court; Some Recent Decisions
Affecting the Independence of Partner Nations' Military Justice Systems,
and Their Impact on the Future of Human Rights

Approved by:

_____, Thesis Committee Chair
Edwin Roldan, Ed.D.

_____, Member
Antonio Raimondo, J.D.

_____, Member
LTC John T. Tutterow, J.D.

Accepted this 23rd day of May 2017 by:

_____, Director, Graduate Degree Programs
Prisco R. Hernández, Ph.D.

The opinions and conclusions expressed herein are those of the student author and do not necessarily represent the views of the U.S. Army Command and General Staff College or any other governmental agency. (References to this study should include the foregoing statement.)

ABSTRACT

THE INTER-AMERICAN HUMAN RIGHTS COURT; SOME RECENT DECISIONS AFFECTING THE INDEPENDENCE OF PARTNER NATIONS' MILITARY JUSTICE SYSTEMS, AND THEIR IMPACT ON THE FUTURE OF HUMAN RIGHTS, by Major Carlos A. Calderón, 99 pages.

This paper consists of a brief historical background on Human Rights Law in the Americas, then quickly narrows to regional instruments and specifically the Inter-American System of Human Rights. The Inter-American Court of Human Rights is then focused on, along with the role it has played in regional governance. The decisions of this Court and the impact it has had on some countries are studied, particularly as to the impact that it might have on government institutions and specifically the military. The potential for the Court's continued influence in the region are assessed. Efforts are made to answer the central question: What is the true impact that this Court's recent opinions have had on regional governance and specifically on the mostly independent military justice systems?

It is hoped that this work will raise interest and provide, at a minimum, a starting point of awareness on these types of regional systems. Their worthy goal of defending and protecting the integrity of human beings should be better understood; yet, among jurists but particularly military practitioners, the function of the Court and even its mere existence are poorly understood. In order to appreciate the contributions already made and, most important, the potential for future positive influence, this work will attempt to survey not just where we are and where we come from but also surmise to where we are heading.

ACKNOWLEDGMENTS

So many people have been key for the completion of this project, that by attempting to list them, I am bound to leave someone out. To you in particular, “gracias” for your unsung support and help.

The students of the WHINSEC CGSOC 2016-2017 have been awesome partners on this year-long academic mission. I thank them profoundly for electing me class leader and complicating even more a life that I manage quite well to mess up on a regular basis. In seriousness though, it has been an honor (and a breeze) to lead this professional group. I thank you for making this year a complete professional and personal success.

Special praise to my beloved Alpha Team within CGSOC. They have truly been “los Magníficos.” I can wholeheartedly say this project could not have been possible without their support and cooperation. I am forever indebted for their understanding, support and encouragement. This accomplishment is as much yours “amigos.” “Gracias!”

To the faculty, staff, administrators, and students of WHINSEC. This year has been one of exceptional excitement and professional growth. It was every bit what I expected and more. I would not change my stubborn pursuit to come study within these walls for anything. Goes without saying that my thesis committee is simply amazing.

Thank you U.S. Army JAG Corps for believing in me, and continually providing unique and challenging professional opportunities.

Last, but definitely not least, “la familia:” Nancy, Alejandro, GianCarlo, Serenne Aimeé, GlendyBelle, and J.A. You continue to inspire me and amaze me with your patience and love. Thank you for sticking with me through my crazy life projects. I cannot wait to have a bit more time to devote to you my muses.

TABLE OF CONTENTS

	Page
MASTER OF MILITARY ART AND SCIENCE THESIS APPROVAL PAGE	iii
ABSTRACT.....	iv
ACKNOWLEDGMENTS	v
TABLE OF CONTENTS.....	vi
ACRONYMS.....	viii
CHAPTER 1 INTRODUCTION	1
Background.....	1
Brief History of Global and Regional Human Rights Systems	3
Human Rights System in Latin America	6
The Inter-American Court of Human Rights.....	10
Purpose of Study.....	15
Primary Research Questions.....	18
Secondary Research Questions.....	18
Assumptions.....	19
Delimitations and Scope	20
CHAPTER 2 LITERATURE REVIEW	22
Introduction.....	22
U.S. Policy and Doctrine	27
Significance of Thesis in the Existing Literature.....	28
CHAPTER 3 RESEARCH METHODOLOGY	30
General Approach.....	30
Case Law.....	33
CHAPTER 4 CASE STUDIES–COUNTRIES DIRECTLY AFFECTED BY RECENT DECISIONS.....	36
Introduction.....	36
México	37
Perú	44
Colombia.....	50
Other Countries Affected.....	54

CHAPTER 5 CONCLUSION AND RECOMMENDATIONS	61
Conclusion	61
Recommendations.....	62
APPENDIX A.....	66
APPENDIX B	69
BIBLIOGRAPHY.....	86

ACRONYMS

DoD	Department of Defense, (United States)
ICC	International Criminal Court
NGO	Non-Governmental Organization
OAS	Organization of American States

CHAPTER 1

INTRODUCTION

Crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced.¹

— Philippe Sands, “From Nuremberg to the Hague”

Background

Human rights before 1945 and limitations on what states could do in harming their citizens were very scarce. There was an effective impunity permitting governments to harm their citizens, and even allow others to abuse them according to their interests.² War crimes and mass violence that shock the conscience had been an uncontrolled result of armed conflict, and atrocities had been an embarrassing but intrinsic part of military campaigns throughout the entire history of war.

After World War II, the victors took affirmative steps toward punishing war criminals for their individual responsibility in the commission of such crimes.³ Atrocities discovered following this conflict led to much-needed development in the area of human rights law. Subsequently, human rights systems were developed at the local, regional and

¹ Philippe Sands, *From Nuremberg to the Hague: The Future of International Criminal Justice* (Cambridge, UK: Cambridge University Press, 2003), 32-33, 116.

² *Ibid.*, 82.

³ Norman E. Tutorow, *War Crimes, War Criminals, and War Crime Trials: An Annotated Bibliography and Source Book* (New York, NY: Greenwood Press, 1986), 4-8.

global level to ensure respect for human rights by all, including governments themselves.⁴

Latin America is a region with a dreadful track record in the area of human rights. Much of this as a product of many years of totalitarian regimes supported in varying degrees by United States administrations worried about left-wing growing influence in the area; consequently, during most of the twentieth century, corrupt and totalitarian governments tarnished the region with infamous atrocities well known around the globe.⁵ Following a wave of democratization processes across the Americas in the last decade of the 20th century, respect for human rights vastly improved in the region. An old but undeveloped regional system of human rights was rejuvenated, finally bringing in much-needed advances in the field of human rights.⁶

This system, a product of some of the modern world's oldest declarations on Human Rights, is best understood in the context of a global, ever evolving structure of human rights laws, its institutions, and their historical parallels. It is imperative to have a basic understanding of the global system of human rights which the United States led United Nations has championed, and comprehend the synergy and relationship among

⁴ *Restatement (Third) of the Foreign Relations Law of the United States*, § 701 (Washington, DC: Am. Law Institute, 1987).

⁵ Washington Office on Latin America, "WOLA Documentary: 40 Years of Advocacy for Human Rights in the Americas," March 16, 2017, accessed April 5, 2017, <https://www.wola.org/analysis/wola-documentary-40-years-advocacy-human-rights-americas>.

⁶ Kathryn Sikkink, *The Justice Cascade: How Human Rights Prosecutions Are Changing World Politics* (New York, NY: W. W. Norton and Company, 2011), 26, 148.

existing regional schemes. The Inter-American System of Human Rights would then be understood, not only from its historical significance but its crucial relevance of today.

Brief History of Global and Regional Human Rights Systems

The Nuremberg and Tokyo tribunals held by triumphant Allied forces after World War II brought forth significant innovations to the field of human rights. An important one was the notion that individuals, even when in power, have concrete duties under international law.⁷ Specific holdings of these tribunals penalized leaders of the surrendering nations, and commanders of their military and para-military forces were also punished. Official and semi-official leaders of institutions, from the Gestapo to the ruling Nazi party and all their supporting agencies, were found personally responsible for crimes against humanity. They were prosecuted and punished. Their institutions were labeled criminal organizations and banished from Germany after 1946.⁸

Years later, during the 1990s, four other ad-hoc international war crime tribunals were implemented in various nations devastated by human rights abuses.⁹ Their objective was to curtail the impunity of political and military leaders in countries desolated by new war crimes often carried out by governments or their leaders and surrogates.¹⁰ These ad-

⁷ Sands, *From Nuremberg*, 82.

⁸ *Ibid.*, 34.

⁹ David Scheffer, *All the Missing Souls: A Personal History of the War Crimes Tribunals* (Princeton, NJ: Princeton University Press, 2012), 3. Note: The four ad-hoc international war tribunals are: International Criminal Tribunal for (the former) Yugoslavia, the International Criminal Tribunal for Rwanda, the Special Court for Sierra Leone, and the Extraordinary Chambers in the Courts of Cambodia. All were set up by the Security Council of the United Nations.

¹⁰ *Ibid.*

hoc, temporary tribunals, contributed to the conception and establishment of the International Criminal Court (ICC) in the late 1990s.¹¹

The ICC is a permanently standing court of complementary jurisdiction. That is, it hears cases involving war crimes, atrocities or crimes against humanity when individual countries are unwilling or unable to prosecute.¹² Unfortunately, it has been very slow and difficult to develop. With only two convictions in almost fifteen years of existence,¹³ it could be argued that perhaps regional institutions might be better suited to take on this responsibility as protector and enforcer of human rights.

Indeed, human rights systems—the core structure for the investigation, prosecution, and protection against abuses—were first successfully developed at the regional level, and it was here in the Americas: The Organization of American States (OAS) is the oldest regional organization established formally in 1948 to achieve, among their members, “an order of peace and justice, to promote solidarity, to strengthen collaboration, and to defend [their] sovereignty, [their] territorial integrity, and [their] independence.”¹⁴ However, perhaps due to the horrific nature of the well documented

¹¹ U.N. General Assembly, *Rome Statute of the International Criminal Court* (last amended 2010), 17 July 1998, accessed April 5, 2017, <http://www.refworld.org/docid/3ae6b3a84.html>.

¹² *Ibid.*, 1-3.

¹³ International Criminal Court-ICC, Situations and Cases, accessed April 4, 2017, <https://www.icc-cpi.int/Pages/cases.aspx>. Note: A total of eight situations (country investigations) with twenty-three related cases are reported as of 2017.

¹⁴ Organization of American States, “History,” Organization of American States, accessed April 5, 2017, http://www.oas.org/en/about/our_history.asp.

World War II atrocities, Europeans were quicker in developing a regional, seemingly successful and certainly functional human rights system.¹⁵

Merely three years after the end of hostilities, by the late forties, Europe was hard at work drafting the innovative European Convention for the Protection of Human Rights and Fundamental Freedoms.¹⁶ This convention created two regional human rights institutions: the European Commission of Human Rights and the European Court of Human Rights. The Commission was empowered to investigate and monitor human rights situations. Contentious cases requiring judicial intervention would be referred to the Court, which in turn makes final decisions binding on signatory nations abiding to its jurisdiction.¹⁷

By 1960, Europe had already established basic regional institutions binding “human rights law, authoritative human rights institutions empowered to implement such laws, and Non-Governmental Institutions (NGOs) capable of bringing abuse cases to the forefront of [the] public attention.”¹⁸ This European model would eventually be closely followed elsewhere in the world for the monitoring, investigating and the enforcing of human rights laws.¹⁹

¹⁵ Sikkink, *The Justice Cascade*, 35.

¹⁶ *Ibid.*

¹⁷ European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, ETS5 (Nov. 4, 1950).

¹⁸ Sikkink, *The Justice Cascade*, 36.

¹⁹ *Ibid.*, 248. Note: The three most well established regional human rights systems are the European, the Inter-American and the African systems. A similar scheme is trying to be established for the Middle East, but progress has been slow to date. All of them are

The modern Inter-American Human Rights System closely mirrors this European model.²⁰ While initially slow in developing, it has matured in later years, and has finally made significant advances in protecting fundamental rights of inhabitants of the Americas. Consequently, the Inter-American Human Rights System's influence in the public international law arena is growing, and its cumulative effect on the Latin American political landscape, to include the military, has risen.²¹

Human Rights System in Latin America

Though only noticeably active towards the end of last century, the Inter-American Human Rights System traces its modern structure back to 1948. Contemporaneously with Europe's efforts in this area, the Organization of American States (OAS) was created that year, and now comprises thirty-five independent states of the Americas. Their essential purposes are based on the main pillars of "democracy, human rights, security and development."²² This would lead to a system of oversight and enforcement very similar to the European model.²³

sanctioned and championed by the United Nations and their Comprehensive Program in Human Rights.

²⁰ Manfred Nowak and Julia Kozma, "A World Court of Human Rights, Research Project on a Court of Human Rights. Protecting Dignity: An Agenda for Human Rights" University of Vienna, Austria, June, 2009, accessed April 5, 2017, http://bim.lbg.ac.at/sites/files/bim/World%20Court%20of%20Human%20Rights_BIM_0.pdf.

²¹ Sikkink, *The Justice Cascade*, 180.

²² Organization of American States, "History."

²³ Nowak and Kozma, "A World Court," 24.

During the Ninth International Conference of American States in Bogota, Colombia in 1948, the OAS issued the American Declaration of the Rights and Duties of Men.²⁴ This initial pronouncement underscored the region's commitment to the protection of human rights, and eventually led to the adoption of the Inter-American Convention on Human Rights in 1969 (the "Convention" or the "Inter-American Convention").²⁵

The Convention is a set of fundamental rights and freedoms afforded to all inhabitants of the Americas.²⁶ An integral part of this Convention, the Inter-American Commission on Human Rights (hereinafter the "Commission" or the "Inter-American Commission") was created and empowered to promote and monitor those freedoms and protections. Among them, the most fundamental include the right to life, to humane treatment, to personal liberty, to fair trial, judicial protection, etc.²⁷

²⁴ Organization of American States, "Inter-American Commission on Human Rights," Organization of American States, accessed April 5, 2017, <http://www.oas.org/en/iachr/mandate/what.asp>.

²⁵ Organization of American States, "Charter," Organization of American States, accessed April 5, 2017, <http://www.cidh.oas.org/Basicos/English/Basic3.American%20Convention.htm>. Note: This so called "Pact of San José" is the Americas' version of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms, the cornerstone of the European Human Rights system.

²⁶ Santiago A. Canton and Elizabeth Abi-Mershed et al., *Inter-American Commission on Human Rights, Report on the Human Rights of Persons Deprived of Liberty in the Americas*, (Madrid, ES: Inter-American Convention, 2011), 1, accessed April 5, 2017, <http://oas.org/en/iachr/pdl/docs/pdf/PPL2011eng.pdf>.

²⁷ Ibid.

A judicial instrument was also created. It was titled the Inter-American Court of Human Rights (the “Court” or the “Inter-American Court”),²⁸ and its primary functions are to judicially interpret and apply the Inter-American Convention.²⁹ The Court promulgates advisory and binding opinions. An advisory opinion merely clarifies and interprets the Inter-American Convention. While these opinions influence all OAS member countries in varying degrees, only those that have voluntarily ratified its jurisdiction are bound by so called binding judgments, which actually have material effects on a party. They arise from contentious cases where the Court not only interprets and applies the Convention or other treaties, but also determines if a member state has violated international law and can penalize accordingly. In order to be bound by such rulings, a member state must first ratify, through a general or special declaration at the national level, the subordination to the Court’s jurisdiction. Fourteen countries, out of the thirty-five OAS members, have ratified such jurisdictional character. In North America, only Mexico has agreed to do so.³⁰

Despite its noble goals, this Inter-American Human Rights system laid virtually toothless and silent for decades.³¹ The second half of the twentieth century saw a series of changes in the political landscape in Latin America, and many nations ended up in the hands of dictatorial regimes; most were the result of *coup d'états* removing

²⁸ Organization of American States, “Charter.”

²⁹ Organization of American States, “American Convention on Human Rights. Article 62” (San José, CR: American Convention on Human Rights, November 22, 1969), 123.

³⁰ Ibid.

³¹ Sikkink, *The Justice Cascade*, 129-136.

democratically elected governments. Many of the region's despotic governments were then backed by United States administrations fearful of the expansion of leftist movements in this hemisphere's theater of the Cold War.³²

The civilian population in these Latin American countries ended up trapped in the crossfire as innocent bystanders in these proxy conflicts. Many were repressively controlled by para-military forces, extremist subversive organizations and government security forces alike, and were often subjected to abuses by all factions involved.³³ Some of these Latin American repressive regimes were directly under the control of the military, or would have a puppet civilian government with no real control over official or illegitimate forces alike. These internal struggles for power spanned almost the entire second half of the last century, and left the region with a horrible reputation for the respect of human rights.³⁴

Fortunately, this totalitarian trend eventually reversed, and by the 1990s most countries in Latin America had returned to democracy and the deference for the rule of law. Finally, the Human Rights System was ripe for a renewal. The militaries, for the most part, went back to their traditional role of supporting democratically-elected civilian

³² Regina Nockerts, et al., "Human Rights in Latin America, Review Digest: Human Rights in Latin America," *Human Rights in Latin America* (blog), *University of Denver*, December 2, 2012, accessed April 5, 2017, <http://www.du.edu/korbel/hrhw/researchdigest/latinamerica/latinamerica.pdf>.

³³ U.S. Department of Defense, *Western Hemisphere Defense Policy Statement*, (Washington, DC: Department of Defense, 2012), 3.

³⁴ Washington Office in Latin America, "40 Years of Advocacy for Human Rights," WOLA Advocacy for Human Rights in the Americas, March 16, 2017, accessed April 5, 2017, <https://www.wola.org/analysis/wola-documentary-40-years-advocacy-human-rights-americas>.

regimes, and peace processes flourished in the region.³⁵ However, the legacy of human rights abuses and the violence previously committed against civilian populations would prove hard to erase, and bringing a lasting and conciliatory closure has been difficult to say the least. It is still a complex work in progress.

Latin America now leads the world in human rights prosecutions.³⁶ Many former leaders of military governments, legitimate or paramilitary forces, and illicit armed organizations in the region have been charged with human rights crimes. It is hoped by many that this will have a direct impact and translate into overall improvements in the area of respect for human conditions.³⁷ At the vanguard of the judicial front in this hemisphere, stands the Inter-American Court of Human Rights.

The Inter-American Court of Human Rights

In post-totalitarian Latin America, multiple ways to handle allegations of human rights abuses arose. For example, in some of the countries with large numbers of credible allegations, pioneering legal instruments known as “truth commissions” were created. These were typically set up by newly-elected or transitional governments with the support of human rights organizations, generally NGOs.³⁸ A rare but growing and

³⁵ Nockerts et al., *Human Rights in Latin America*, 1.

³⁶ Sikkink, *The Justice Cascade*, 136-180. Note: There were virtually no prosecutions in Latin America prior to 1985. That number quickly spikes to more than six per year by 2000, and growing.

³⁷ *Ibid.*, 257.

³⁸ Gerardo Alberto Arce Arce, “Armed Forces, Truth Commission and Transitional Justice in Peru,” *Sur - International Journal on Human Rights* 7, no. 13 (December 2010): 27, accessed April 5, 2017, <https://ssrn.com/abstract=1928616>.

noteworthy number of cases have been prosecuted internally by domestic courts,³⁹ and another few were handled in foreign tribunals. This anomaly was mainly due to the number of victims and alleged perpetrators fleeing their home countries during the conflicts. In those cases, human rights lawyers representing Latin American victims would “borrow” the foreign justice system (e.g. European courts) to file lawsuits. Perhaps the most famous examples of this include the arrest in London, and then extradition to Spain, of former Senator and President of Chile, General Augusto Pinochet. He ended up facing charges in a Spanish court for crimes against humanity.⁴⁰ Nobel Peace Prize laureate, Rigoberta Menchú also utilized this type of mechanism against former president and life-time Guatemalan Senator, Efraín Ríos Montt.⁴¹

There is a vast and most significant number of prosecutions, however, taking place at a revamped Inter-American Court of Human Rights.⁴² Originally located in Washington, DC but later permanently staged in San José, Costa Rica, the Court’s influence over elected regional governments has considerably risen. Many of their opinions have pierced national sovereignties, and directly forced a shift in individual

³⁹ Jo-Marie Burt, “Guilty as Charged: The Trial of Former Peruvian President Alberto Fujimori for Human Rights Violations,” *International Journal on Transitional Justice*, (2010): 384-405.

⁴⁰ Sands, *From Nuremberg*, ix.

⁴¹ *Rigoberta Menchú et al. v. Ríos Montt, et al.*, Guatemala Genocide Case, Acer Centre for European and International Law, 2013, accessed April 5, 2017, <https://www.scribd.com/document/145019009/20-05-13-Rigoberta-Menchu-Et-Al-v-Rios-Montt-Et-Al-Guatemala-Genocide-Case>.

⁴² Marcia Nina Bernardes, “Inter-American Human Rights System as a Transnational Public Sphere: Legal and Political Aspects of the Implications of International Decisions,” *Conectas Human Rights*, 8th ed. no. 15 (December, 2011): 137.

countries' governance. One area certainly impacted is the way that domestic laws apply restrictions, judgments and penalties to governments, individuals, and institutions.⁴³ The single government organization most significantly affected is the military.⁴⁴

Many of the Court's decisions call for the reshaping and erosion of entire military justice systems,⁴⁵ and the Court has repeatedly handed down opinions attempting to limit or eliminate altogether the jurisdiction of military courts.⁴⁶ These rulings have consistently called for the restriction of military judiciaries only over what has been coined as "delitos de función,"⁴⁷ and typically expand the reach of the civilian courts into matters formerly of exclusive military competence. "Delito de función," the short form for "delito de función militar" is a recently coined term used throughout Latin America in relation to the functionality principle explained in the next paragraph. It simply defines an offense directly related to the functions exclusively vested on the military (and police or other government law enforcement agencies). Militaries and their judiciaries tend to broadly interpret this concept, whereas civilian interpretations tend to narrow it to a very

⁴³ *Rigoberta Menchú et al. v. Rios Montt, et al.*

⁴⁴ Susana Mosquera Monelos, "Perú ante el Sistema Interamericano de Protección de los Derechos Humanos," Universidad Nacional Autónoma de México, México City, MX, Instituto de Investigaciones Jurídicas, 2012, accessed April 5, 2017, <https://archivos.juridicas.unam.mx/www/bjv/libros/7/3160/15.pdf>. Note: Not available in English.

⁴⁵ *Rosendo Radilla v. United Mexican States*, Case 12.511, Inter-Am. Ct. H.R. (ser. C) (Nov. 23, 2009).

⁴⁶ *Ibid.*, 6.

⁴⁷ Juan Carlos Gutiérrez and Silvano Cantú, "The Restriction of Military Jurisdiction in International Human Rights Protection Systems," *International Journal on Human Rights* (December 2010): 75-108.

limited set of offenses. The direct correlation to the military is the main aspect of controversy.

To this end, the Inter-American Court often relies on the so-called *functionality principle*, which significantly narrows military justice courts' jurisdictions to a very limited "functional competence that is both restrictive and exceptional."⁴⁸ Support for this principle seems to be gaining strength in Latin America, especially among civilian judiciaries and human rights organizations. Multiple scholars and NGOs believe in varying degrees that there exists an "extensive application of military jurisdiction . . . [which] disrupts the thin line of functionality that distinguishes a democracy from other types of political regimes."⁴⁹ This argument seems to be mainly based on fears of the traditionally intrusive role that militaries had in the governance of Latin America, and the significant amount of power they held (and arguably abused) many years ago.⁵⁰

These Court-imposed restrictions could have a profoundly adverse impact on militaries' integrity, independence, and even core functions. It could severely hinder their reintegration as a vital component of democratic states, and threaten the fragile new democracies arising in Latin America; indeed, extreme interpretations of this functionality principle could leave the militaries of the region virtually powerless, and

⁴⁸ *Ibid.*, 77.

⁴⁹ *Ibid.*, 78-79.

⁵⁰ Sergio García Ramírez, President of the Inter-American Court of Human Rights, *The Military Criminal Jurisdiction on the Jurisprudence of the Inter-American Court of Human Rights* (San José, CR: The Inter-American Court of Human Rights, 1997-2007), 1.

unable to successfully apply internal discipline, necessary for its very existence and functionality. At best, it would reduce the scope of military justice systems to only a limited set of offenses. Crimes of a unique military nature, such as absence without leave (AWOL), desertion, insubordination, etc., would be the only ones left to the competence of independent or quasi-independent military justice systems, which in turn, could greatly impact military good order and discipline.

Additionally, the Court increasingly calls for the expanding jurisdiction of domestic civilian justice systems over the military. For example, the Inter-American Court has ordered the granting of powers to civilian justice systems over allegations of human rights abuses, even when related to armed forces personnel in the execution of official duties.⁵¹ Many fear that this would leave military personnel vulnerable to traditionally unfriendly civilian courts' charges, especially under Human Rights Law,⁵² a poorly understood branch of Public International Law, even among jurists.

The reaction to these pronouncements of the Inter-American Court by countries in the region has been both varied and controversial. They range from calls to strict compliance, to nervous indifference, and all the way up to open defiance. What is clear is

⁵¹ *Rosendo Radilla v. United Mexican States*, Case 12.511, Inter-Am. Ct. H.R. (ser. C) (Nov. 23, 2009) 332.

⁵² Adriaan Alsema, "Colombia Rejects HRW Criticism on Military Justice Reform," Colombia Republic, January 24, 2012, accessed April 5, 2017, <http://colombiareports.com/colombia-news/news/21736-colombia-rejects-hrw-criticism-on-military-justice.html>; Adriaan Alsema, "Colombia Rejects Criticism on Military Justice Reform," Colombia Republic, December 17, 2011, accessed April 5, 2017, <http://colombiareports.com/colombia-news/news/21094-colombia-rejects-criticism-on-military-justice-reform.html>.

that any and all degree of adherence to these rulings will have an effect on the region's militaries; thus the importance of this study.

Purpose of Study

Clearly, while the Human Rights System in the Americas dates back to the early days of the post-World War II era, and was inspired even earlier in history,⁵³ it has yet to fully develop. It has, however, taken on a momentous change and it is conceived that it could further grow, from an actual or perceived small-scale impact idea, into a true mechanism for change in the Americas. Successes similar to those enjoyed by the European Human Rights system at the regional level, and the Charter of the United Nations globally, would be welcome additions to the region, and could tremendously contribute to mend our reputation for the lack of respect for human rights.

A wholly functional Inter-American System of Human Rights will undoubtedly affect many institutions, to include governments, NGOs, and in particular, the military. Sadly, civilian and military jurists alike, especially in the United States of America, seem to know and understand very little about the Inter-American Court of Human Rights, its parent institutions, and the system as a whole. Furthermore, there is minimal appreciation of the potential impact of this sixty-eight year-old system of human rights on governance.

It is important then to study this system's present status and relevance. Perhaps a comparison to similar regional organizations is valuable, and the parallels and differences

⁵³ OAS, Charter, 21. Note: The Organization of American States, formally chartered in 1948, traces its roots back to earlier regional organizations. E.g., the one created by the liberator himself, Simon Bolivar who, in 1829 convened the *Congress of Panama* dreaming of a united and democratic South America.

to the contemporaneously created International Criminal Court could help understand it.⁵⁴ Most importantly, it is imperative to assess the potential for its continued influence in the region, on governments, and specific institutions such as the military. Hopefully, the best years of human rights law in the region lie ahead, and it would be great if the impact of this ambitious system of human rights actually translates into improved dignity and respect for human beings. At the same time, it would be great if a balance is found, whereby important institutions of democracy, like the military, are allowed to continue serving their valid roles in the societies they conform.

Clearly, there are numerous and influential multi-national legal instruments with potential to influence the lives of millions; thus, it is startling that even seasoned attorneys and scholars often ignore the most basic facts of these important regional systems, and other aspect of this key area of International Public Law. This is even more prominent among English-speaking countries and in Common Law jurisdictions, perhaps as a result of the posture of the United States: it refuses to subject itself to the competence of the ICC, or any other international criminal law tribunals.⁵⁵ However, at the same time it maintains a robust lustration and vetting policy that “administratively penalizes post-conflict or post-authoritarian governments... And forces them to remove from public

⁵⁴ Scheffer, *All the Missing*, 444-450. Note: The ICC is the permanent tribunal designed to investigate and prosecute atrocity crimes throughout the world. Any state party to the Rome Statute, its governing statute is subject to its jurisdiction. To date, all but three nations of the world have ratified this Statute. The U.S. is not a ratifying party, but maintains that a strong policy of support.

⁵⁵ *Ibid.*

institutions personnel who have been implicated in activities that call into question their fitness... To include Human Rights violations or abuses and others.”⁵⁶

Despite not being a signatory of the Rome Statute, the United States not only contributes significant economic backing to Human Rights globally, but reinforces it through important policies. On the ICC, for example the State Department “supports the court’s prosecutions and provides assistance in response to specific requests from the ICC prosecutor and other court officials.”⁵⁷ Still, this ambiguous position, has created tremendous skepticism among international actors at all levels, and there exist a horde of experts dismissing international law as merely a quasi-judicial-body without any power of enforcement; consequently, without the necessary deterrent effect.

It is vital then to analyze the progress that these institutions have made, and not only assess their effectivity, but perhaps recommend actions that might enhance their relevance to domestic legal institutions, governments and non-state actors alike. Finally, its influence on legitimate armed forces of the region and their independent judiciaries should also be explored.

This work does not pretend to answer every open question in the vast area of Human Rights Law, even if limited to the regional level. It merely attempts to raise awareness, a certain level of interest, and provide starting points for further study in the

⁵⁶ Under Secretary for Civilian Security, Democracy, and Human Rights, “Lustration and Vetting,” May 16, 2016, accessed May 8, 2017, <https://www.state.gov/j/gcj/transitional/257569.htm>.

⁵⁷ Under Secretary for Civilian Security, Democracy, and Human Rights, “International Criminal Court,” May 2010, accessed May 8, 2017, <https://www.state.gov/j/gcj/icc/index.htm>.

field. Soldiers, military officers, and certainly Judge Advocates should be aware of these regional mechanisms devoted to the defense of the integrity of human beings. There should be a degree of appreciation for the contributions already made, the improvements achieved in the respect for human rights, and most importantly, the potential impact to military jurisprudence.

Primary Research Questions

Have the Inter-American Human Rights Commission and its judicial apparatus, the Inter-American Court of Human Rights, been effective mechanisms effecting the respect of Human Rights as their charters aspired, and what influence has resulted from this into governments and affected institutions, particularly the military?

Secondary Research Questions

To the extent that States, their militaries, and other actors have been affected by the Court's mandate, has such impact been translated into actual improvements in the treatment of citizens of this hemisphere by governments and others attempting against their integrity?

What types of alliances between States and other actors have developed for the benefit of those most vulnerable to abuses?

Have any mechanisms of enforcement been created and proven effective to control those who abuse the Human Rights of others, particularly the anarchist non-state actors guided by their disregard for the rule of law?

What is the interaction between these regional judicial bodies to individual States' legal systems and enforcement mechanisms?

Assumptions

The scope of the work will be difficult to delimit, dissect and analyze until we start digging into this complex set of questions. The field is vast and ever growing. It is complex, varied, and often internally incongruent. We expect to encounter massive amounts of literature. This might complicate our focus to research in order to gather valuable data and provide useful, definitive answers; however, that is often the case in the world of legal analysis. Efforts will be made to mitigate by investigating more narrowly, and staying focused specifically on impacts to the military.

The audience is intended to be the public at large and specifically military members not necessarily trained on the nuisances of International Public Law and specifically, Human Rights. While international law is somewhat independent, attention must be placed on spotting areas of potential conflict where civil law countries might interpret, define or apply laws differently than we do. Most, if not all Latin American countries follow this codified type of legal framework, which differs significantly from the precedent-based, common law prevalent in the United States. All efforts will be made to maintain the discussion accessible to all readers, and not to make of this a legal treatise directed to audiences with specialized legal training.

Many of the sources will likely be originally written in Spanish, for this subject has been extensively studied in Spanish speaking countries, mainly in Latin America. Consequently, the author will either provide the official translation to English, if one exists, or translate to the best of his ability. Where necessary, additional explanations will be provided, and footnotes will likely be a valuable resource for this purpose.

Delimitations and Scope

Perhaps a limitation, the number of available books in English on this subject is limited, and few comprehensive treatises exactly on point exist. However, this will hopefully be mitigated by the author's expertise in relevant languages at a native speaker level; nevertheless, language intrinsically possesses limitations of clarity and interpretation even among experts. All efforts will be made to convey and maintain the integrity of all translated material. All personal translations delivered here will retain the intended original message. If further explanation or details are necessary, footnotes will be used to explain any necessary minutiae.

The scope of this survey, its analysis, discussion, and conclusions will remain within the unclassified realm. Most materials on this subject are public domain, and can easily be traced and found in public channels and domains outside the military or the government.

This research paper does not intend to be a comprehensive survey on human rights or even the Inter-American Human Rights system. It cannot even do that on the Inter-American Court of Human Rights alone. The intention is to give a broad overview of this regional system, its available mechanisms for the continuous protection of all human beings in the area, and its most recent developments and relevant events. The focus will be placed on the Inter-American Court of Human Rights, and its impact on states, institutions, and particularly, regional legitimate military forces. Hopefully, this will provide readers with a starting point to understand and further investigate the potential effect of these systems on the Armed Forces of the region.

Finally, every effort will be made to at least provide some suggestions as to how to best respect and promote these important advancements while safeguarding one of the vital institutions of any democracy: its military.

CHAPTER 2

LITERATURE REVIEW

Introduction

Many books have provided perspective and valuable knowledge in this area; however, as human rights are sadly a daily subject in Latin America, there are multiple renowned journals, periodicals, reports, etc., that provide most of the information herein. Court hearings, transcripts, opinions, and related literature complement the sources, and many regional newspapers have been consulted on a daily basis for added currency.

Many scholars across Latin America have undertaken studies in this area, and there are countless books, scholarly papers, journals, articles, etc., on this subject matter; however, the ratio of literature in Spanish to that written in English seems to be large. This might be a consequence of the ongoing posture by the United States government – despite its proclaimed commitment to human rights globally – of continuously refusing the competence of international criminal tribunals.⁵⁸ Jurists from this country could then be dispassionate on a subject that our country seemingly disregards. Nevertheless, with greater access to news and reports around the world, there seems to be a renewed interest in the subject, and the growing amounts of literature studying this subject, reflect that growing importance.

⁵⁸ Under Secretary for Civilian Security, Democracy, and Human Rights, “International Criminal Court,” May, 2010, accessed May 8, 2017, <https://www.state.gov/j/gcj/icc/index.htm>.

Clear example of this growing relevance is the book that first generated our interest in the subject. *All the Missing Souls* by Professor David Scheffer,⁵⁹ is a jewel from 2012 that deals with his idealistic aspiration to “judicially eradicate atrocity crimes from the face of the earth.”⁶⁰ Professor Scheffer celebrates the positive aspects of having international courts to handle abhorrent crimes; however, he points out the frustrations brought about when standing up international tribunals. From the perspective of someone deeply embedded in our country’s foreign service, he gives a passionate and authoritative perspective to this complex process.

Professor Scheffer’ held the innovative position of ambassador-at-large for war crimes issues at the United Nations. It was during his tenure, those critical years from 1997 through 2001 that the four ad-hoc war crimes tribunals were created. Furthermore, during this period the International Criminal Court was also conceived, planned and set up. He was closely involved in all international efforts to design, develop and create these international legal mechanisms on behalf of the United States;⁶¹ consequently, he understands better than most the intricacies of such enterprises. This intimate knowledge is obviously critical for the grasp of the complexities behind similar multi-national systems.

⁵⁹ Scheffer, *All the Missing Souls*, 9 et seq.

⁶⁰ Ibid.

⁶¹ Ibid.

Another critical book for our research has been *The Justice Cascade* by Professor Kathryn Sikkink.⁶² She is a Regents Professor and the McKnight Presidential Chair of Political Science at the University of Minnesota in Minneapolis. In this book, she explores the structure of what she considers a “cascade” of developments towards creating institutions and instruments of justice in the area of Human Rights. She traces this process, from its historical roots in Nuremberg and Tokyo to the modern conceptions of standing international commissions and tribunals. These human rights institutions are crucial, she asserts, and are key to ensuring that individuals are no longer completely vulnerable. She celebrates their existence and sees them as positive methods for the international community to hold “*even* governments accountable for any transgressions against individuals.”⁶³ (Emphasis added).

General aspects and basic concepts of International Human Rights Law have been mostly developed through the study of a book by Dinah L. Shelton. She is a professor of International Law (emeritus) at George Washington University Law School. Aptly enough, this former member of the Inter-American Commission on Human Rights titled it *Advanced Introduction to International Human Rights Law*.⁶⁴ It provides an insightful entry point into this vast area of the law, and it is a well-regarded reference for subject matter experts. It has also been used at prestigious universities across the United States as an introductory textbook on human rights, both at the undergraduate and graduate level.

⁶² Sikkink, *The Justice Cascade*.

⁶³ Ibid.

⁶⁴ Dinah L. Shelton, *Advanced Introduction to International Human Rights*. (Northampton, MA: Edgard Publishing Inc. 2014), 1.

It contains vast discussions on legal frameworks, from the ethical to the historical, and of course the substantive aspects of the law. The author used it extensively as the tool for general resources and legal background for this investigation.

Regarding the evaluation, hitherto, of U.S. military efforts in Latin America, much of the research has started with the study of a survey book on lessons from Latin America titled *The U.S. Military and Human Rights Promotion*. It is compiled and written by Jerry M. Laurienti,⁶⁵ who dedicated his career to become one of the foremost experts in the field. He is a Latin American analyst for the U.S. government in top areas of foreign policy making. Mr. Laurienti maintains, for example, that the United States military “has spent unmatched efforts in Latin America promoting human rights.”⁶⁶ This posture stands in sharp contrast to much of the literature, which tends to *accuse* the United States of doing exactly the opposite throughout the history of these relations. His view that the military has been at the forefront of contributing to the *resolution* of this issue, contributes tremendously at the balancing of perspectives often encountered. That is, that the military is part of the problem, and certainly not the solution, or even a positive aspect of the whole structure. (Emphases added).

Thomas M. Leonard, with his comprehensive work, *Encyclopedia of U.S. - Latin American Relations*,⁶⁷ provides yet another key starting point for much of the historical

⁶⁵ Jerry M. Laurienti, *The U.S. Military and Human Rights Promotion: Lessons from Latin America* (Westport, CT: Greenwood Publishing Inc. 2007), 1.

⁶⁶ *Ibid.*, back flap.

⁶⁷ Thomas M. Leonard, ed., *Encyclopedia of U.S.-Latin American Relations* (London, UK: Sage Publications, 2012).

context on U.S.-Latin American relations. This book “explores more than 200 years of political, military, economic, and cultural connections between the United States and its closest neighbors in this hemisphere;”⁶⁸ as such, this collection is invaluable for much of the historical context on the traditional importance of these relations. While the focus is on the current environment and the recent decisions of the Court, this historical perspective provides valuable insights.

Several other books have provided perspective and valuable knowledge; however, it is in many renowned journals, periodicals, and short writings that current issues, court hearings, transcripts, opinions, etc., have been found. Additionally, many regional newspapers provided a daily doses of currency in the subject matter. Though their individual contribution to the end product is small and might not even be credited wholly by the rules, they patently point out that there is a tremendous need for international oversight in the area of human rights. Recurrently, reports and news tell a tale of a hemisphere where murders and violent crimes still occur in shocking numbers, and justice systems seem overwhelmed at best, and almost ineffective at worst. Hopefully, if we somehow manage to curtail human rights abuses globally and at the regional levels, there might also be a correlating improvement at the national and local levels. If the powerful, those governing, the influencing insurgencies, and organized criminal organizations were to be held accountable, perhaps impunity would disappear or at least diminish. The world will then truly treasure the most fundamental of human rights: the right to life.

⁶⁸ Ibid., back cover.

U.S. Policy and Doctrine

The review of relevant United States policy and doctrine centers on the precept of the command policy responsible for all military discipline. In the U.S. Army, with command, comes a huge responsibility to ensure proper conduct of Soldiers at all times. This is, however a reflection of U.S. national security policies followed across the armed services which withhold jurisdiction over service members.⁶⁹ This disciplinary oversight over personnel suspected of committing a crime applies worldwide at all times.⁷⁰ This fact is significant as it places on U.S. military chain of command an almost exclusive responsibility for criminal liability. The United States' military justice system is wholly command-centric.⁷¹

The research might often bring us to comparisons and contrasts as to that stance of the American system with those of partner nations and other states. The significance is that many of those accused of human rights violations in the past either belong, or at some point had been members of an armed force; hence, this raises the delicate issue of deep involvement of international tribunals into military affairs and their service members.

⁶⁹ Department of the Army, Regulation 600-20, *Army Command Policy* (Washington DC: Department of the Army, 2011), 4-4; see also Department of the Army, Regulation 27-10, *Legal Services Military Justice* (Washington, DC: Department of the Army, 3 October 2011).

⁷⁰ Department of Defense, *Manual for Courts-Martial: Rules of Courts Martial, R.C.M. 202*, 10th ed. (Washington, DC: Department of Defense, 2012), I-1, et seq.

⁷¹ *Ibid.*, II-31 – II-33.

Another important national policy document consulted is the Department of Defense's Western Hemisphere Defense Policy Statement.⁷² It explains how the Defense Strategic Guidance shapes the U.S. engagements in this hemisphere. Department of Defense (DoD) defense policy goals continue to include the "promoting [of] mature, professional national defense institutions; fostering integration and interoperability among partners; and promoting hemispheric defense institutions." It also subjects bilateral and regional defense efforts to the continuous respect for human rights.⁷³

Significance of Thesis in the Existing Literature

As explained above, vast amounts of literature exist in this area of the law written in Spanish. Comparatively, the number of writers approaching the subject in English is seemingly lower; moreover, those writing on the subject tend to have legal backgrounds, and usually write for that particular audience.⁷⁴ In contrast, this investigation will attempt to maintain a military and more general focus, and answer a key question relating the constitutionally mandated militaries of the region to the Inter-American Court of Human Rights: How do the latest opinions from the Court affect military justice systems? While this will constitute but a small grain in the vast universe of Human Rights Law, it would hopefully spark interest for further research and reading.

⁷² DoD, *Western Hemisphere Defense Policy Statement*, 1.

⁷³ *Ibid*, 3-7.

⁷⁴ The Danish Institute for Human Rights, "Review of Literature on National Human Rights Institutions" (Copenhagen DK: Danish Institute for Human Rights, 2016), 2, accessed April 9, 2017, https://www.humanrights.dk/sites/humanrights.dk/files/media/dokumenter/udgivelser/hrs/nhri_bibliography_dihr_mena_2016_en.pdf.

This investigation is not intended to be a legal treatise, but hopes to incorporate enough legalese so as to inspire future legal scholars and writers to dig deeper into the fields of International Public Law, Human Rights Law, and particularly into the Inter-American Human Rights System. These essential instruments of a regional legal framework could be a valuable tool affecting deep into domestic legal systems and institutions. In the United States, where human rights have been championed and promoted continuously, their significance can only continue to grow.

CHAPTER 3
RESEARCH METHODOLOGY

General Approach

The intended research methodology will be heavily qualitative as this paper pretends to be both a historical and analytical survey of the Human Rights System, and it will consist of mainly research and reading into contemporaneous relevant literature. The goal will be to uncover trends and opinions on the subject matter, and through multi-phased analysis, better understand the Inter-American Court and its impact. The primary methodology of investigation consists of cycles of intense research and analytical review of sources. The reading, analysis, comparison and revisit of multiple resources summarizes the method; however, some aspects of the investigation deserve further explanation.

While Human Rights as a separate and comprehensive field within International Public Law is a relatively recent development,⁷⁵ its growth and development are already undeniable. Interest in this subject matter spans the entire globe, and there are multiple undergraduate, post-graduate and professional degrees and specializations offered in the field nowadays. While many law schools now offer, at a minimum, an introductory survey course on this subject, this is no longer just a legal field, but belongs to the social sciences in general. Thus, the author has dedicated time to understand the field from a very broad base, working it down to the specifics intersecting the military and the law.

⁷⁵ United Nations, “The Foundation of International Human Rights Law,” United Nations, accessed April 9, 2017, <http://www.un.org/en/sections/universal-declaration/foundation-international-human-rights-law/index.html>.); Sands, *From Nuremberg*, 82.

As a starting point, the *Encyclopedia of U.S.-Latin American Relations*⁷⁶ has been a magnificent resource for general background and history. It spans a surprisingly long time of state relations, mainly between the United States and South American countries. It is concise in most entries, but very broad in the spectrum of information it provides. Names of major individual researchers, scholars, and writers in this field are also easy to find. Most explanations are less than a page in length, but they often point out to multiple other references for further research. NGOs, inter and intra-governmental organizations, regional leaders and countries are also covered, and there will likely be a solid, if concise explanation of their relations with the United States.

This aspect of the research was also aided by another encyclopedia-type compilation titled *Latin America, the United States, and the Inter-American System*, a publication of Westview Special Studies on Latin America and the Caribbean. This book, edited jointly by John D. Martz and Lars Schoultz dates back from 1980, but it still has some outstanding essays by brilliant scholars of the time that focused on contemporary inter-American relations.⁷⁷

Thanks to those and other literary works consulted, varying facets of this complex relationship are better understood. The symbiotic triad of relationships between the United States, neighboring countries, and the Human Rights system that binds them is

⁷⁶ Thomas M. Leonard, ed., *Encyclopedia of U.S.-Latin American Relations*, 1 et seq.

⁷⁷ John D. Martz and Lars Schoultz, *Latin America, the United States and the Inter-American System* (Boulder, CO: Westview Press, 1980), 1 et seq.

likely to stand, and most scholars agree that there are common values and interest that will keep it relevant for decades to come.

There is also somewhat of a consensus that this relationship has been a mixture of love and hate; however, as fragile democracies have started to spring across Latin America in the latter part of the 20th century, common values of respect for human rights have been developed, and as these democracies mature, they seem to be finding a cohesive, genuine interest on this important aspect of legitimate governance. Its development can only help support the needed bonds between nations of the region and the continued strengthening of our democratic governance.⁷⁸

A large amount of the literature found blames the United States for many of the human rights abuses committed by proxy governments in the region. It is undeniable that during good portions of the last century, the U.S. supported cruel regimes and factions if by calculated self-interest; however, there are multiple examples of efforts made by the United States to champion human rights in this hemisphere as well. It is important to keep this balanced approach, and stay objective amid the varied perspectives and resources. To this end, multiple and diverse sources have been consulted, and they have been analyzed and studied with an open but intrigued mind. While a self-critical attitude is healthy, it is true that Americans at large have always been interested in a world sans human rights crimes. The analysis that follows simply aims to temper our deep interest in human rights respect with the integrity of legitimate military institutions.

⁷⁸ DoD, *Western Hemisphere Defense Policy Statement*, 6-7

Case Law.

A great deal of the analysis, but especially the conclusions and recommendations will stem from the study of case law from the Inter-American Court, and in lesser degree domestic jurisprudence. In order to assess the impact of the Inter-American Court of Human Rights on the regional militaries, it is necessary to study as many of their decisions as possible; particularly those that have direct impact on our ways of governance, or have the potential to alter it. As a starting point, the author reviewed dozens of cases. The following cases from the Inter-American Court have the common characteristic that their decrees have either somehow affected a specific country's military or have the potential to do so. These and other cases will constitute a great portion of the basis of the analysis in Chapter Four, and some will be discussed in greater detail. Most of them somewhat will validate our conclusions and recommendations:

1. *Rosendo Radilla v. United Mexican States*, Case 12.511, Inter-Am. Ct. H.R. (Ser C), (Nov. 23, 2009)
2. *Alfonso Martín del Campo Dodd v. United Mexican States*, Case 12.228, Inter-Am. Ct. H.R. (Ser. C), (Sept. 3, 2004)
3. *Sambrano Vélez, et al v. Ecuador*, Case 166, Inter-Am. Ct. H.R. (Ser C), (Jul. 4, 2007)
4. *Escué Zapata v. Colombia*, Case 165, Inter-Am. Ct. H.R. (Ser C), (Jul. 4, 2007)
5. *Case of La Rochela Massacre (Colombia)*, Case 163, Inter-Am. Ct. H.R. (Ser C), (May 11, 2007)
6. *Case of La Cantuta (Perú)*, Case 162, Inter-Am. Ct. H.R. (Ser C), (Nov. 29, 2006)
7. *Almonacid Arellano v. Chile*, Case 154, Inter-Am. Ct. H.R. (Ser C), (Sep. 26, 2006)

8. *Case of the Massacre of Pueblo Bello* (Colombia), Case 16403, Inter-Am. Ct. H.R. (Ser C), (Jan. 31, 2006)
9. *Case of Palamara Iribarne* (Chile), Case 135, Inter-Am. Ct. H.R. (Ser C), (Nov. 22, 2005)
10. *Case of the “Mariripán Massacre”* (Colombia), Case 134, Inter-Am. Ct. H.R. (Ser C), (Sep. 15, 2005)
11. *Lori Bernson Mejía v. Perú*, Case 119, Inter-Am. Ct. H.R. (Ser C), (Nov. 25, 2004)
12. *Case of the Las Palmeras* (Colombia), Case 90, Inter-Am. Ct. H.R. (Ser C), (Dec. 6, 2001)
13. *Cantoral Benavides v. Perú*, Case 69, Inter-Am. Ct. H.R. (Ser C), (Aug. 18, 2000)
14. *Durant and Ugarte v. Perú*, Case 68, Inter-Am. Ct. H.R. (Ser C), (Aug. 16, 2000)
15. *Cesti Hurtado v. Perú*, Case 56, Inter-Am. Ct. H.R. (Ser C), (Sep. 29, 1999)
16. *Castillo Petruzzi, et. al. v. Perú*, Case 52, Inter-Am. Ct. H.R. (Ser C), (May 30, 1999)
17. *Loayza Tamayo v. Perú*, Case 33, Inter-Am. Ct. H.R. (Ser C), (Sep. 17, 1997)

For all the cases researched, a basic outline analysis has looked, at a minimum, to the following variables:

1. Factual Overview and Background;
2. The Court’s holdings and orders to the home State;
3. How it is being interpreted, implemented, disputed or analyzed in that country:
 - i. Is it affecting that country’s military justice system, and encroaching in its independence or the state’s sovereignty?
 - ii. How?

- iii. Other concerns of the military
4. Opposing view points
- i. What if any NGO involvement exists in this case?
 - ii. Who are they and what are their particular positions?
 - iii. How do they differ from the position of the military?

With the case analysis outlined above, and the study of available literature, this paper will seek to answer the central and supporting questions postulated. The impact of the Court to military institutions in the region will be assessed, and it is hoped it will provide some insight into the seeming conflict: How to continue supporting important instruments of respect for human rights while maintaining the integrity of an independent military justice system.

CHAPTER 4

CASE STUDIES—COUNTRIES DIRECTLY AFFECTED BY RECENT DECISIONS

Introduction

The Inter-American System of Human Rights stayed busy over the last few years of the 20th century, and began the two-thousands with renewed vigor. Virtually all countries in the Americas have, at some point or another, been under the scrutiny of the Commission, and most have had controversies heard and decided by the Court. More than half of those cases have involved the countries of Perú, Guatemala, Colombia, and Venezuela,⁷⁹ and many of the resulting decrees have affected, in one way or another their military structures, particularly their justice systems.

Thus, a closer inspection into those countries and related judgments affecting their militaries is needed. The United Mexican States (México) will also be included in that list. While it does not partake on the vast amounts of cases that the other four countries have faced, it has had a direct and profound impact on its domestic laws as the practical end result. The jurisdiction of the Mexican military justice system has seen its share of erosion as a result. With the seminal case that actually defines the “functionality principle,” which is seeking to minimize the militaries’ jurisdictions in the region adjudged against México, it is only fitting that we begin our analysis with this nation.

⁷⁹ Inter-American Court of Human Rights, “Decisions and Judgments,” Inter American Court of Human Rights - Decisions and Judgments, 2014, accessed April 9, 2017, http://www.corteidh.or.cr/cf/jurisprudencia2/busqueda_casos_contenciosos.cfm?lang=en.

México

Very few countries have been under as much international scrutiny as México over its respect for human rights at the institutional level. With a multi-front war against narco-trafficking and other criminal groups, the Mexican government has seen a rise in these inquiries,⁸⁰ and NGOs have risen their voices against a perceived disregard for human rights respect at all levels and by multiple Mexican institutions. It is no surprise then that some of the most important recent decisions regarding military jurisdiction by the Inter-American Court have been on cases against the Mexican government.⁸¹

One of the original signatories of the OAS, México did not ratify the Inter-American Convention of Human Rights until March of 1981, and only accepted the Court's contentious jurisdiction seventeen years later, in December of 1998.⁸² By 2004, the first case was adjudicated involving the Mexican government,⁸³ and in 2009, the seminal case of *Rosendo Radilla v. United Mexican States* was decided.⁸⁴ This case is considered the Court's most "important precedent for understanding the impact of the

⁸⁰ Tracy Wilkinson, "Mexico Under Siege: Report Rebukes Mexico Over Cases of the Missing," *L.A. Times*, February 20, 2013, accessed April 9, 2017, <http://articles.latimes.com/2013/feb/20/world/la-fg-mexico-human-rights-20130221>.

⁸¹ Gutierrez and Cantú, "The Restriction of Military Jurisdiction," 77.

⁸² Sergio García Ramírez, "Admisión de la Competencia Contenciosa de la Corte Interamericana de Derechos Humanos," *Recepción Nacional del Derecho Internacional de los Derechos Humanos y Admisión de la Competencia Contenciosa de la Corte Interamericana*, (DF, México: UNAM, Instituto de Investigaciones Jurídicas, 2009). Note: not available in English, translation of the author.

⁸³ *Alfonso Martín del Campo Dodd v. United Mexican States*, Case 12.228, Inter-Am. Ct. H.R. (ser. C), (September 3, 2004).

⁸⁴ *Rosendo Radilla v. United Mexican States*, Case 12.511, Inter-Am. Ct. H.R. (ser. C) (November 23, 2009).

extensive use of military jurisdiction for civilian human rights violations,”⁸⁵ and is the most comprehensive judicial pronouncement with respect to the jurisdiction of military justice systems in the region.⁸⁶

The *Radilla* case brought to a climax the discussion of military jurisdictions in the region. The original complaining parties were all surviving family members of Mr. Radilla. Supported by national NGOs devoted to the preservation of fundamental human rights, they spent almost thirty years demanding justice under domestic Mexican laws without success. This delay was mainly attributed to the jurisdiction of the military over the presumed offenders, all members of the military or government forces. In August of 1974, Mr. Rosendo Radilla Pacheco was the victim of a “forced disappearance,”⁸⁷ allegedly at the hands of military or public security forces.

Forced disappearance, “desaparición forzosa” is a colloquial term in Latin America which basically meant being illegally detained, usually without legal recourse and without warrants, by public security forces. It gave victims no access to constitutional safeguards, and it often involved torture, long or permanent isolation, and in many cases death. A related term, “los desaparecidos” (the disappeared) was the noun used to refer to the victims, which for all practical purposes would become presumed dead. Many were never found. The estimated numbers across Latin America in the

⁸⁵ Gutierrez and Cantu, “Restriction of Military Jurisdiction,” 82.

⁸⁶ Ibid.

⁸⁷ *Radilla v. United Mexican States*, 2.

twentieth century hovered around the hundreds of thousands, with very little chance to ever knowing the accurate count because of the states' sponsored secrecy around it.

By the early 2000s, there had been no progress in the Radilla case in Mexican domestic courts;⁸⁸ thus, the case was brought in front of the Inter-American Court of Human Rights.

México alleged that the plaintiffs had not yet exhausted all available domestic legal recourse, but the Court rejected that claim and justified its intervention by stating that “over thirty years of inefficacy *demandad intervention* by a foreign regional court.”⁸⁹ In ruling against the Mexican state, the Court emphasized that “military jurisdiction constitutes a violation of the . . . Inter-American Convention . . . mainly in what refers to the principle of a competent Court,”⁹⁰ and ordered the Mexican government to ensure that “under *no circumstances* can military jurisdiction be applied when the military violates the human rights of civilians(Emphases added).”⁹¹

The Court's pronouncement about military jurisdictions is obviously categorical, and went beyond merely finding against the Mexican state for violating Mr. Radilla's rights to life, liberty and personal integrity. It reiterated the Court's steady call for eliminating military justice systems within the American states altogether.⁹² This opinion focused tremendously on reducing the jurisdiction of military justice systems to a bare

⁸⁸ *Radilla v. United Mexican States*, 2.

⁸⁹ *Ibid.*, 245.

⁹⁰ *Ibid.*, 266-282.

⁹¹ *Ibid.*, 332

⁹² *Ibid.*

minimum set of “restricted and exceptional” circumstances.⁹³ Such circumstances, the Court stated, are only those which can be “directed towards the protection of special juridical (sic) interests of the military;”⁹⁴ furthermore, the Court stated that when the issue involves alleged violations of human rights against civilian populations, “under no circumstances” can this be a competent matter for a military tribunal.⁹⁵ This detailed level of restrictions by the Court generated a set of conflicts within the Mexican judicial system that sent the country into a spiral of debates. To date, determining exactly what needs to be accepted, applied and implemented is a source of controversy within all levels of the Mexican government.

In the Mexican judicial system, the jurisdiction of the military justice system has traditionally been interpreted and applied extensively. While the Mexican Constitution establishes that “no one shall be put on trial by either personalized laws nor by special tribunals,”⁹⁶ it makes a significant exception for the military. It excepts that “personalized laws shall be applied, however, to military personnel who have committed criminal offenses or have breached the military discipline.”⁹⁷ The term “military discipline” has been further defined in the Mexican Code of Military Justice, and applies military jurisdiction to all crimes committed by military personnel “while they are on duty or

⁹³ *Radilla v. United Mexican States*, 272.

⁹⁴ *Ibid.*

⁹⁵ *Ibid.*, 332.

⁹⁶ Constitución Política de los Estados Unidos Mexicanos (CP), as amended, Diario Oficial de la Federación (DO), 5 de Febrero de 1917 (MX).

⁹⁷ *Ibid.*

acting under motivation of duty.”⁹⁸ This traditionally has allowed most if not all offenses committed by military members to be investigated by a military prosecutor and adjudged by military authorities wholly within the military justice system, for this country, like many others, views its military as being “on duty” at all times.⁹⁹ Clearly, the mandate of the Inter-American Court deeply conflicts with constitutional principles of the Mexican state.

Consequently, the *Radilla* case generated a large number of debates as to the value of an international tribunal’s opinion, and its influence on a national constitution. Most countries in the region, as is the case in the United States, consider their constitutions the “supreme law of the land.” In México, the President of the Suprema Corte de Justicia (México’s Supreme Court), Guillermo Ortiz Mayagoitia, immediately called for an *en banc* study on the potential reaction and posture of his court.¹⁰⁰ In its findings, the judges declared that all matters resolved by the Inter-American Court will be deemed “*res judicata*,” i.e., a settled matter not eligible for review by that court, when it concerns any and all claims filed within the jurisdiction of the Mexican Supreme Court; therefore, the Inter-American Court is judicially granted full faith and credit at the very

⁹⁸ Código de Justicia Militar [CJM] [Military Justice Code], as amended, Diario Oficial de la Federación [DO], 31 de agosto de 1933 (MX.).

⁹⁹ Eduardo Ferrer-McGregor and Fernando Silva García, “El Caso Radilla ante la Corte Interamericana de Derechos Humanos,” *Jurisdicción Militar y Derechos Humanos* (2012): 1.

¹⁰⁰ Laura Rangel Hernández, “Sentences Handed Down by the Inter-American Court of Human Rights and its Implications for the Mexican Legal Order,” *IUS Revista del Instituto de Ciencias Jurídicas de Puebla* 28 (July-December 2011): 1.

same level as México's highest court.¹⁰¹ This is an unprecedented give-in of national sovereignty via the judiciary to an international institution.

In addition, the Mexican Supreme Court decided not to evaluate nor question the jurisdiction of the Inter-American Court in Mexican jurisprudence, and will limit itself to “advisory opinions” wherever clarification is needed with respect to any Inter-American Court decision.¹⁰² Furthermore, the view of the Mexican Supreme Court is that one of its obligations is to “restrict the interpretation of military jurisdiction to specific cases,”¹⁰³ so, it ordered all judges and tribunals in the Mexican Judicial System to refer “any and all cases” involving military jurisdiction and alleged violations of human rights to the Mexican Supreme Court for application of the necessary mechanisms for resolution within the *civilian* judiciary system,¹⁰⁴ therefore fully complying with the Inter-American Court mandate. (Emphasis added)

The pronouncements of the Mexican Supreme Court are only one example of the effects of the *Radilla* case in Mexican sovereignty. Similar debates and calls for action have sparked among the legislature, NGOs, scholars, and the executive, among others.¹⁰⁵ For example, Mexican Deputy Secretary of State, Felipe Zamora Castro published an acknowledgement of the obligation of the Mexican government to accept the Court's

¹⁰¹ *Ibid.*, 172.

¹⁰² Rangel Hernández, “Sentences Handed Down by the Inter-American Court,” 172.

¹⁰³ *Ibid.*

¹⁰⁴ *Ibid.*

¹⁰⁵ *Ibid.*, 174.

sentence in the Radilla case, and vowed to obey by its terms.¹⁰⁶ Even then President Felipe Calderón submitted a project of law in October of 2010 asking Congress to modify the Code of Military Justice, and also the Federal Penal Code to comply with the guidelines dictated by the Inter-American Court.¹⁰⁷ Thus far, the Mexican legislature has maintained virtually intact its military jurisdiction, but these holdings of the Inter-American Court have profoundly impacted civilian and governmental oversight over a busy Army.¹⁰⁸ At this very moment, the Supreme Court of México is considering cases where the military jurisdiction could be severely impacted.¹⁰⁹

Presently, México faces a very challenging internal conflict with powerful drug lords and organized multinational crime. Such threats are considered by the United States among the greatest new challenges to our national interests in the region;¹¹⁰ therefore, it is vital to have a disciplined and combat ready Mexican military. Such good order and discipline for the sake of military readiness make an independent military justice system

¹⁰⁶ Ibid.

¹⁰⁷ Human Rights Watch, *Neither Rights Nor Security: Killings, Torture, and Disappearances in Mexico's 'War on Drugs'* (Washington, DC: Human Rights Watch, 2011), accessed April 9, 2017, <http://www.hrw.org/reports/2011/11/09/neither-rights-nor-security-0>.

¹⁰⁸ Ibid.

¹⁰⁹ Human Rights Watch, *Mexico: Court's Historic Opportunity to Address Military Impunity* (Washington, DC: Human Rights Watch, 2012), accessed April 9, 2017, <http://www.hrw.org/news/2012/08/06/mexico-court-s-historic-opportunity-address-military-impunity>.

¹¹⁰ William B. Caldwell, IV, LTG, "Enhancing North America Security and Military Perspective," *The Journal of the Simmons Center: Special Edition: Southwest Border Security*, no. 4 (December 2012); see also DOD Western Hemisphere Defense Policy Statement, 2012, 3-7.

necessary and valuable. Challenges to this internal independence could prove catastrophic if they become a distraction to the fight, or worse yet, completely disrupt the execution of the Mexican Army's mission.

México faces then an interesting dilemma. It must balance the significant international consequences of its respect for the Court's mandates against the needs of an Army at war, and the requirement for an independent military justice system. Fortunately, other countries in the region have set firm precedents in their responses to the Court. Their experiences could prove significant.

Perú

The struggles that México faces due to international criticism for its record on human rights are hardly new or isolated. In fact, the Inter-American Court has repeatedly ruled, against other governments in the region, and the jurisprudence of the Inter-American Court on military jurisdiction is the most copious.¹¹¹ In particular, Perú has the unfortunate record of most cases heard by the Court.¹¹²

This disproportional share of criticism in this area might stem from having had, for decades, a long line of despotic military regimes ruling the country. This was followed by a string of quasi-democratically elected civilian governments rife with corruption and repression. Along a decimated economy, or perhaps as a consequence, these regimes fought very strong and organized armed insurgences, including the

¹¹¹ Gutierrez and Cantú, "The Restriction of Military Jurisdiction," 81.

¹¹² Inter-American Court of Human Rights, "Interactive Map," Inter American Court of Human Rights - Decisions and Judgments, 2014, accessed April 9, 2017, <http://www.corteidh.or.cr/index.php/es/mapa-interactivo>.

infamous Maoist “Sendero Luminoso” (Shining Path).¹¹³ As this war came to a standoff, Perú’s position as a main producer of coca leaves left opportunistic groups with a very profitable source of funding for their political or criminal activities.

After decades of a Peruvian military heavily involved in this multi-front war, it is no surprise that Perú took center stage in many of the Inter-American Court’s deliberations. The unfortunate record of the highest number of cases held against its government might stand for a while: By the early 2010’s, the report of the Inter-American Court of Human Rights ranked Perú as the country with also the most pending cases, 349.¹¹⁴

Perú’s participation in the Human Rights System in the Americas is as long as it is tumultuous. In 1977, less than eight years after its adoption, Perú ratified the Inter-American Convention on Human Rights.¹¹⁵ Just over three years later, in January 1981, it recognized the jurisdiction of the Court, thereby becoming one of the countries bound by its decisions. In a novel and surprising event, on July of 1999, Perú officially tried to withdraw from such jurisdiction,¹¹⁶ but the Inter-American Court rejected this challenge

¹¹³ Arce, “Truth Commission Transitional Justice Peru.”

¹¹⁴ Gutierrez and Cantú, “Restriction Military Jurisdiction,” 81; *see also* Bernardes, “Inter-American Human Rights System.”

¹¹⁵ Inter-American Court of Human Rights, “Interactive Map.”

¹¹⁶ Organization of American States, Department of International Law - Multilateral Treaties: American Convention on Human Rights, accessed April 9, 2017, http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights_sign.htm#Peru.

the following September.¹¹⁷ The Peruvian government resolved to back off; consequently, by resolution of its Congress, Perú formally accepted the continuous acquiescence to the Court's jurisdiction in 2000.¹¹⁸

Just as would happen with México in later years, a number of cases directly addressing the perceived "expansion" of the Peruvian military jurisdiction followed.¹¹⁹ Notorious examples during that period include the cases of *Loayza Tamayo* and *Castillo Petruzzi*, which were harshly critical of alleged special or disparate treatment to civilians by military tribunals.¹²⁰ The pronouncements in the cases of *Neira Alegria* and *Durand and Ugarte* condemned military control and abuses in jails housing suspects of terrorism against the state.¹²¹ These and many more cases resonate the overwhelmingly hostile posture of the Court which would eventually become the mandate of *Radilla*: that the

¹¹⁷ *Corte del Tribunal Constitucional v. Perú*, Competencia, Inter-Am. Ct. H.R. (ser. C) no. 55, para. 54 (September 24, 1999).

¹¹⁸ Organization of American States, Department of International Law - Multilateral Treaties.

¹¹⁹ Organization of American States, "Second Report on Human Rights in Perú," Comisión Interamericana de Derechos Humanos, accessed April 9, 2017, <http://www.cidh.org/countryrep/Peru2000sp/indice.htm>.

¹²⁰ *Castillo Petruzzi et al. v. Perú*, Case 52, Inter-Am. Ct. H.R. (ser. C), ¶¶ 128, 130, 132, 194 (May 30, 1999); *Loayza Tamayo v. Perú*, Case 33, Inter-Am. Ct. H.R. (ser. C), ¶¶ 61-63 (September 17, 1997).

¹²¹ *Neira Alegria et al. v. Perú*, Case 20, Inter-Am. Ct. H.R. (ser. C), ¶¶ 59-60, 68-69 (Jan. 19, 1995); *Durand and Ugarte v. Perú*, Case 68, Inter-Am. Ct. H.R. (ser. C), 116-117 (August 16, 2000);

Peruvian (in these cases) government ought to keep the military jurisdiction restrictive, exceptional and functional.¹²²

Perú's response has been thought-provoking, and some consider it a model to follow.¹²³ Whereas México, with only a few Inter-American Court cases at odds with their domestic jurisprudence, seem to overwhelmingly favor strict compliance with many of the decrees,¹²⁴ Perú has found itself squarely at odds with the Court's decisions.

For example, in a very famous standoff of this love-hate relationship between Perú and the Inter-American Court of Human Rights, the Peruvian government proclaimed an amnesty law in the 1990's.¹²⁵ It was very similar to many others in the region that had already been condemned by the Court and Commission; therefore, a major source of controversy. The Inter-American Court of Human Rights quickly responded and declared, in a 2001 advisory opinion, that this law was "contrary to the American Convention on Human Rights."¹²⁶

Though there has been other open challenges to the powers vested in the Commission,¹²⁷ Perú has also slightly adjusted its domestic laws when necessary to

¹²² Gutierrez and Cantú, "The Restriction of Military Jurisdiction," 82. Note: "Functional," as utilized here, refers to the desire for the specific underlying crimes to be intimately related to the military *function*.

¹²³ Nockerts, "Human Rights in Latin America," 1-2.

¹²⁴ Rangel Hernández, "Sentences Handed Down by the Inter-American Court," 174.

¹²⁵ Sikkink, *The Justice Cascade*, 146.

¹²⁶ *Ibid.*

¹²⁷ Angel Páez, "Perú Clashes with Inter-American Commission Over Human Rights Case," *Inter Press Service News Agency* (January 23, 2013), accessed April 12,

appease the growing influence of the Court's rulings into national governances; for example, it did explicitly create a new crime, defined as the "forced disappearance of an individual,"¹²⁸ and applied it equally to criminal elements and members of the armed forces.

The comparative success of Perú's strong stance could possibly stem from the rare and intense cooperation of its armed forces with human rights groups and other government organizations. Their assistance in investigating, assessing responsibilities and correcting past violations of human rights has been highly praised.¹²⁹ The Peruvian government, NGOs and other civilian and military institutions synergized seamlessly into a successful truth commission. It was established in 1999 by the transitional government led by President Paniagua to ascertain "facts and responsibilities of the terrorist violence and the violation of human rights."¹³⁰ It was later strategically renamed a "truth and *reconciliation* commission." (Emphasis added). Though it was not the first one in the region, it remarkably managed to bring together civilian, political, and military players in a particularly effective manner with relatively quick and palpable successes.

It is important to emphasize that the Peruvian armed forces immediately embraced the idea of the truth commission and not only vastly cooperated with its efforts, but when found responsible, publicly acknowledged past problems and apologized for

2017. <http://www.ipsnews.net/2011/12/peru-clashes-with-inter-american-commission-over-human-rights-case/>.

¹²⁸ *Castillo Paéz v. Perú*, Case 34, Inter-Am. Ct. H.R. (ser. C), 108 (November 3, 1997).

¹²⁹ Nockerts, "Human Rights in Latin America," 114.

¹³⁰ Arce, "Truth Commission Transitional Justice," 22.

their participation. During president Paniagua's transitional period, for example, three Commanding Generals of different military institutions and the Commanding General of the National Police (PNP) tendered their resignations shortly after the administration forced into retirement more than eighty senior leaders of the Armed Forces.¹³¹ Clearly, the Peruvian military took a very proactive and open minded role in this national healing process. By fully participating in the repair and compensation for past human rights violations, they actively engaged with civilian and political organizations to ensure a true transparency and avoidance of future similar violations. This is remarkable, for they still continue to battle subversive and drug organizations at a significant scale.¹³²

In a climatic 2010 action on this stance, the Peruvian legislature took up the matter of independent jurisdiction for the military. President Alan Garcia had submitted legislative acts directly related to the jurisdiction of the military judiciary as part of legislative bill number 29548 granting him executive power over this issue. Decrees 1094 through 1097 were passed into laws.¹³³ While there was some resistance and debate, the legislature resolved to go along with the president's executive decision, and ruled that the military jurisdiction continues as an independent judiciary with *expansive roles*.¹³⁴ (Emphasis added).

¹³¹ Arce, "Truth Commission Transitional Justice," 29.

¹³² *Ibid.*, 32.

¹³³ Law No. 29548, July 3, 2010.

¹³⁴ Juan Carlos Ruiz Molleda, "Judicial Report: Analysis of Legislative Decrees 1094, 1095, 1096 and 1097," *Institute of Legal Defense* (2011): 1-2, accessed November 14, 2016, <http://www.justiciaviva.org.pe/especiales/1097/informe-D-L-2-preliminar.pdf>.

The criticism of internal¹³⁵ and international human rights organizations was immediate and loud;¹³⁶ however, the synergy between governmental organizations continued, and even the always skeptical Inter-American Court had to admit that there were steps in the right direction.¹³⁷ Yet, this impasse continues, and while Perú has not taken solid steps in completely subsiding under the weight of the judgments of the Court, the *Castillo Paéz* case shows that its influence in domestic jurisdiction is patent. The pressure for Perú to continue squeezing jurisdiction out of military courts is likely to continue, and the high number of investigation at the Commission on this country highly suggest more scrutiny is yet to come.

Colombia

México and Perú are not alone as countries under fire to modify, diminish, and even eliminate their military jurisdictions.¹³⁸ The Inter-American Court of Human Rights has repeated similar calls for change to most governments in Latin America, and their opinions have repeated *ad nauseum* the call for military jurisdictions that are far more constrained.¹³⁹ The case of the relative success of the Peruvian government in somewhat deflecting internal and external pressures to annihilate its military jurisdiction, while still

¹³⁵ *Ibid.*

¹³⁶ Human Rights Watch, *World Report 2012: Perú* (2012), accessed February 1, 2017, <http://www.hrw.org/world-report-2012/peru>.

¹³⁷ *Castillo Paéz v. Perú*, 108 (November 3, 1997).

¹³⁸ García Ramírez, “The Military Criminal Jurisdiction,” 1, *et seq.*

¹³⁹ *Ibid.*

unique, has generated similar responses. The case of Colombia is as recent as it is noteworthy.

The Colombian government deeply reformed its Military Code of Justice in 1999 as a result of harsh judgments from the Inter-American Court,¹⁴⁰ It was an attempt to “correct the perceived shortcomings of the military judiciary,” including their alleged lack of transparency and accountability. In particular, the Colombian military’s jurisdiction was being restricted over certain criminal offenses only by exception; for instance, violations under Human Rights laws were deemed to be the competence of civilian courts regardless of any conflicts with military justice and its jurisdiction.¹⁴¹

Furthermore, after a scandal broke out involving alleged killings of civilians at the hands of service-members, Colombia faced enhanced pressure for further reforms in 2008. This led to even more legislative restrictions to their military justice system in early 2010. Congress directed members of the Public Force (“Fuerzas de Seguridad Pública,” which include the military), that in *no case* may a Commander be the authority responsible in *any* military justice investigation, prosecution, and trial, and further establishing a separation of the functions of command with those of investigations and prosecution, ensuring “absolute impartiality and independence.”¹⁴² (Emphases added).

¹⁴⁰ José Miguel Vivanco, “Human Rights Situation in Colombia and the Implications of U.S. Security Assistance,” Human Rights Watch, September 21, 2000, accessed April 17, 2017, <https://www.hrw.org/legacy/backgrounder/americas/jmv-testimony-0921.htm>.

¹⁴¹ L. 1407, 17 de agosto de 2010, 47.804, Diario Oficial [D.O] (Colom.) art. 2 [Law 1407, August 17, 2010, 47.804, Official Cong. Rec.]. Note: this is a legislative decree by the Colombian legislature.

¹⁴² *Ibid.*, arts. 189, 215.

Despite repeated calls from the highest leaders of the military,¹⁴³ these modifications were quickly implemented.

Surprisingly however, at the end of 2012, the Colombian legislature somewhat reversed this trend, and pushed for approval of a sweeping set of laws widely seen as restoring lost competency of the military justice system, and returning many lost powers to the military command.¹⁴⁴ Legislative Act Number 2 of December, 2012 gave permission to the military to proceed to modify the Military Code of Justice, and purportedly give back greater control to military commanders over criminal matters within their ranks.

In late December of 2012, a group of military, civilian and government lawyers from Colombia visited The U.S. Army JAG's Legal Center and School to work with American counterparts in starting to draft what will eventually become the new and modified Colombian Code of Military Justice. The author had the privilege to meet this distinguished delegation and discuss several of the ideas in this paper with them. Eventually, the military in Colombia published a new Code with innovative ideas on military jurisdiction. Though these changes have been difficult and uncertain on their implementation, even after the promulgation of the new Code of Military Justice, they certainly reflect the country's firm resistance to intimidation by the Inter-American

¹⁴³ Mario Montoya Uribe, "La Disciplina en la Justicia Penal Militar," *Justicia Penal Militar*, ed. 6 (2008), 1.

¹⁴⁴ "Colombian Senate Approves Controversial Military Justice Reform," *Justice for Colombia - News*, December 15, 2012, accessed April 17, 2017, <http://www.justiceforcolombia.org/news/article/1348/colombian-senate-approves-controversial-military-justice-reform>.

Court, and certainly restored many of the former strong stances of the Colombian Military Justice System. Immediate criticism for these types of reversal were of course led by the Inter-American Commission on Human Rights.¹⁴⁵

Most recently, as the peace process has progressed in Colombia, and the half a century conflict seems to approach a much needed end, Colombian domestic jurisprudence has taken affirmative steps to cover all judicial angles, and maintain legal matters in house, to include those regarding Human Rights Law. The recent promulgation of a sentence by the highest Colombian Court, the “Corte de Constitucionalidad,” makes clear that Colombian jurisprudence wants to retain jurisdiction over alleged violations of human rights violations at any cost. After an appeal submitted by a conglomerate of NGO’s to challenge the reversal mentioned in the prior paragraph, the “Corte de Constitucionalidad” categorically ruled in 2016 as follows: “investigating and adjudging punishable conduct by members of the Armed Forces, even with respect to the armed conflict, must be within either applicable framework of Human Rights Law *and* International Humanitarian Law.”¹⁴⁶ They add that the reforms from prior years do not necessarily exclude the competency of military courts, and that jurisdiction must be, at a minimum, complementary and shared.

¹⁴⁵ OAS Inter-American Commission on Human Rights, “IACHR Expresses Concern Over Constitutional Reform in Colombia,” OAS Press Release, January 4, 2013, accessed February 1, 2017, http://www.oas.org/en/iachr/media_center/PReleases/2013/004.asp.

¹⁴⁶ Corte Constitucional de Colombia. (24 de Febrero, 2016), Sentencia C-084, M. P.: Luis Ernesto Vargas Silva.

Thus, it is undeniable that the pronouncements of the Inter-American Court are having an impact on national jurisprudence in Colombia as in other nations. Perhaps in a more subdued manner, what is happening at the regional level translates into domestic courts action to ensure that violations of human rights law are investigated, analyzed and settled within domestic courts. What might be difficult for military practitioners to accept is that what often suffers is a military judiciary, which tends to lose some degree of control over a set of criminal matters, mainly when they are related to human rights violations.

While this might seem to be an annoyance at best to military conscious thinkers, it must always be evaluated keeping in mind what is really at stake here. The ultimate goal should be transparency and respect for human rights regardless of the environment and operations. Respect for the dignity of human beings, even amid fighting difficult conflicts must always be a primary concern at all levels of command. Militaries that are professional and respectful of their constitutional mandates will have little to lose, and any remaining contentions are meant to be traces of a past, hopefully long gone. Militaries' involvement in the assertion of human rights law can only champion their own legitimacy, and support the rule of law throughout the region, to include the necessary oversight on Human Rights laws.

Other Countries Affected

Finally, this analysis will benefit from looking at a couple of other countries with interesting relations to the Inter-American Court, and cases in which they face criticism for situations related to governmental responsibility in human rights compliance. Both Guatemala and Venezuela could be separately studied to bring some more evidence on

the renewed importance of the Inter-American Court, for they both belong in the top five of countries investigated by the Inter-American System of Human Rights; however, their current situation calls for a very simple but significant analysis. It will be based on the current status of their governance, and how it shows the undeniable impact that the pronouncements of the Inter-American Court, among other international pressures, are having on national jurisprudences with potential impact to the military.

During a good portion of the last century, Guatemala had a horrible reputation on judicial, governmental or quasi-governmental forced disappearances and other types of repressions. Deserving or not, this reputation falls on the shoulders of military regimes that ruled the country during most of the second half of the 20th century. During an extended tenure of military despot regimes, the abuses on the civilian population got the attention of even the most supportive of allies, and by 1990, the United States Congress had instituted serious restrictions on military aid and support to that country, which was not partially lifted until 2007.¹⁴⁷

For most of the last century, government administrators, ruling politicians, and some Guatemalan military officers involved were untouchable figures in regimes infamous for their impunity. This caused human rights organizations and families of victims to seek redress outside Guatemalan borders, “borrowing” foreign jurisdictions to indict. Perhaps the most infamous case was the one brought against former President of Guatemala and a life tenured senator, General Efraín Ríos Montt.¹⁴⁸ He had ruled the

¹⁴⁷ Washington Office on Latin America, “WOLA Documentary:”

¹⁴⁸ *Menchú et al. v. Ríos Montt.*

country, as a result of a *coup d'état* at the height of the country's civil war in the mid-eighties. During this time, the near thirty-five year old conflict came to a climax in terms of human rights abuses.

While eventually not judged by international courts, General Ríos Montt was indicted by a domestic Guatemalan court, and was found guilty at the lower level court. Facing a significant jail time sentence, Ríos Montt sought redress. Subsequent appeals were successful, and his sentence was eventually vacated. The alleged victims continued their quest for justice and a set of re-hearings followed. Those are unlikely to be resolved anytime soon: In the mid 2010's, a court set aside another trial when the defense sought the removal of judges. More recently, in early 2016, yet another retrial in criminal courts was suspended in order to assert his mental capacity to stand trial.¹⁴⁹

While this renowned eighteen year old case makes its long way through Guatemalan courts, many of the last ruling cabinet sit in jail, or are out on bond awaiting hearings under domestic law for allegations of corruption, abuse of power, and other charges. President Otto Pérez Molina, a former Army Colonel himself, who was democratically elected only six years ago, faces a long judicial battle for acts less severe than human rights abuses. Many of his cabinet members are also facing potential legal actions for related or similar charges.

It seems like Guatemala has taken a complete about face in terms of tolerating abuses of any kind by their governments. Its domestic judicial branch has taken the lead

¹⁴⁹ World News, "Genocide trial for Guatemala ex-dictator Rios Montt suspended," *Reuters World News*, January 11, 2016, accessed April 17, 2017, <http://www.reuters.com/article/us-guatemala-trial-idUSKCN0UP21F20160111>.

in asserting the rights of a democratic country to keep even governments and governors in check. Something that was inconceivable only a couple decades ago is now a common reality: domestic laws are answering their constitutional call in keeping former or even sitting government officials at the highest levels accountable. The logical question is why? And the main source of pressure seems to stem from the international community, and in particular a role played by regional human rights instruments onto nations' governance. The answer as to whether international jurisprudence pressure has played a role in the forcing of this proactive posture of the Guatemalan judiciary might lie in Venezuela.

The Republic of Venezuela first recognized the competency of the Inter-American Commission back in 1977 along with signing the Inter-American Convention on Human Rights. Four years later, it became one of the countries bound by the contentious jurisdiction of the Court in accordance with Article 62(1) of the Convention,¹⁵⁰ and had a seemingly good relation with these organisms, for Venezuela was a champion of human rights among South American countries for a long time.

Enter the populist regime of Hugo Chavez, a former Army officer who governed Venezuela from 1999 until his recent death in 2013; the last few years, under a law championed by Chavez himself abolishing time limits for high functionaries in Venezuela, and effectively appointing himself a life-time president. Increasing reports of human rights abuses plagued the last few years of Chavez' regime, and continue

¹⁵⁰ American Convention on Human Rights (Pact of San José, Costa Rica), November 22, 1969, 1144 U.N.T.S. 138.

nowadays under the reign of his successor, President Nicolas Maduro.¹⁵¹ Therefore, the Venezuelan government is a rear-view mirror into the actions of authoritarian Latin American governments of last century which left the region with the tarnished reputation for human rights abuse. Much like they did during those times, the Venezuelan government has made of the Inter-American system of human rights an enemy.

On September 6, 2012, the Government of the now renamed Bolivarian Republic of Venezuela, still under the control of an ailing President Chavez, gave notice of its denunciation of the American Convention on Human Rights, effective a year later, pursuant to Article 78 of the Convention.¹⁵² This widely criticized move, a rare challenge to the integrity of the Convention and the system in general, was seen as Venezuela's attempt to minimize the legitimacy of the influential Inter-American Commission. With repeated criticism to their government, the Commission had become an annoyance to a regime which is one of the last bastions of the erosion of human rights. This type of stance has prompted the United Nations High Commissioner of Human Rights to proclaim, in defense of the system, that "the Inter-American system is one of the most effective systems of human rights protection in the world."¹⁵³

¹⁵¹ Human Rights Watch, "Countries - Venezuela," Human Rights Watch - Countries, accessed April 11, 2017, <https://www.hrw.org/americas/venezuela>.

¹⁵² American Convention on Human Rights, 144

¹⁵³ Diego German Mejía-Lemus, "Venezuela's Denunciation of the American Convention on Human Rights," *Insights* 17, no. 1 (January 9, 2013): 1, accessed April 11, 2017, https://asil.org/insights/volume/17/issue/1/venezuelas-denunciation-american-convention-human-rights#_edn4.

Venezuela, in response, expressed their intention to pull their abidance from both the Commission and the Inter American Court;¹⁵⁴ furthermore, in late April of 2017, the Venezuelan government announced the beginning of formal steps to withdraw from the OAS altogether.¹⁵⁵ This evidences a fear to the ever growing influence of international human rights jurisprudence, and curiously, it effectively gives credence to the growing importance of this Court.

The case studies of Venezuela and Guatemala show that there exists a direct correlation between the Court's pronouncements and attempts to either appease or delegitimize its mandate. The amount and type of proactive reactions to the Court's pronouncements make it clear that is relevant and influential. There exist direct corrective actions taking place, seemingly intended to prevent negative pronouncements from the Court, and there are also complete repudiations and attacks on the legitimacy of the Court and the system, seemingly as a result of its relevance and influence.

What is clear, is that this regional system of human rights is influencing democratic governments to correct and adjust their governance and domestic laws; additionally, when despotic regimes react negatively as to these pronouncements, and attempt to renounce to their binding obligations under International Law, they end up reassuring the mandate of the Court. The Inter-American Court of Human Rights seems

¹⁵⁴ Ibid.

¹⁵⁵ Associated Press, "Venezuela Will Withdraw From the Organization of American States Amid Deadly Protests," *Time Magazine*, April 26, 2017, 1, accessed May 8, 2017, <http://time.com/4757061/venezuela-organization-american-states-protests/>.

to be directly and indirectly producing results that promote the rule of law within the region. This can only be considered, at the very least, a positive step in the right direction.

CHAPTER 5

CONCLUSION AND RECOMMENDATIONS

Conclusion

It is evident that there is a palpable effect on Human Rights in the region, and much of this “cascade of justice” seems to stem from the role The Inter-American Court of Human Rights has played in the last few years. Regardless of one’s position with respect to the intrusiveness of an international instrument into individual countries’ judiciaries, the mere end result of these adjustments indicate a reverence to the Court, and makes it relevant. Even the recent repudiation attempts by an authoritarian Venezuelan government validate its value. It is left to discuss the delicate balance that such oversight should have with the countries’ individual sovereignties.

In the one hand, it is evident that the region needed added mechanisms of protection and oversight in order to reverse a ruined reputation, but it is also true that institutions directly affected, the military for example, do have a crucial role to play in the governance of democratic nations. As these delicate democracies spring across the region, the synergy along all their institutions is crucial, and the role the militaries play in the strengthening of a more democratic hemisphere should be respected and valued.

The advances made in the realm of Human Rights in the last few decades, cannot be sustained at the expense of strong democratic governments with the ability to handle most of their judicial actions within their institutions and boundaries. Much of the delicate work of stability and progress involves the strengthening of the rule of law, which in turn enhances the citizenship trust and confidence in elected officials and governments.

The true impact of these improvements in the Human Rights arena, though, is difficult to quantify. After all, the impact on human rights varies widely across the hemisphere: in places like Guatemala and Perú arguments and numbers can be used to evidence a definite progression, while areas like Venezuela could be argued to be receding.¹⁵⁶ Both arguments would have its share of proponents and detractors as well.

The truth though, is that human rights are still abused and the region is far from a model of respect for human dignity. However, it seems clear that governments and official institutions are less responsible for these abuses, and in fact have become part of the shield of protections that they were always meant to be, rather than abusers themselves; furthermore, the number of cases and investigations pending in domestic judiciaries against current and former government officials at all levels, show that the impunity that used to plague the hemisphere is perhaps and hopefully quickly eroding.

There are clearly reasons for a tempered optimism, and it is hoped that the bleak picture of abuses onto those most vulnerable will only continue to diminish as these democracies mature.

Recommendations

There is no magical algorithm for the resolution of the Human Rights problems within the region. Particularly, as much of these are now coming from criminal activity, transnational narco-terrorism, and other outlaws. However, the research seems to point out to a few areas where simple actions might translate into added success, and others that we might want to think twice about continuing.

¹⁵⁶ Associated Press, “Venezuela Will Withdraw.”

The synergy between inter and intra-governmental institutions with international institutions bring about significant progress. The continued professionalization of armies and institutions create strong democracies where the population themselves become vested on their own governance; finally, there should be more interaction between internal and international judicial bodies to improve legal systems, investigative methods, and enforcement mechanisms.

As the case of Perú strongly suggests, the synergy between institutions is key. There are numerous domestic and international NGOs devoted to continuing to work for Human Rights in Latin America. The work that international organizations like the IRC, Rubicon, Human Rights Watch, and many others, are doing is remarkable. What would have been inconceivable last century is a reality today: international organizations working side by side with governmental and civic organizations for the improvement of lives across the region, to include the military. This interaction must not only be sustained, but championed and supported.

Governments have also taken important key steps in focusing on the important area of Human Rights: Colombia, and many other countries in the region, have created sub-secretariats devoted completely to Human Rights issues now. They are the governments' lead on interactions intra and inter-governmental, and with international organizations as well. It is only positive to continue this synergy among different organizations dedicated to the overall improvement of Human Rights respect.

The United States Armed Forces have championed the continued professionalism, training, and development of counterparts in Latin America, and the reciprocal enthusiasm of our allies is equally encouraging. Personal involvement in subject matter

expert exchanges between most of the Armies of the region focusing on Human Rights for a good decade fill the author with confidence and hope. Most, if not all had involvement from every one of the elements of governance mentioned in the previous paragraph. Being able to witness first-hand the professionalism of our counterparts, and the interest they have in being part of the solution of past mistakes is extremely encouraging. It also reinforces a personal belief that the militaries of the region, until proven otherwise, should be given a chance to handle their military affairs freely, to include Human Rights compliance, and not continue to be penalized for mistakes of a darker past, hopefully gone forever.

What was evident during the research, is that the judicial mechanisms at the international, global and domestic levels must step up to interrelations that mirror what regional militaries have attempted in the last decade. The subject of intersections between local, regional, and global judiciaries would be an entire separate paper subject altogether; however, an initial assessment suggests that much work is left to do to integrate these complex systems of justice.

This, of course, is much easier said than done. Even at the domestic level, and in small countries with mature jurisprudence, that interface would amount to a gargantuan enterprise. However, small steps would mean a solid start, and it is easy to venture a speculation that interaction among these levels of jurisprudence in this Public International Law area will only effect positively in the quest for a more fair and just world for all.

In sum, words expressed at some point by Professor Scheffer resonate profoundly: It is hoped that someday these types of international and global judicial oversight become

unnecessary due to the lack of abuses and assaults against humanity. Until then, our only hope is to strengthen these institutions to ensure that the abuses that brought about the need for international action are never seen again.¹⁵⁷

¹⁵⁷ Scheffer, *All the Missing Souls*, 420.

APPENDIX A

CHARTER OF THE ORGANIZATION OF AMERICAN STATES

(Adopted at Bogotá, Colombia on April 30, 1948,
at the Ninth International Conference of American States)

ENTRY INTO FORCE: 12/13/51, in accordance with Article 145 of the Charter

DEPOSITORY: General Secretariat, OAS (Original Instrument and Ratifications)

TEXT: OAS, Treaty Series, Nos. 1-C and 61

UN REGISTRATION: 01/16/52 No. 1609 Vol. 119

SIGNATORY	SIGNATURE	REF RA/AC/AD REF	DEPOSIT
Antigua and Barbuda	12/03/81	12/03/	12/03/81 RA
Argentina	04/30/48	01/19/	04/10/56 RA
Bahamas	03/03/82	03/01/	03/03/82 RA
Barbados	10/09/67	11/14/	11/15/67 RA
Belize	01/08/91	01/08/	01/08/91 RA
Bolivia ¹	04/30/48	09/25/50 D	10/18/50 RA
Brazil	04/30/48	02/11/	03/13/50 RA
Canada	11/13/89	12/20/	01/08/90 RA
Chile	04/30/48	05/05/	06/05/53 RA
Colombia	04/30/48	12/07/	12/13/51 RA
Costa Rica	04/30/48	10/30/	11/16/48 RA
Cuba	04/30/48	07/08/	07/16/52 RA
Dominica	05/22/79	05/22/	05/22/79 RA
Dominican Republic	04/30/48	04/11/	04/22/49 RA
Ecuador	04/30/48	12/21/	12/28/50 RA
El Salvador	04/30/48	08/15/	09/11/50 RA
Grenada	05/13/75	05/13/	05/13/75 RA
Guatemala ³	04/30/48	03/18/51 R	04/06/55 RA
Guyana	01/08/91	01/08/	01/08/91 RA
Haiti	04/30/48	08/21/	03/28/51 RA
Honduras	04/30/48	01/13/	02/07/50 RA
Jamaica	06/24/69	08/07/	08/20/69 RA
México	04/30/48	11/23/	11/23/48 RA
Nicaragua	04/30/48	06/21/	07/26/50 RA
Panama	04/30/48	03/16/	03/22/51 RA
Paraguay	04/30/48	03/30/	05/03/50 RA
Perú ⁴	04/30/48	05/15/52 R	02/12/54 RA
Saint Kitts and Nevis	03/12/84	03/12/	03/12/84 RA
Saint Lucia	05/22/79	05/22/	05/22/79 RA
Saint Vincent and the Grenadines	12/03/81	12/03/	12/03/81 RA

Suriname	02/22/77	06/01/	06/08/77 RA
Trinidad and Tobago	03/13/67	03/14/	03/17/67RA
United States ²	04/30/48	05/15/51 R	06/19/51 RA
Uruguay	04/30/48	08/17/	09/01/55 RA
Venezuela	04/30/48	12/21/	12/29/51 RA

DECLARATIONS/RESERVATIONS/DENUNCIATIONS/WITHDRAWS

REF = REFERENCE INST = TYPE OF INSTRUMENT D = DECLARATION
RA = RATIFICATION R = RESERVATION AC =
ACCEPTANCE
AD = ACCESSION

1. **Bolivia:**

(Declaration made at the time of ratification) THE HONORABLE NATIONAL

CONGRESS Resolves:

That the Executive Power, at the time of depositing in the Pan American Union the ratification of the Charter of the Organization of American States, signed in Bogotá on April 30, 1948, should make the following declaration:

The Government of Bolivia maintains, in agreement with the context of the Bogotá Charter, that "the respect for and the faithful observance of treaties" which is upheld in Articles 5 and 14 as a standard of international relations, does not exclude the revision of those articles by the peaceful procedures which are referred to in Articles 21, 22, and 23 of that Charter, when they affect the fundamental rights of States.

2. **United States:**

(Reservation made at the time of ratification)

That the Senate give its advice and consent to ratification of the Charter with the reservation that none of its provisions shall be considered as enlarging the powers of the Federal Government of the United States or limiting the powers of the several states of the Federal Union with respect to any matters recognized under the Constitution as being within the reserved powers of the several states.

3. **Guatemala:**

(Reservation made at the time of ratification)

None of the stipulations of the present Charter of the Organization of American States may be considered as an impediment to Guatemala's assertion of its rights over the territory of Belize by such means as at anytime it may deem advisable.*

4. Perú:

(Reservation made at the time of ratification)

With the reservation that the principles of inter-American solidarity and cooperation and essentially those set forth in the preamble and declarations of the Act of Chapultepec constitute standards for the mutual relations between the American States and juridical bases of the Inter-American system.

*/ With respect to this reservation, the General Secretariat consulted the signatory governments, in accordance with the procedure established by paragraph 2 of Resolution XXIX of the Eighth International Conference of American States, to ascertain whether they found it acceptable or not. At the request of the Government of Guatemala, this consultation was accompanied by a formal declaration of that Government to the effect that its reservation did not imply any alteration in the Charter of the Organization of American States, and that Guatemala is ready to act at all times within the bounds of international agreements to which it is a party. In view of this declaration, the States that previously did not find the reservation acceptable expressed their acceptance.

APPENDIX B

AMERICAN CONVENTION ON HUMAN RIGHTS

“PACT OF SAN JOSE, COSTA RICA”

(Adopted at San Jose, Costa Rica, November 22, 1969,
at the Inter-American Specialized Conference on Human Rights)

ENTRY INTO FORCE: July 18, 1978, in accordance with Article 74.2 of the Convention

DEPOSITORY: OAS General Secretariat, (Original Instrument and Ratifications)

TEXT: OAS, Treaty Series, No. 36

UN REGISTRATION: August 27, 1979, No. 17955

SIGNATORY COUNTRIES	SIGNATURE	RATIFICATION /ACCESSION	DEPOSIT	RECOGNITION OF THE JURISDICTION OF THE COURT	RECOGNITION OF THE COMPETENCE OF THE
Antigua and Barbuda	//	//	//	//	
Argentina (1)	02/02/84	08/14/84	09/05/84 RA	09/05/84	09/08/84
Bahamas	//	//	//	//	//
Barbados (2)	06/20/78	11/05/81	11/27/82 RA	04/04/00	//
Belize	//	//	//	//	//
Bolivia (3)	//	06/20/79	07/19/79 AD	07/27/93	//
Brazil (4)	//	07/09/92	09/25/92 AD	12/10/98	//
Canada	//	//	//	//	//
Chile (5)	11/22/69	08/10/90	08/21/90 RA	08/21/90	8/21/90
Colombia (6)	11/22/69	05/28/73	07/31/73 RA	06/21/85	06/21/85
Costa Rica (7)	11/22/69	03/02/70	04/08/70 RA	07/02/80	07/02/80
Dominica (8)	//	06/03/93	06/11/93 RA	//	//
Dominican Rep. (9)	09/07/77	01/21/78	04/19/78 RA	03/25/99	//
Ecuador (10)	11/22/69	12/08/77	12/28/77 RA	07/24/84	08/13/84
El Salvador (11)	11/22/69	06/20/78	06/23/78 RA	06/06/95	//
Grenada (12)	07/14/78	07/14/78	07/18/78 RA	//	//
Guatemala (13)	11/22/69	04/27/78	05/25/78 RA	03/09/87	//
Guyana	//	//	//	//	//
Haiti (14)	//	09/14/77	09/27/77 AD	03/20/98	//
Honduras (15)	11/22/69	09/05/77	09/08/77 RA	09/09/81	//
Jamaica (16)	09/16/77	07/19/78	08/07/78 RA	//	08/07/78
Mexico (17)	//	03/02/81	03/24/81 AD	12/16/98	//
Nicaragua (18)	11/22/69	09/25/79	09/25/79 RA	02/12/91	02/0606
Panama (19)	11/22/69	05/08/78	06/22/78 RA	05/09/90	//
Paraguay (20)	11/22/69	08/18/89	08/24/89 RA	03/26/93	//
Peru (21)	07/27/77	07/12/78	07/28/78 RA	01/21/81	01/21/81

St. Kitts and Nevis	//	//	//	//	//
Saint Lucia	//	//	//	//	//
St. Vincent and the Grenadines	//	//	//	//	//
Suriname (22)	//	11/12/87	11/12/87 AD	11/12/87	//
Trinidad & Tobago (23)	//	04/03/91 -	05/28/91 AD	05/28/91	//
United States	06/01/77	//	//	//	//
Uruguay (24)	11/22/69	03/26/85	04/19/85 RA	04/19/85	04/19/85
Venezuela (25)	11/22/69	06/23/77	08/09/77 RA	04/24/81	08/09/77

DECLARATIONS/RESERVATIONS/DENUNCIATIONS/WITHDRAWALS

REF = REFERENCE
D = DECLARATION
R = RESERVATION

INST = TYPE OF INSTRUMENT
RA = RATIFICATION
AC = RECOGNITION
AD = ACCESSION

1. **Argentina:**

(Reservation and interpretative declarations made at the time of ratification)

The instrument of ratification was received at the General Secretariat of the OAS on September 5, 1984, with a reservation and interpretative declarations. The notification procedure of the reservation was taken in conformity with the Vienna Convention on the Law of Treaties signed on May 23, 1969.

The texts of the above-mentioned reservation and of the interpretative declarations are the following:

I. Reservation:

Article 21 is subject to the following reservation: "The Argentine Government establishes that questions relating to the Government's economic policy shall not be subject to review by an international tribunal. Neither shall it consider reviewable anything the national courts may determine to be matters of 'public utility' and 'social interest', nor anything they may understand to be 'fair compensation'."

II. Interpretative
Declarations:

Article 5, paragraph 3, shall be interpreted to mean that a punishment shall not be applied to any person other than the criminal, that is, that there shall be no vicarious criminal punishment.

Article 7, paragraph 7, shall be interpreted to mean that the prohibition against "detention for debt" does not involve prohibiting the state from basing punishment on default of certain debts, when the punishment is not imposed for default itself but rather for a prior independent, illegal, punishable act.

Article 10 shall be interpreted to mean that the "miscarriage of justice" has been established by a national court.

Recognition of Competence

In the instrument of ratification dated August 14, 1984, and deposited with the General Secretariat of the OAS on September 5, 1984, the Government of Argentina recognizes the competence of the Inter-American Commission on Human Rights and on the jurisdiction of the Inter-American Court of Human Rights. This recognition is for an indeterminate period and on condition of reciprocity on all cases related to the interpretation or application of the Convention cited, with the partial reservation and bearing in mind the interpretative statements contained in the instrument of ratification.

The instrument of ratification further notes that the obligations undertaken by virtue of the Convention shall only be effective as regards acts that have occurred after the ratification of the above-mentioned instrument.

2. Barbados:

(Reservations made at the time of ratification)

The instrument of ratification was received at the General Secretariat of the OAS on November 5, 1981, with reservations. Notification of the reservations submitted was given in conformity with the Vienna Convention on the Law of Treaties, signed on May 23, 1969. The twelve-month period from the notification of said reservations expired on November 26, 1982, without any objection being raised to the reservations.

The text of the reservations with respect to Articles 4(4), 4(5) and 8(2) (e), is the following:

In respect of 4(4) the criminal code of Barbados provides for death by hanging as a penalty for murder and treason. The Government is at present reviewing the whole matter of the death penalty which is only rarely inflicted but wishes to enter a

reservation on this point inasmuch as treason in certain circumstances might be regarded as a political offence and falling within the terms of section 4(4)

In respect of 4(5) while the youth or old age of an offender may be matters which the Privy Council, the highest Court of Appeal, might take into account in considering whether the sentence of death should be carried out, persons of 16 years and over or over 70 years of age may be executed under Barbadian law.

In respect of 8(2)(e) Barbadian law does not provide as a minimum guarantee in criminal proceeding any inalienable right to be assisted by counsel provided by the state. Legal aid is provided for certain scheduled offences such as homicide, and rape.

3. Bolivia:

Recognition of competence:

On July 27, 1993 the instrument of recognition of the competence of the Inter-American Court of Human Rights was deposited with the OAS General Secretariat, in accordance with Article 62 of the American Convention on Human Rights, with the following declaration:

I. The Constitutional Government of the Republic, under Article 59, paragraph 12, of the State Constitution, by Law 1430 of February 11, approved and ratified the American Convention on Human Rights "Pact of San Jose", signed at San Jose, Costa Rica, on November 22, 1969, and recognized the competence of the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, under Articles 45 and 62 of the Convention.

II. By virtue of the power vested in me under Article 96, paragraph 2, Constitution of the State, I issue this instrument ratifying the American Convention on Human Rights "Pact of San Jose", recognizing the competence of the Inter-American Commission on Human Rights, and recognizing as binding, *ipso facto*, unconditionally and indefinitely the jurisdiction of the Inter-American Court of Human Rights, under Article 62 of the Convention.

The Government of Bolivia in letter OAS/262/93, of July 22, 1993, made an interpretative declaration at the time of deposit of the instrument of recognition of the competence of the Inter-American Court of Human Rights. The text of the declaration is as follows:

"The Government of Bolivia declares that the norms of unconditionally and indeterminacy shall apply with strict observance to the Constitution of Bolivia, especially with respect to the principles of reciprocity, non retroactivity and judicial autonomy."

4. Brazil:

(Interpretative declaration made at the time of
adhesion)

The Government of Brazil understands that Articles 43 and 48, (D) do not include the automatic right of on site visits and inspections by the Inter-American Commission of Human Rights, which will depend on the express consent of the State.

Recognition of competence:

The Government of the Federative Republic of Brazil declares its recognition as binding, for an indefinite period of time, *ipso jure*, of the jurisdiction of the Inter-American Court of Human Rights on all matters relating to the interpretation or application of the American Convention on Human Rights, according to Article 62 of that Convention, on the condition of reciprocity, and for matters arising after the time of this declaration.

(Date: December 10, 1998)

5. Chile:

(Declaration made at the time of
signature)

The Delegation of Chile signs this Convention, subject to its subsequent parliamentary approval and ratification, in accordance with the constitutional rules in force. Such parliamentary approval was later granted and the instrument of ratification was deposited with the General Secretariat of the OAS.

(Reservations made at the time of
ratification)

a) The Government of Chile declares that it recognizes, for an indefinite period of time and on the condition of reciprocity, the competence of the Inter-American Commission on Human Rights to receive and examine communications in which a State Party alleges that another State Party has committed a violation of the human rights established in the American Convention on Human Rights, as provided for in Article 45 of the Convention.

b) The Government of Chile declares that it recognizes as binding, *ipso facto*, the jurisdiction of the Court on all matters relating to the interpretation or application of the Convention in accordance with its Article 62.

In making these declarations, the Government of Chile places on record that this recognition of the competence and jurisdiction of the Commission applies to events subsequent to the date of deposit of this instrument of ratification or, in any case,

to events which began subsequent to March 11, 1990. Moreover, in acknowledging the competence and jurisdiction of the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, the Government of Chile declares that, when these bodies apply the provisions of Article 21.2 of the Convention, they may not make statements concerning the reasons of public utility or social interest taken into account in depriving a person of his property.

6. Colombia:

Recognition of Competence:

On 21 June 1985 presented an instrument of acceptance by which recognizes the competence of the Inter-American Commission on Human Rights for an indefinite time, on the condition of strict reciprocity and nonretroactivity, for cases involving the interpretation or application of the Convention, and reserves the right to withdraw its recognition of competence should it deem this advisable. The same instrument recognizes the jurisdiction of the Inter-American Court of Human Rights, for an indefinite time, on the condition of reciprocity and nonretroactivity, for cases involving the interpretation or application of the Convention, and reserves the right to withdraw its recognition of competence should it deem this advisable.

7. Costa Rica:

Recognition of Competence:

Deposited on 2 July 1980 at the General Secretariat of the OAS an instrument recognizing the competence of the Inter-American Commission on Human Rights and the jurisdiction of the Inter-American Court of Human Rights, in accordance with Articles 45 and 62 of the Convention.

(Declaration and reservations made at the time of ratification)

1) That Costa Rica declares that it recognizes, without conditions and while the American Convention on Human Rights remains in effect, the competence of the Inter-American Commission to receive and examine communications in which a State Party alleges that another State Party has committed a violation of human rights established by the cited Convention.

2) That Costa Rica declares that it recognizes, without conditions and while the American Convention on Human Rights remains in effect, the mandatory jurisdiction of the Court, as a matter of law and without a specific convention on the Inter-American Court on Human Rights, on all cases relating to the interpretation or application of such multilateral treaty.

8. Dominica:

(Reservation made at the time of ratification)

On June 3, 1993, the Commonwealth of Dominica ratified the American Convention on Human Rights, with the following reservations:

- 1) Article 5. This should not be read as prohibiting corporal punishment administered in accordance with the Corporal Punishment Act of Dominica or the Juvenile Offenders Punishment Act.
- 2) Article 4.4. Reservation is made in respect of the words "or related common crimes".
- 3) Article 8.2.(e). This Article shall not apply in respect of Dominica.
- 4) Article 21.2. This must be interpreted in the light of the provisions of the Constitution of Dominica and is not to be deemed to extend or limit the rights declared in the Constitution.
- 5) Article 27.1. This must also be read in the light of our Constitution and is not to be deemed to extend or limit the rights declared by the Constitution.
- 6) Article 62. The Commonwealth of Dominica does not recognize the jurisdiction of the Court.

9. Dominican Republic:

(Declaration made at the time of signature)

The Dominican Republic, upon signing the American Convention on Human Rights, aspires that the principle pertaining to the abolition of the death penalty shall become purely and simply that, with general application throughout the states of the American region, and likewise maintains the observations and comments made on the aforementioned Draft Convention which it distributed to the delegations to the Council of the Organization of American States on 20 June 1969.

Recognition of jurisdiction

The Government of the Dominican Republic, by way of this instrument, declares that it recognizes as binding, as a matter of law, and not requiring special agreement, the jurisdiction of the Inter-American Court of Human Rights on all matters relating to the interpretation or application of the American Convention on Human Rights, of November 22, 1969.

10. Ecuador:

(Declaration made at the time of signature)

The Delegation of Ecuador has the honor of signing the American Convention on Human Rights. It does not believe that it is necessary to make any specific reservation at this time, without prejudice to the general power set forth in the Convention itself that leaves the governments free to ratify it or not.

Recognition of Competence:

On July 24, 1984 recognized the applicability of Articles 45 and 62 of the American Convention on Human Rights, by Decree No. 2768 of July 24, 1984, published in the Registro Oficial No. 795 on July 27 of said month and year.

In addition, the Minister of Foreign Affairs of Ecuador made the following declaration on July 30, 1984 in conformity with Articles 45(4) and 62(2) of the above-mentioned Convention:

In keeping with the provisions of Article 45, paragraph 1, of the American Convention on Human Rights--Pact of San José, Costa Rica-- (ratified by Ecuador on October 21, 1977, and in force since October 27, 1977), the Government of Ecuador recognizes the competence of the Inter-American Commission on Human Rights to receive and examine communications in which a State Party alleges that another State Party has committed a violation of the human rights set forth in the Convention, under the terms provided for in paragraph 2 of that Article.

This recognition of competence is to be valid for an indefinite time and on condition of reciprocity.

As provided in Article 62, paragraph 1, of the Convention in reference, the Government of Ecuador declares that it recognizes as binding, *ipso facto*, and not requiring special agreement, the jurisdiction of the Inter-American Court of Human Rights on all matters relating to the interpretation or application of the Convention.

This recognition of jurisdiction is for an indeterminate period and on condition of reciprocity. The Ecuadorian State reserves the right to withdraw its recognition of this competence and this jurisdiction whenever it may deem it advisable to do so.

11. El Salvador:

(Declaration and reservations made at the time of ratification)

The present Convention is ratified, its provisions being interpreted to mean that the Inter-American Court of Human Rights shall have jurisdiction to hear any case that can be submitted to it, either by the Inter-American Commission on Human Rights or by any state party, provided that the State of El Salvador, as a party to the case, recognizes or has recognized such jurisdiction, by any of the means and under the arrangements indicated in the Convention.

The American Convention on Human Rights, known as the "Pact of San José, Costa Rica", signed at San José, Costa Rica, on 22 November 1969, composed of a preamble and eighty-two articles, approved by the Executive Branch in the Field of Foreign Affairs by Agreement 405, dated June 14 of the current year, is hereby ratified, with the reservation that such ratification is understood without prejudice to those provisions of the Convention that might be in conflict with express precepts of the Political Constitution of the Republic.

The instrument of ratification was received at the General Secretariat of the OAS on 23 June 1978 with a reservation and a declaration. The notification procedure of the reservation was taken in conformity with the Vienna Convention on the Law of Treaties signed on 23 May 1969.

Recognition of Competence deposited on June 6, 1995:

I. The Government of El Salvador recognizes as binding, *ipso facto*, and not requiring special agreement, the jurisdiction of the Inter-American Court of Human Rights, in accordance with Article 62 of the American Convention on Human Rights, "Pact of San José."

II. The Government of El Salvador, in recognizing that competence, expressed that its recognition is for an indefinite period and on condition of reciprocity, and that it retains the right to include exclusively subsequent deeds or juridical acts or deeds or juridical acts began subsequent to the date of deposit of this declaration of acceptance, by reserving the right to withdraw its recognition of competence whenever it may deem it advisable to do so.

III. The Government of El Salvador recognizes the competence of the Court, insofar as this recognition is compatible with the provisions in the constitution of the Republic of El Salvador.

12. Grenada:

By way of an instrument dated July 14, 1978, the Prime Minister and the Minister of Foreign Affairs of this state ratified the American Convention on Human Rights on its behalf.

13. Guatemala:

(Reservation made at the time of ratification)

The Government of the Republic of Guatemala ratifies the American Convention on Human Rights, signed at San José, Costa Rica, on 22 November 1969, with a reservation as to Article 4, paragraph 4 thereof, since the Constitution of the Republic of Guatemala, in its Article 54, only excludes the application of the death penalty to political crimes, but not to common crimes related to political crimes.

The instrument of ratification was received at the General Secretariat of the OAS on 25 May 1978 with a reservation. The notification procedure of the reservation was taken in conformity with the Vienna Convention on the Law of Treaties signed on 23 May 1969.

Withdrawal of Guatemala's reservation:

The Government of Guatemala, by Government Agreement N° 281-86, dated 20 May 1986, has withdrawn the above-mentioned reservation, which was included in its instrument of ratification dated 27 April 1978, considering that it is no longer supported by the Constitution in the light of the new legal system in force. The withdrawal of the reservation will become effective as of 12 August 1986, in conformity with Article 22 of the Vienna Convention on the Law of Treaties of 1969, in application of Article 75 of the American Convention on Human Rights.

Recognition of Competence:

On 9 March 1987, presented at the General Secretariat of the OAS, the Government Agreement N° 123-87, dated 20 February 1987, of the Republic of Guatemala, by which it recognizes the jurisdiction of the Inter-American Court of Human Rights, in the following terms:

"(Article 1) To declare that it recognizes as binding, *ipso facto*, and not requiring special agreement, the jurisdiction of the Inter-American Court of Human Rights on all matters relating to the interpretation or application of the American Convention on Human Rights."

"(Article 2) To accept the competence of the Inter-American Court of Human Rights for an indefinite period of time, such competence being general in nature, under terms of reciprocity and with the reservation that cases in which the competence of the Court is recognized are exclusively those that shall have taken place after the date that this declaration is presented to the Secretary General of the Organization of American States."

14. Haiti:

By way of an instrument dated September 14, 1977, the President of this state, in accordance with Article 93 of its national constitution, ratified the American Convention on Human Rights, promising that it would be strictly observed.

Recognition of Competence:

Having seen the Constitution of the Republic of 1987; and

Having seen the law dated August 18, 1979, whereby the Republic of Haiti ratified the American Convention on Human Rights.

Hereby declare that we recognize as binding, *ipso facto*, and not requiring special agreement, the jurisdiction of the Inter-American Court of Human Rights on all matters relating to the interpretation or application of the Convention. This declaration has been issued for presentation to the General Secretariat of the Organization of American States, which shall transmit copies thereof to the other member states of the Organization and to the Secretary of the Court, pursuant to Article 62 of the Convention.

Attached to the present declaration is the law of August 18, 1979, whereby the Republic of Haiti ratified the American Convention on Human Rights, which was promulgated in the Official Journal of the Republic.

Done in the National Palace, in Port-au-Prince, on March 3, 1998, the 195th year of independence.

15. Honduras:

Recognition of Competence:

On 9 September 1981, presented at the General Secretariat of the OAS, an instrument recognizing the jurisdiction of the Inter-American Court of Human Rights in accordance with Article 62 of the Convention.

16. Jamaica:

Recognition of Competence:

The instrument of ratification, dated July 19, 1978, states, in conformity with Article 45, paragraph 1 of the Convention, that the Government of Jamaica recognizes the competence of the Inter- American Commission on Human Rights to receive and examine communications in which a State Party alleges that another State Party has committed a violation of a human right set forth in this Convention.

17. Mexico:

(Declarations and reservation made at the time of ratification)

The instrument of accession was received at the General Secretariat of the OAS on 24 March 1981, with two interpretative declarations and one reservation. Notification of the reservation submitted was given in conformity with the provisions of the Vienna Convention on the Law of Treaties, signed on 23 May 1969. The twelve-month period from the notification of said reservation expired on 2 April 1982, without any objection being raised to the reservation.

The texts of the interpretative declarations and the reservation are the following: Interpretive Declarations:

With respect to Article 4, paragraph 1, the Government of Mexico considers that the expression "in general" does not constitute an obligation to adopt, or keep in force, legislation to protect life "from the moment of conception," since this matter falls within the domain reserved to the States.

Furthermore, the Government of Mexico believes that the limitation established by the Mexican Constitution to the effect that all public acts of religious worship must be performed inside places of public worship, conforms to the limitations set forth in Article 12, paragraph 3. This interpretive declaration was withdrawn on April 9, 2002.

Reservation:

The Government of Mexico makes express reservation to Article 23, paragraph 2, since the Mexican Constitution provides, in Article 130, that ministers of denominations shall not have an active or passive vote, nor the right to associate for political purposes.

DECLARATION FOR RECOGNITION OF THE JURISDICTION OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS

1. The United States of Mexico recognizes as binding *ipso facto* the adjudicatory jurisdiction of the Inter-American Court of Human Rights on matters relating to the interpretation or application of the American Convention on Human Rights, in accordance with article 62.1 of the same, with the exception of cases derived from application of article 33 of the Political Constitution of the United States of Mexico

2. Acceptance of the adjudicatory jurisdiction of the Inter-American Court of Human Rights shall only be applicable to facts or juridical acts subsequent to the date of deposit of this declaration, and shall not therefore apply retroactively.

3. Acceptance of the adjudicatory jurisdiction of the Inter-American Court of Human Rights is of a general nature and shall continue in force for one year after the date of which the United States of Mexico gives notice it has denounced it.

18. Nicaragua:

Recognition of Competence:

On February 12, 1991, presented at the General Secretariat of the OAS, an instrument dated January 15, 1991, by which the Government of Nicaragua declares:

I. The Government of Nicaragua recognizes as binding as of right with no special convention the competence of the Inter-American Court of Human Rights in all cases involving interpretation and application of the Inter-American Convention on Human Rights, "Pact of San Jose, Costa Rica," by virtue of Article 62(1) thereof.

II. The foregoing notwithstanding, the Government of Nicaragua states for the record that its acceptance of the competence of the Inter-American Court of Human Rights is given for an indefinite period, is general in character and grounded in reciprocity, and is subject to the reservation that this recognition of competence applies only to cases arising solely out of events subsequent to, and out of acts which began to be committed after, the date of deposit of this declaration with the Secretary General of the Organization of American States.

On February 6, 2006, Nicaragua delivered a note to the General Secretariat in which it reported that the Government of the Republic of Nicaragua had added a third paragraph to the Declaration No. 49 of January 15, 1991 regarding the American Convention on Human Rights, in which it declares that it recognizes the competence of the Inter-American Commission on Human Rights to receive and examine communications in which a

State Party alleges that another State Party has committed a violation of a human right set forth in the Convention, as provided in Article 45 thereof.

19. Panama:

Recognition of Competence:

On May 9, 1990, presented at the General Secretariat of the OAS, an instrument, dated February 20, 1990, by which it declares that the Government of the Republic of Panama recognizes as binding, *ipso facto*, the jurisdiction of the Court on all matters relating to the interpretation or application of the American Convention on Human Rights.

20. Paraguay:

Recognition of Competence:

On March 11, 1993, Paraguay presented to the General Secretariat of the OAS an instrument recognizing the jurisdiction of the Inter-American Court of Human Rights, "for an indefinite period of time and which should be interpreted in accordance with the principles of International Law in the sense that this recognition refers expressly to acts that occurred after the deposit of this instrument and only for cases in which there exists reciprocity."

21. Peru:

Recognition of Competence and Jurisdiction

On January 21, 1981, an instrument issued by the Ministry of Foreign Affairs of the Republic of Peru, dated October 20, 1980, was presented to the OAS General Secretariat. The instrument states: "...As stipulated in paragraph 1 of Article 45 of the American Convention on Human Rights, or Pact of San José, Costa Rica (ratified by Peru on September 9, 1980), the Government of Peru recognizes the competence of the Inter-American Commission on Human Rights to receive and examine communications in which a state party alleges that another state party has committed a violation of a human right set forth in that Convention, as provided in paragraph 2 of that article. This recognition of competence is valid for an indefinite time and under the condition of reciprocity. As stipulated in paragraph 1 of Article 62 of the aforementioned Convention, the Government of Peru declares that its recognizes as binding, as a matter of law, and not requiring special agreement, the jurisdiction of the Inter-American Court of Human Rights on all matters relating to the interpretation or application of the Convention. This recognition of jurisdiction is valid for an indefinite time and under the condition of reciprocity"

Withdrawal of recognition of the contentious jurisdiction of the Inter-American Court of Human Rights

The Government of Peru, on July 8, 1999, declares:

In accordance with the American Convention on Human Rights, the Republic of Peru withdraws the declaration of recognition of the contentious jurisdiction of the Inter-American Court of Human Rights previously issued by the Peruvian Government under the optional clause pertaining to such recognition.

This withdrawal of recognition of the contentious jurisdiction of the Inter-American Court takes effect immediately and applies to all cases in which Peru has not replied to a complaint lodged with the Court.

Withdrawal of recognition of the contentious jurisdiction of the Court

The Government of Peru, on January 29, 2001, declares:

The recognition of the contentious jurisdiction of the Inter-American Court of Human Rights issued by Peru on October 20, 1980, is in full effect and is binding in all legal respects on the Peruvian state. Such effect should be understood as having been uninterrupted since the deposit of the declaration with the General Secretariat of the Organization of American States on January 21, 1981.

The Government of the Republic of Peru withdraws the declaration deposited on July 9, 1999, the intent of which was to withdraw the declaration of recognition of the contentious jurisdiction of the Inter- American Court of Human Rights under the optional clause pertaining to such recognition.

22. Suriname:

Accession.

Recognition of Competence:

On 12 November 1987, presented at the General Secretariat of the OAS, an instrument recognizing the jurisdiction of the Inter-American Court of Human Rights in accordance with Article 62 of the Convention.

23. Trinidad and Tobago:

(Reservations made at the time of accession)

1. As regards Article 4(5) of the Convention the Government of The Republic of Trinidad and Tobago makes reservation in that under the laws of Trinidad and

Tobago there is no prohibition against the carrying out a sentence of death on a person over seventy (70) years of age.

2. As regards Article 62 of the Convention, the Government of the Republic of Trinidad and Tobago recognizes the compulsory jurisdiction of the Inter-American Court of Human Rights as stated in said article only to such extent that recognition is consistent with the relevant sections of the Constitution of the Republic of Trinidad and Tobago; and provided that any judgment of the Court does not infringe, create or abolish any existing rights or duties of any private citizen.

On May 26, 1998, the Republic of Trinidad and Tobago notified the Secretary General of the OAS of its denunciation of the American Convention. In accordance with Article 78(1) of the American Convention, the denunciation came into effect one year from the date of notification.

24. Uruguay:

(Reservation made at the time of signature)

Article 80.2 of the Constitution of Uruguay provides that a person's citizenship is suspended if the person is "under indictment on a criminal charge which may result in a penitentiary sentence." Such a restriction on the exercise of the rights recognized in Article 23 of the Convention is not envisaged among the circumstances provided for in Article 23, paragraph 2, for which reason the Delegation of Uruguay expresses a reservation on this matter.

(Reservation made at the time of ratification)

With the reservation made at the time of signature. Notification of this reservation was given in conformity with the Vienna Convention on the Law of Treaties, signed on May 23, 1969.

Recognition of Competence:

In the instrument of ratification dated March 26, 1985 and deposited with the General Secretariat of the OAS on April 19, 1985, the Government of the Oriental Republic of Uruguay declares that it recognizes the competence of the Inter-American Commission on Human Rights for an indefinite period and of the Inter-American Court of Human Rights on all matters relating to the interpretation or application of this Convention, on the condition of reciprocity, in accordance with Articles 45.3 and 62.2 of the Convention.

25. Venezuela:

(Reservation and declaration made at the time of ratification)

Article 60, paragraph 5 of the Constitution of the Republic of Venezuela establishes that: No one may be convicted in a criminal trial without first having been personally notified of the charges and heard in the manner prescribed by law. Persons accused of an offense against the *res publica* may be tried *in absentia*, with the guarantees and in the manner prescribed by law. Such a possibility is not provided for in Article 8, paragraph 1 of the Convention, and for this reason Venezuela formulates the corresponding reservations, and,

DECLARES: That, in accordance with the provisions of Article 45, paragraph 1 of the Convention, the Government of the Republic of Venezuela recognizes the competence of the Inter-American Commission on Human Rights to receive and examine communications in which a State Party alleges that another State Party has committed violations of human rights set forth in that Convention, in the terms stipulated in paragraph 2 of that article. This recognition of competence is made for an indefinite period of time.

The instrument of ratification was received at the General Secretariat of the OAS on 9 August 1977 with a reservation and a declaration. The notification procedure of the reservation was taken in conformity with the Vienna Convention on the Law of Treaties signed on 23 May 1969.

Recognition of Competence:

On 9 August 1977 recognized the competence of the Inter-American Commission on Human Rights and on 24 June 1981 recognized the jurisdiction of the Inter-American Court of Human Rights, in accordance with Articles 45 and 62 of the Convention, respectively.

DENUNCIATION

Pursuant to article 78 of the American Convention on Human Rights, “States Parties may denounce this Convention at the expiration of a five-year period from the date of its entry into force and by means of notice given one year in advance. Notice of the denunciation shall be addressed to the Secretary General of the Organization, who shall inform the other States Parties”. Similarly, that article states that “such a denunciation shall not have the effect of releasing the State Party concerned from the obligations contained in this Convention with respect to any act that may constitute a violation of those obligations and that has been taken by that state prior to the effective date of denunciation”.

*-The Bolivarian Republic of Venezuela manifested its decision to denounce the American Convention on Human Rights on September 10, 2012

Text of the communication:

http://www.oas.org/DIL/Nota_República_Bolivariana_Venezuela_to_SG.English.pdf

BIBLIOGRAPHY

- Alsema, Adriaan. "Colombia Rejects Criticism on Military Justice Reform." Colombia Republic. December 17, 2011. Accessed April 5, 2017. <http://colombiareports.com/colombia-news/news/21094-colombia-rejects-criticism-on-military-justice-reform.html>.
- . "Colombia Rejects HRW Criticism on Military Justice Reform." Colombia Republic. January 24, 2012. Accessed April 5, 2017. <http://colombiareports.com/colombia-news/news/21736-colombia-rejects-hrw-criticism-on-military-justice.html>;
- American Convention on Human Rights (Pact of San José, Costa Rica). November 22, 1969. 1144 U.N.T.S. 138 et seq.
- Arce Arce, Gerardo Alberto. "Armed Forces, Truth Commission and Transitional Justice in Peru." *Sur - International Journal on Human Rights* 7, no. 13 (December 2010): 27. Accessed April 5, 2017. <https://ssrn.com/abstract=1928616>.
- Bernardes, Marcia Nina. "Inter-American Human Rights System as a Transnational Public Sphere: Legal and Political Aspects of the Implications of International Decisions." *Conectas Human Rights*, 8th ed. no. 15 (December, 2011): 137.
- Burt, Jo-Marie. "Guilty as Charged: The Trial of Former Peruvian President Alberto Fujimori for Human Rights Violations." *International Journal on Transitional Justice* (2010): 384-405.
- Caldwell, William B., LTG. "Enhancing North America Security and Military Perspective." *The Journal of the Simmons Center: Special Edition: Southwest Border Security*, 3, no. 4 (December 2012).
- Canton, Santiago A., Abi-Mershed, Elizabeth, et al. *Inter-American Commission on Human Rights, Report on the Human Rights of Persons Deprived of Liberty in the Americas*. Madrid, ES: Inter-American Commission, 2011. Accessed April 5, 2017. <http://oas.org/en/iachr/pdl/docs/pdf/PPL2011eng.pdf>.
- Código de Justicia Militar CJM (Military Justice Code), as amended. Diario Oficial de la Federación DO, 31 de agosto de 1933 (MX.).
- Constitución Política de los Estados Unidos Mexicanos C.P., as amended, Diario Oficial de la Federación DO, 5 de Febrero de 1917 (MX.).
- Corte Constitucional de Colombia. (24 de Febrero, 2016). Sentencia C-084. M. P.: Luis Ernesto Vargas Silva.

- Department of the Army. Regulation 600-20, *Army Command Policy*. Washington DC: Department of the Army, 2011.
- . Regulation 27-10, *Legal Services Military Justice*. Washington, DC: Department of the Army, 3 Oct. 2011.
- Department of Defense. *Manual for Courts-Martial: Rules of Courts Martial, R.C.M. 202*. 10th ed. Washington, DC: Department of Defense, 2012.
- . *Western Hemisphere Defense Policy Statement*. Washington, DC: Department of Defense, 2012.
- Department of State. Under Secretary for Civilian Security, Democracy, and Human Rights. “Lustration and Vetting.” May 16, 2016. Accessed May 8, 2017. <https://www.state.gov/j/gcj/transitional/257569.htm>.
- . “International Criminal Court.” May, 2010. Accessed May 8, 2017. <https://www.state.gov/j/gcj/icc/index.htm>.
- European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol Nos. 11 and 14, ETS5. November 4, 1950.
- Ferrer-McGregor, Eduardo, and Fernando Silva García. “El Caso Radilla ante la Corte Interamericana de Derechos Humanos.” *Jurisdicción Militar y Derechos Humanos* (2012):1.
- García Ramírez, Sergio, “Admisión de la Competencia Contenciosa de la Corte Interamericana de Derechos Humanos,” *Recepción Nacional del Derecho Internacional de los Derechos Humanos y Admisión de la Competencia Contenciosa de la Corte Interamericana*, México City, MX: UNAM, Instituto de Investigaciones Jurídicas, 2009.
- . President of the Inter-American Court of Human Right. *The Military Criminal Jurisdiction on the Jurisprudence of the Inter-American Court of Human Rights*. San José, CR: The Inter-American Court of Human Rights, 1997-2007.
- Gutiérrez, Juan Carlos, and Silvano Cantú. “The Restriction of Military Jurisdiction in International Human Rights Protection Systems.” *International Journal on Human Rights*. 7th ed., no. 13. December 2010.
- Human Rights Watch. “Neither Rights Nor Security: Killings, Torture, and Disappearances in Mexico’s ‘War on Drugs.’” Accessed April 9, 2017, <http://www.hrw.org/reports/2011/11/09/neither-rights-nor-security-0>.

- . Vivanco, José Miguel. “Human Rights Situation in Colombia and the Implications of U.S. Security Assistance.” 2000. Accessed April 17, 2017. <https://www.hrw.org/legacy/backgrounder/americas/jmv-testimony-0921.htm>.
- . Human Rights Watch, *Mexico: Court’s Historic Opportunity to Address Military Impunity*. Washington, DC: Human Rights Watch, 2012. Accessed April 9, 2017. <http://www.hrw.org/news/2012/08/06/mexico-court-s-historic-opportunity-address-military-impunity>.
- . World Report 2012. *Perú (2012)*. Washington, DC: Human Rights Watch, 2012. Accessed April 9, 2017. <http://www.hrw.org/world-report-2012/peru>.
- . World Report 2012, *Venezuela (2012)*. Washington, DC: Human Rights Watch, 2012. Accessed April 11, 2017. <https://www.hrw.org/americas/venezuela>.
- Inter-American Court of Human Rights, “Decisions and Judgments,” Inter American Court of Human Rights - Decisions and Judgments, 2014, accessed April 9, 2017, http://www.corteidh.or.cr/cf/jurisprudencia2/busqueda_casos_contenciosos.cfm?lang=en.
- . “Interactive Map,” Inter American Court of Human Rights - Decisions and Judgments, 2014. Accessed April 9, 2017. <http://www.corteidh.or.cr/index.php/es/mapa-interactivo>.
- . *Neira Alegría et al. v. Perú*, Case 20, Inter-Am. Ct. H.R. (ser. C), ¶¶ 59-60, 68-69 (January 19, 1995).
- . *Loayza Tamayo v. Perú*, Case 33, Inter-Am. Ct. H.R. (ser. C), ¶¶ 61-63 (September 17, 1997).
- . *Castillo Paéz v. Perú*, Case 34, Inter-Am. Ct. H.R. (ser. C), ¶ 108 (November 3, 1997).
- . *Castillo Petruzzi et al. v. Perú*, Case 52, Inter-Am. Ct. H.R. (ser. C), ¶¶ 128, 130, 132, 194 (May 30, 1999).
- . *Corte del Tribunal Constitucional v. Perú*, Competencia, Inter-Am. Ct. H.R. (Ser. C) No. 55, para. 54 (September 24, 1999).
- . *Duran and Ugarte v. Perú*, Case 68, Inter-Am. Ct. H.R. (ser. C), ¶¶ 116-117 (August 16, 2000).
- . *Alfonso Martín del Campo Dodd v. United Mexican States*, Case 12.228, Inter-Am. Ct. H.R. (Ser. C), (September 3, 2004).
- . *Rosendo Radilla v. United Mexican States*, Case 12.511, Inter-Am. Ct. H.R. (Ser. C), (November 23, 2009).

- International Criminal Court - ICC, "Situations and Cases. Accessed April 4, 2017.
<https://www.icc-cpi.int/Pages/cases.aspx>.
- Justice for Colombia - News. "Colombian Senate Approves Controversial Military Justice Reform." December 15, 2012. Accessed April 17, 2017.
<http://www.justiceforcolombia.org/news/article/1348/colombian-senate-approves-controversial-military-justice-reform>.
- L. 1407, 17 de agosto de 2010, 47.804, Diario Oficial [D.O] (Colom.) art. 2 [Law 1407, Aug. 17, 2010, 47.804, Official Cong. Rec.].
- Laurienti, Jerry M. *The U.S. Military and Human Rights Promotion: Lessons from Latin America*. New York, NY: Greenwood Publishing Group, 2007.
- Leonard, Thomas M. *Encyclopedia of United States-Latin American Relations*. Washington, DC: CQ Press, 2012.
- Martz, John D., and Lars Schoultz. *Latin America, the United States and the inter-American System*. Boulder, CO: Westview Press, 1980.
- Menchú, Rigoberta et al. v. Ríos Montt, et al., Guatemala Genocide Case, Acer Centre for European and International Law. 2013. Accessed April 5, 2017.
<https://www.scribd.com/document/145019009/20-05-13-Rigoberta-Menchu-Et-Al-v-Rios-Montt-Et-Al-Guatemala-Genocide-Case>.
- Mejía-Lemus, Diego German, "Venezuela's Denunciation of the American Convention on Human Rights," *Insights* 17, no. 1 (January 9, 2013): 1. Accessed April 11, 2017. https://asil.org/insights/volume/17/issue/1/venezuelas-denunciation-american-convention-human-rights#_edn4.
- Montoya Uribe, Mario. "La Disciplina en la Justicia Penal Militar." *Justicia Penal Militar* ed. 6 (2008): 1.
- Mosquera Monelos, Susana. 2012. "Perú ante el Sistema Interamericano de Protección de los Derechos Humanos." *Universidad Nacional Autónoma de México*, México City, MX: Instituto de Investigaciones Jurídicas. Accessed April 5, 2017.
<https://archivos.juridicas.unam.mx/www/bjv/libros/7/3160/15.pdf>.
- Nockerts, Regina, et al. "Human Rights in Latin America, Review Digest: Human Rights in Latin America." *Human Rights in Latin America* (blog). December 2, 2012. Accessed April 5, 2017. <http://www.du.edu/korbel/hrhw/researchdigest/latinamerica/latinamerica.pdf>.
- Nowak, Manfred, and Julia Kozma. "Research Project on a World of Human Rights Court: A World Court of Human Rights". *Protecting Dignity: An Agenda for Human Rights*. (June 2009) 1.

- Organization of American States. “American Convention on Human Rights. Article 62.” American Convention on Human Rights, San José, CR, November 22, 1969.
- . “Second Report on Human Rights in Perú,” Comisión Interamericana de Derechos Humanos, OAS. Accessed April 9, 2017, <http://www.cidh.org/countryrep/Peru2000sp/indice.htm>.
- . “Charter.” Organization of American States. Accessed April 5, 2017. <http://www.cidh.oas.org/Basicos/English/Basic3.American%20Convention.htm>.
- . “History.” Organization of American States. Accessed April 5, 2017. http://www.oas.org/en/about/our_history.asp.
- . “IACHR Expresses Concern Over Constitutional Reform in Colombia.” Organization of American States Press Release. January 4, 2013. Accessed April 5, 2017. http://www.oas.org/en/iachr/media_center/PReleases/2013/004.asp.
- . “Inter-American Commission on Human Rights.” Organization of American States. Accessed April 5, 2017. <http://www.oas.org/en/iachr/mandate/what.asp>.
- . “Multilateral Treaties.” Organization of American States. Accessed April 5, 2017. http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights_sign.htm#Peru.
- Páez, Angel. “Perú Clashes with Inter-American Commission Over Human Rights Case.” *Inter Press Service News Agency* (2013): 1. Accessed November 14, 2016. <http://www.ipsnews.net/2011/12/peru-clashes-with-inter-american-commission-over-human-rights-case/>.
- Rangel Hernández, Laura. “Sentences Handed Down by the Inter-American Court of Human Rights and its Implications for the Mexican Legal Order.” *IUS Revista del Instituto de Ciencias Jurídicas de Puebla*, 28 (July.-December 2011): 1.
- Restatement (Third) of the Foreign Relations Law of the United States, § 701 Washington, DC: Am. Law Institute, 1987.
- Ruiz Molleda, Juan Carlos. “Judicial Report: Analysis of Legislative Decrees 1094, 1095, 1096 and 1097.” *Institute of Legal Defense* (2011): 1-2. Accessed November 14, 2016. <http://www.justiciaviva.org.pe/especiales/1097/informe-D-L-2-preliminar.pdf>.
- Sands, Philippe. *From Nuremberg to the Hague: The Future of International Criminal Justice*. Cambridge, UK: Cambridge University Press, 2003.
- Scheffer, David. *All the Missing Souls: A Personal History of the War Crimes Tribunals*. Princeton, NJ: Princeton University Press, 2012.

- Shelton, Dinah L. *Advanced Introduction to International Human Rights Law*. Northampton, MA: Edward Elgar Publishing, 2015.
- Sikkink, Kathryn. *The Justice Cascade: How Human Rights Prosecutions Are Changing World Politics*. New York, NY: W. W. Norton and Company, 2011.
- The Danish Institute for Human Rights. "Review of Literature on National Human Rights Institutions." Danish Institute for Human Right. 2016. Accessed November 5, 2016. https://www.humanrights.dk/sites/humanrights.dk/files/media/dokumenter/udgivelser/hrs/nhri_bibliography_dihhr_mena_2016_en.pdf
- Turabian, Kate. *A Manual for Writers of Research Papers, Theses, and Dissertation*. 8th ed. Chicago, IL: The University of Chicago, Press, 2013.
- Tutorow, Norman E. *War Crimes, War Criminals, and War Crime Trials: An Annotated Bibliography and Source Book*. New York, NY: Greenwood Press, 1986.
- United Nations. "The Foundation of International Human Rights Law." Human Rights Law. Accessed November 18, 2016, <http://www.un.org/en/sections/universal-declaration/foundation-international-human-rights-law/index.html>.
- . "Rome Statute of the International Criminal Court." United Nations. Accessed April 5, 2017. <http://www.refworld.org/docid/3ae6b3a84.html>.
- Washington Office in Latin America. "40 Years of Advocacy for Human Rights." WOLA Advocacy for Human Rights in the Americas. March 16, 2017. Accessed April 5, 2017. <https://www.wola.org/analysis/wola-documentary-40-years-advocacy-human-rights-americas>.