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„ACCESS TO THE REGIONAL HUMAN RIGHTS COURTS IN AMERICA AND EUROPE“

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To my parents, who teach with their example
that ethical principles, compassion, knowledge, courage
and effort are part of a package that must be welded to
our heart in the course of our lives.

FOREWODS

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ABSTRACT

The present research compares the access of individuals to the European and Inter-American human rights courts. The efficiency of both human rights regional protection mechanisms is evaluated by taking into consideration procedural aspects that determine the spectrum of protection of both Courts and the effective access of individuals to them. The antecedents of both Courts are compared in this dissertation, including their beginning, developments over time and main pending reform proposals, as well as their current admissibility criteria. It stands out that both regional human rights protection systems have made major advances over time; however, the latest reforms show a tendency to restrict the access to the human rights regional protection mechanisms that has already been provided. The present research work makes proposals with respect to both systems, particularly regarding the role that the Inter-American Commission on Human Rights should have if the right of individual petition is granted in the Inter-American System. The proposals made are based on lessons to be learned from previous experiences, and while the experiences of both Courts are compared to identify what can one Court learn from the other, the proposals of the present research take into consideration the differences in the realities of the regions.

ABSTRACT

(German version)

Die vorliegende Forschung vergleicht den Zugang von Einzelpersonen zu dem europäischen und dem interamerikanischen Gerichtshof für Menschenrechte. Die Effizienz der beiden regionalen Schutzmechanismen der Menschenrechte wird unter Berücksichtigung von Verfahrensaspekten bewertet, die das Spektrum des Schutzes beider Gerichte und den effektiven Zugang von Personen zu ihnen bestimmen. Die Hintergründe beider Gerichtshöfe werden in dieser Dissertation verglichen, einschließlich ihres Anfangs, der Entwicklungen im Laufe der Zeit und der wichtigsten anstehenden Reformvorschläge, sowie ihrer derzeitigen Zulässigkeitskriterien. Es stellt sich heraus, dass beide regionalen Menschenrechtsschutzsysteme im Laufe der Zeit große Fortschritte gemacht haben. Die letzten Reformen zeigen jedoch eine Tendenz, den bereits vorgesehenen Zugang zu den regionalen Schutzmechanismen der Menschenrechte zu beschränken. Diese Forschungsarbeit macht Vorschläge für beide Systeme, insbesondere bezüglich der Rolle, die die Interamerikanische Menschenrechtskommission haben sollte, wenn das Recht auf individuelle Petition im interamerikanischen System gewährt wird. Die vorgeschlagene Vorgangsweise basiert auf den Lehren aus früheren Erfahrungen. Während die Erfahrungen beider Gerichtshöfe miteinander verglichen werden, um zu ermitteln, was ein Gericht von dem anderen lernen kann, berücksichtigen die Vorschläge dieser Forschung die Unterschiede in den Realitäten der Regionen.

CONTENTS

INTRODUCTION

In America and Europe, in the course of history many efforts have been made in the area of human rights protection, and several advances have been achieved. One of the major human rights protection advances in both regions is that human rights instruments with their respective supervisory mechanisms have been created; moreover, these supervisory mechanisms involve courts of justice at the regional level.

The sole existence of human rights protection mechanisms already represents a major step towards the protection of human rights; however, it is necessary that these mechanisms are effective. Courts of justice, be it at domestic or international level, can be the most effective supervisory mechanisms, as unlike other supervisory mechanisms these are endowed with the power to administer justice which includes the powers of *notio*, *vocatio*, *iudicio*, *coertio* and *executio*. However, the courts of justice do not start the proceedings *ex officio*. They can only make use of their powers when a case is submitted to them, and therefore the effective access to them is one of the main requirements for their effectiveness.

Several studies and reforms, including significant contributions, have been made in regards to the access by individuals to the human rights protection mechanisms created in these two regions. However, some important reforms are pending and other reforms and proposals were done that had the aim of solving important problems but are actually creating another problem as they are leading to lose sight of the main goal which is to ensure the observance by States in all cases that fall under the scope of the respective human rights instrument.

The present comparative study focuses on the factors fostering or hindering access by individuals to the regional human rights protection mechanisms created in America and Europe. The purpose of this research is to contribute to two goals: firstly that the systems in the two regions do not go backwards and secondly to make suggestions to move forward. For the first goal, the present research identifies the origins and developments made to date, determining the advances achieved, so that these are used as milestones that allow identifying if subsequent reforms give rise to advances or setbacks. In regards to the second goal, proposals are made with the aim of contributing to the effectiveness of the systems taking in consideration lessons learned in both

systems from their own experiences and from the experience of the other system with due attention to the differences of the realities of the regions.

Taking into consideration that access to justice has several aspects, the present research makes a comparative analysis structured as follows: The first chapter compares the historical evolution of the two human rights protection mechanisms, the second chapter their scope of the jurisdiction, the third chapter compares the standing to petition the Courts and finally the fourth chapter compares other main admissibility criteria requested by the Courts. All these four factors are essential to determine if effective access to human rights justice is being provided in both regions and what can one system learn from the other.

CHAPTER I: HISTORICAL OVERVIEW OF THE EUROPEAN AND THE INTER-AMERICAN COURTS OF HUMAN RIGHTS

> *"…there must be a league of a particular kind, which can be called a league of peace (foedus pacificum), and which would be distinguished from a treaty of peace (pactum pacis) by the fact that the latter terminates only one war, while the former seeks to make an end of all wars forever."* (I. Kant, *Perpetual Peace: A Philosophical Sketch*, 1795)

In order to understand the nature of the European and the Inter-American Courts of Human Rights, it is useful to examine the historical context in which they were created and the significant changes that they have undergone. In this Chapter I analyze how the European and Inter-American systems of protection of human rights were created and have developed over time, influencing each other and giving rise to an evolution in the human rights protection mechanisms.

1. ANTECEDENTS

International human rights protection mechanisms can be traced back to 1919 when the League of Nations was first established. After World War I ended, this organ was created as guarantor of the obligations assumed through several treaties signed between the Allied and Associated Powers and the defeated nations. The League of Nations was entrusted with the task of dealing with labor conditions, just treatment of native inhabitants of territories under control, trafficking of women and children, protection of minorities in Europe, among others.[1] The League of Nations was dissolved in 1946 as it failed to achieve its main goal, which was to prevent another war.

The League of Nations had countries around the world among its members[2]. This was just the beginning, and the treaty that created this international organization did not

[1] Article 23 of the Peace Treaty of Versailles and Article 67 of the Peace Treaty of Saint Germain.

[2] League of Nations members:

expressly give it the mandate to protect human rights. As Thomas Buergenthal, Dinah Shelton and David P. Stewart recall "[t]he notion that human rights should be internationally protected had not yet gained acceptance by the community of nations, nor was it seriously contemplated by those who drafted that treaty…"[3] In deed, in the 1930s, during a period of great depression in Europe, the facsist governments of Benito Mussolini in Italy, Adolf Hitler in Germany and Francisco Franco in Spain, among other, rised.[4] Nevertheless, the League of Nations left the foundation for several international organizations and agencies that currently exist and therefore is an antecedent of the European and the Inter-American systems of protection of human rights.

In America the VIII International Conference of American States, which met in Lima on December 9-27, 1938, set a precedent for its own regional protection system. In this Conference, the Declaration of the Principles of the Solidarity in America[5], also known as the "Declaration of Lima", was adopted by 21 American republics. Its aim was to ensure the maintenance of peace and solidarity in the American region. This Declaration created the Meetings of Consultation of Ministers of Foreign Affairs to facilitate consultations regarding this and other American Peace Instruments. The

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Founding members: Argentina, Australia, Belgium, Bolivia, Brazil, Canada, Czechoslovakia, Chile, China, Colombia, Cuba, Denmark, El Salvador, France, Greece, Guatemala, Haiti, Honduras, India, Italy, Japan, Liberia, Nicaragua, New Zealand, Netherlands, Panama, Paraguay, Persia, Peru, Portugal, Republic of Yugoslavia, the United Kingdom, Romania, Siam, Sweden, Switzerland, South Africa, Spain, Uruguay and Venezuela

New members between 1920 and 1930: Abyssinia, Albania, Austria, Bulgaria, Costa Rica, Estonia, Finland, Germany, Hungary, Ireland, Latvia, Lithuania, Luxembourg and the Dominican Republic.

New members between 1930 and 1940: Ecuador, Mexico, Egypt, Iraq, Turkey and the United Soviet Socialist Republic.

Although the President of the United States of America Woodrow Wilson was the main ideologue of the League of Nations and the United States signed the Treaty of Versailles, the Senate of this country did not ratify it and therefore it did not join this international organization.

[3] Thomas Buergenthal, Dinah L. Shelton, and David P. Stewart, *International Human Rights in a Nutshell*, 4th ed. (Saint Paul: West Publishing, 2009): 8.

[4] Other dictatorships that arose in Europe in the 1930s: Josef Tiso in Slovakia, Ioannis Metxas in Greece, Larlis Ulmanis in Latvia; Engelbert Dollfuss and Kurt Schuschnigg in Austria, Boris III in Bulgaria, Konstantin Päts in Estonia,

[5] Declaration of the Principles of the Solidarity in America, accessed May 08, 2017, http://www.oas.org/sap/peacefund/VirtualLibrary/EighthIntConfAmericanStates/Declarations/DeclarationofLima.pdf.

Resolution XVI Defense of Human Rights, which was also adopted by this Conference in light of the events that had transpired at that time in Europe, provides that:

> WHEREAS
>
> Although the pacific and harmonious existence of the countries of the Americas, together with their conception of international relations, makes it unnecessary for them to adopt rules of warfare, America cannot be indifferent, from a humane point of view, to the sufferings caused by war, and to desire to diminish them;
>
> The waging of warfare on other continents is leading to the use of methods contrary to practices and regulations recognized by international law and by humane sentiments, such as the aerial bombardment of undefended cities and non-combatant populations, resulting in the destruction of human lives …
>
> RESOLVES
>
> That the American Republics, which do not recognize war as legitimate means of settling national or international controversies express the hope that when recourse is had to war in any other region of the world, respect be given to those human rights not necessarily involved in the conflict, to humanitarian sentiments, and to the spiritual and material inheritance of civilization.[6]

This is one of the first antecedents of the first human rights declaration that years later came into been in the American continent. The pre-war environment of Europe led the American nations to meet and seek to implement mechanisms to ensure its political and economic stability in case that the European conflict would affect them. It is to be noted, that in the same way as in Europe, at that time in the region several dictatorships arose such as Antonio López de Santa María in Mexico, Maximiliano Hernández Martínez in El Salvador, Jorge Ubico in Guatemala, Tiburcio Carías Andino in Honduras, Juan Manuel de Rosas in Argentina, Getúlio Vargas in Brazil, Óscar Benavides in Perú and Gabriel Terra in Uruguay.

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[6] Resolution XVI Defense of Human Rights, accessed May 08, 2017, http://www.oas.org/sap/peacefund/VirtualLibrary/EighthIntConfAmericanStates/XVIDefenseHumanRights.pdf

From the above can be deduced that, while the League of Nations set the foundation for an international system, the express indication that human rights have to be protected by an international community was made in the American continent. This recognition was done in view of the atrocities suffered in Europe during the World War, which made humankind aware that, while countries can form coalitions to fight against other countries, countries can also join to protect human rights.

2. INTERNATIONAL SYSTEM

At the international level, the institutionalization of a global system guided by human rights principles started after the end of World War II. "Modern international human rights law is largely a post-World War II phenomenon".[7] The Yalta Conference in February 1945, which brought together the Soviet Union represented by Premier Joseph Stalin, the United Kingdom represented by Prime Minister Winston Churchill and the United States of America represented by President Franklin D. Roosevelt, decided to summon a United Nations conference in April 1945 to be held in the United States of America.

On April 25, 1945, delegates from 50 nations, including nations of America and Europe, gathered in San Francisco to attend the United Nations Conference on International Organization. The representatives drafted a charter with 111 articles, which was adopted unanimously on June 25, 1945 and signed the next day. The United Nations Charter[8] (hereinafter the "UN Charter"), which created the United Nations (hereinafter the "UN"), came into force on October 24, 1945, after the five permanent members of the Security Council and other signatories ratified it. Additional steps for the establishment of the UN included the Declaration of London[9] (June 1941) and the Atlantic Charter[10] (August 1941).

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7 Thomas Buergenthal, Dinah L. Shelton, and David P. Stewart, *International Human Rights in a Nutshell*, 4th ed. (Saint Paul: West Publishing, 2009): 29.

8 United Nations Charter, June 26, 1945, 59 Stat. 1031, T.S. 993, 3 Bevans 1153, entered into force Oct. 24, 1945.

9 The first step in creating the UN was given in June 12, 1941, when representatives of 14 allied countries met in the Palace of St. James (London) and signed the Declaration of London with which they intended to "work together with other free peoples in war and in peace."

Among its purposes the UN Charter references "promoting and encouraging for human rights and for fundamental freedoms" but, as Thomas Buergenthal notes, this Charter "did not impose any concrete human rights obligation on the UN member states."[11] Moreover, in practice, this did not prevent that new dictatorships rose later in America and Europe and that the dictatorship of Francisco Franco in Spain continued. Most importantly, to date there is no human rights enforcement mechanism within the UN system.[12]

In addition, the term "human rights" was not defined in the UN Charter, but later developed in the Universal Declaration of Human Rights[13] (hereinafter the "UDHR") which was adopted by the General Assembly of the UN on December 10, 1948. However, as Manfred Nowak indicates, while the UDHR "is formally a resolution of the General Assembly… not binding under international law … still represents an

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[10] The next step for the creation of the UN was the Atlantic Charter of August 14, 1941, a proposal from the U.S. President Franklin Delano Roosevelt and the British Prime Minister, Winston Churchill, who proposed a series of principles for international collaboration with the objective of maintaining peace and security. On January 1, 1942, representatives of 26 allied nations met in Washington DC to reaffirm its support for the Atlantic Charter by signing the Declaration of the United Nations. In the Moscow Declaration, signed in Moscow on October 30, 1943, the governments of the Soviet Union, the United Kingdom, the United States of America and China expressed their desire to establish an international organization as soon as possible to maintain peace and security. That goal was reaffirmed at the meeting by the leaders of the United States, the Soviet Union and the United Kingdom in Tehran on December 1, 1943. The first draft of what would be the UN was prepared at a conference held at the Dumbarton Oaks mansion in Washington, DC. During two sessions that lasted from September 21 to October 7, 1944, the United States of America, the United Kingdom, Russia and China agreed on the objectives, structure and functioning of the global organization. On February 11, 1945, following meetings at Yalta, Roosevelt Churchill and Stalin declared their determination to establish a general international organization for maintaining peace and security, in what is known as the Yalta Conference.

[11] Thomas Buergenthal, "The Evolving International Human Rights System," *American Journal of International Law* 100, no. 4 (2006): 786.

[12] It is beyond the realm of this research, but it is also interesting to observe at this point that to date there is no Human Rights Court or Tribunal at a universal level. What was created within the UN System was a political body: the United Nations Commission on Human Rights which had no enforcement mechanism. This body, created on August 12, 1947, had it last session on March 27, 2006. It was succeeded by the United Nations Human Rights Council, created on March 15, 2006. This "new body" also lacks of an enforcement mechanism. On the other hand, in the UN other bodies comprised of experts were created; like the United Nations Human Rights Committee in charge of monitoring the implementation of the International Covenant on Civil and Political Rights. This latter organ has quasi jurisdictional functions, but no enforcement mechanism.

[13] Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948).

authoritative interpretation of the term "human rights" in the UN Charter, and thus can be considered indirectly constituting international treaty law."[14]

When the UN Charter makes reference to the regional systems, it refers to the task of dealing with peace and security matters.[15] Nevertheless, the regional systems have also been dealing with human rights protection issues. In fact, a few years after the creation of the UN, the two regional systems that protect human rights in the European and American continents started to take the form they have now, as analyzed below.

3. REGIONAL SYSTEMS AND HUMAN RIGHTS CONVENTIONS IN EUROPE AND AMERICA

During the 1940s

In America, shortly before the end of World War II,[16] from February 28 to March 8, 1945 (before the aforementioned meeting in San Francisco), the Inter-American

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[14] Manfred Nowak, *Introduction to the International Human Rights Regime*, (Boston: Raoul Wallenberg Institute Human Rights Library, 2003) 76.

[15] Article 52 of the UN Charter.

[16] In America, long before the two World Wars, the idea of creating a regional organism already existed. In 1810 Simón Bolívar proposed the creation of a confederation in America, and on December 7, 1824 convened in Lima to the Amphictyonic Congress of Panama. This congress took place in Panama from June 22 to July 15, 1826 with plenipotentiary delegations from Guatemala, Venezuela, the Gran Colombia (New Granada, Venezuela and Ecuador), Mexico, Peru and observers from England and Holland. The Treaty of Union, League and Perpetual Confederation was signed, which declared the solidarity of the signatory nations, affirmed the irrevocability of the Latin American independence, expressed the desire to achieve a just peace with the former metropolis, established the principle of conciliation and arbitration to resolve international conflicts, granted common citizenship to the inhabitants of the contracting nations and rejected the slave trade, which was declared a crime against humanity, and besides its role in outlining the guidelines for a future international organization. In this congress the Convention of Troops was signed, and also a third document which stated that meetings would resume a few months after in the village of Tacubaya. Nothing was achieved in Tacubaya, however, and the Panama Treaty officially did not come into force.

Later, in 1890, the First American International Conference, also called Pan-American Conference, took place. It was held in Washington D.C. on the initiative of the United States of America. All governments in the hemisphere (Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, United States of America, Uruguay and Venezuela) except the Dominican Republic attended. The International Union of American Republics was established, as well as its secretariat and the Commercial Bureau of American Republics (1890-1902) which later was renamed as the International Bureau of American Republics (1902-1910).

Conference on Problems of War and Peace[17] was held in Mexico City. This Conference was the working basis for the establishment of a regional system in charge of protecting the essential rights of man and the drafting of its Charter. The Inter-American Juridical Committee was entrusted with the task of elaborating a draft of a Declaration of the International Rights and Duties of Men.[18] It is interesting to note, that this step was taken while at that time four countries in America were under dictatorial regimes: Brazil under Getúlio Vargas, Dominican Republic under Rafael Trujillo, Honduras under Tiburcio Carías Andino and Paraguay under Higinio Morínigo,

Three years later, in 1948, the American Declaration of the Rights and Duties of Man[19] (hereinafter the "American Declaration") was approved at the IX Pan-American Conference held in Bogota. This legal instrument was the first international human rights

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Before World War I, more conferences took place. The II Pan American Conference in Mexico was conducted in 1901-1902 and the III Pan American Conference took place in Rio de Janeiro in 1906. In those conferences the Dominican Republic was also represented, and decisions on legal, business and economics issues were adopted. In 1910, the IV Pan American Conference was conducted in Buenos Aires; in this the name of the organization of the International Union of American Republics changed to the Union of American Republics. Also, the International Bureau of American Republics became the Pan American Union, with the general secretary of technical support in Washington D.C. The aforementioned IV Pan American Conference (1910), the V Pan American Conference in Santiago de Chile (1923), the VI Pan American Conference in Havana (1928) and the VII Pan American Conference in Montevideo (1933) focused on military and defense cooperation. It is to be highlighted the reunion held in Santiago de Chile (1923) which adopted the so-called Gondra Convention, whose purpose was to prevent armed clashes between the American countries. The VIII Conference in Lima (1938), which contributed to establishment of the current Inter-American System is analyzed in the main text or the present research.

[17] Inter-American Conference on Problems of War and Peace, Resolution XXVII entitled "Free Access to Information" and Resolution XL on "International Protection of the Essential Rights of Man", *International Conferences of American States*, Second Supplement, 1942-1954, Washington D.C..: Pan American Union, 1958, 93-94.

[18] In the referred Resolution XL of the Inter-American Conference on Problems of War and Peace, adopted in the plenary meeting held on March 7, 1945, was recommended that after reviewing the draft of the Inter-American Juridical Committee, the Governments of the American continent should adopt the "Declaration of the International Rights and Duties of Man" as a convention. In the recitals was indicated that in order to put into practice the international protection of the Essential Rights of Man, this rights and correspondent duties required a declaration adopted as a convention by the States. Nevertheless, what came into been afterwards was a declaration.

[19] American Declaration of the Rights and Duties of Man, O.A.S. Res. XXX, adopted by the Ninth International Conference of American States (1948), reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 17 (1992).

instrument in the history of mankind.[20] Furthermore, the Organization of American States (hereinafter the "OAS") was created through the endorsement of the Charter of the Organization of American States[21] (hereinafter the "Charter or the OAS") which entered in force on December 13, 1951.[22] To date, thirty five Member States have joined the OAS[23] and the American Declaration remains as the backbone of the Inter-American system.

In regards the socio-political context of the American region, the year 1948 also marks the end of the dictatorship of Higinio Morínigo in Paraguay and the beginning of two new dictatorships in America: Manuel Odría in Peru and Marcos Pérez Jiménez in Venezuela. Furthermore, new dictatorships arose in the following years.

Meanwhile in Europe, in the early 1940's, Winston Churchill proposed the creation of the "United States of Europe" and the "Council of Europe". Later, at The Hague Congress in 1948, a political resolution calling for the unification of Europe was adopted, which is one of the cornerstones of the current European system. The Political Resolution of The Hague agreed, among other things, that a United Europe should be created and that it should be open to all European nations that were democratically governed and that were determined to respect a Charter of Human Rights. Moreover, in this Resolution, a commission was set up to draft the Charter of Human Rights, and for

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[20] The American Declaration was adopted in April 1948, seven months before the Universal Declaration of Human Rights.

[21] Charter of the Organization of American States, 119 U.N.T.S. 3, entered into force December 13, 1951; amended by Protocol of Buenos Aires, 721 U.N.T.S. 324, O.A.S. Treaty Series, No. 1-A, entered into force Feb. 27, 1970; amended by Protocol of Cartagena, O.A.S. Treaty Series, No. 66, 25 I.L.M. 527, entered into force Nov. 16, 1988; amended by Protocol of Washington, 1-E Rev. OEA Documentos Oficiales OEA/Ser.A/2 Add. 3 (SEPF), 33 I.L.M. 1005, entered into force September 25, 1997; amended by Protocol of Managua, 1-F Rev. OEA Documentos Oficiales OEA/Ser.A/2 Add.4 (SEPF), 33 I.L.M. 1009, entered into force January 29, 1996.

[22] The Charter of the OAS was subsequently amended by the Protocol of Buenos Aires on 1967, the Protocol of Cartagena de Indias on 1985, the Protocol of Washington on 1992 and the Protocol of Managua on 1993.

[23] Antigua and Barbuda, Argentina, Bahamas, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba (the current Government of Cuba is excluded from participation in the OAS by resolution of the Eight Meeting of Consultation of Ministers of Foreign Affairs (1962)), Dominican Republic, El Salvador, Ecuador, United States, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and Grenadines, Suriname, Trinidad and Tobago, Uruguay and Venezuela.

the first time in history proposals for the establishment of a Court of Justice with adequate sanctions for the implementation of a human rights instrument were requested. Furthermore, it was already foreseen at that time that this Court of Justice should provide redress to any citizen of the associated countries "at any time and with the least possible delay" regarding any violation of his rights prescribed in the Charter.[24]

One year later, on May 5, 1949, the Treaty of London, which was signed by 10 countries[25], created the Council of Europe. As Philip Leach indicates, the creation of the Council of Europe and its early work "was in part a reaction to the serious human rights

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[24] For the purposes of the present research the following extracts of the Political Resolution of the Hague Congress (7–10 May 1948) (Congress of Europe: The Hague-May, 1948: Resolutions, 1948) are of great importance:

> (1) RECOGNISES that it is the urgent duty of the nations of Europe to create an economic and political union in order to assure security and social progress…
>
> Sovereign Rights
>
> (3) DECLARES that the time has come when the European nations must transfer and merge some portion of their sovereign rights so as to secure common political and economic action for the integration and proper development of their common resources…
>
> Charter of Human Rights
>
> (9) CONSIDERS that the resultant Union or Federation should be open to all European nations democratically governed and which undertake to respect a Charter of Human Rights.
>
> (10) RESOLVES that a Commission should be set up to undertake immediately the double task of drafting such a Charter and of laying down standards to which a State must conform if it is to deserve the name of a democracy…
>
> Supreme Court
>
> (13) IS CONVINCED that in the interests of human values and human liberty, the Assembly should make proposals for the establishment of a Court of Justice with adequate sanctions for the implementation of this Charter, and to this end any citizen of the associated countries shall have redress before the court, at any time and with the least possible delay, of any violation of his rights as formulated in the Charter.
>
> World Unity
>
> (14) DECLARES that the creation of a United Europe is an essential element in the creation of a united world.

[25] Belgium, Denmark, France, Republic of Ireland, Italy, Luxembourg, Netherlands, Norway, Sweden and the United Kingdom.

violations encountered in Europe during World War II."[26] At that time the following European Countries were under dictatorship and did not sign the Treaty of London: Albania under Enver Hoxha, Hungary under Mátyás Rákosi, Portugal under António de Oliveira Salazar, Spain under Francisco Franco and the Soviet Union under Joseph Stalin. Over the following years, this situation changed dramatically in Europe as explained below.

By the end of the 1940s there was an important similitude between the two newly established regional systems in America and Europe: comparing the original texts of the Charter of the OAS and of the Statute of the Council of Europe, the States Parties of both were required to accept certain principles of human rights. Article 5.j of the original text of the Charter of the OAS[27] provides that "the American States proclaim the fundamental rights of the individual without distinction as to race, nationality, creed and sex", while Article 3 of the Statute of the Council of Europe emphasizes the duty of the states and provides that every of its Member States "must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms." The Statute of the Council of Europe in addition reinforces the States Parties obligation to protect human rights and makes reference in its Article 1(b) to the "realization of human rights and fundamental freedoms" and in its Article 8 establishes that the violation of the obligation stated in Article 3 can lead to cessation of membership.[28]

During 1950s, 1960s and 1970s

In Europe, in 1950, the Council of Europe set up one of the most significant milestones in the history of human rights protection. It drafted and auspicated for the first time the adoption of a legally binding treaty of human rights that established an enforcing machinery to ensure that its provisions were to be observed: the Convention for the Protection of Human Rights and Fundamental Freedoms also called European

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[26] Philip Leach, *Taking a Case to the European Court of Human Rights,* 3rd ed. (Oxford: Oxford University Press, 2011): 1.

[27] Article 3.l of the Charter of the OAS.

[28] Other similitudes and differences include for instance that both were conceived as inferior instruments in relation with the UN Charter (for example Articles 1.c and 32 of the Statute of the European Council and Articles 1, 2, 8, 24, 54, 91, 95 and 131 of the Charter of the OAS).

Convention on Human Rights[29] (hereinafter the "ECHR"). The ECHR was signed in Rome on November 4, 1950 and entered into force on September 3, 1953 when it was ratified by 10 Member States of the Council of Europe.

By the end of the 1950s, on August 12-18, 1959, a significant development took place in the Inter-American system: the Inter-American Commission on Human Rights (hereinafter the "IACHR") was established by the Fifth Meeting of Consultation of Ministers of Foreign Affairs at Santiago de Chile. This was done taking into account the preamble of the Charter of the OAS and various instruments of the OAS that promote liberty. Additionally, the Inter-American Council of Jurists was entrusted with the task of drafting a Convention on Human Rights and "a draft convention or draft conventions on the Creation of an Inter-American Court for the Protection of Human Rights and of other organizations appropriate for the protection and observance of those rights."[30] In 1960 the Council of the OAS adopted the Statute of the IACHR, elected its first members and inaugurated this Commission. The IACHR was established as an independent organ of the OAS to promote compliance and protection of human rights and together with the Inter-American Council of Jurists was responsible for the technical preparation of the Convention on human rights for the American continent.[31]

In America, the drafting of the Convention on human rights for the American States lasted nearly ten years, allowing the American governments to analyze and comment on various drafts. Among other documents, the ECHR was taken as a reference as the most advanced document in the area of human rights international protection.[32] On

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29 [European] Convention for the Protection of Human Rights and Fundamental Freedoms, ETS 5, 213 U.N.T.S. 222, entered into force Sept. 3, 1953, as amended by Protocols Nos 11 and 14 which entered into force on November 11, 1998 and June 6, 2010 respectively.

30 Final Act of the Fifth Meeting of Consultation of Ministers of Foreign Affairs, Santiago de Chile, August 12-18, 1959, accessed May 05, 2017, http://www.oas.org/consejo/MEETINGS%20OF%20CONSULTATION/Actas/Acta%205.pdf.

31 The IACHR increased in importance over time, first in 1965, during the Second Extraordinary Inter-American Conference in Rio de Janeiro where its Statute was modified to expand its functions and again in 1967, where it became one of the main organs of the OEA with the Protocol of Buenos Aires.

32 Additionally, several States based their observations and amendments to the draft ACHR on the text of that time of the ECHR.

November 22, 1969, the American Convention on Human Rights[33], also called Pact of San José, (hereinafter the "ACHR") was signed in the Inter-American Specialized Conference on Human Rights. The ACHR entered into force almost nine years later, on July 18, 1978, when the required eleven ratifications were reached.

An important difference between the two systems stands out at this point: In the European system, the Member States adopted since 1953 a Convention, a binding instrument. Furthermore, this Convention created a control mechanism in the region. In America for its part, from the end of 1940's until the end of the 1970's, the Inter-American system of protection of human rights was based on a declaration, not on a binding instrument.[34] The drafting of a Convention on Human Rights in the Inter-American system started later in 1960, and the ACHR entered into force much later, in 1978, more than twenty years after the ECHR.

To date, while in Europe the Statute of the Council of Europe has been signed by 47 countries[35] with five other countries[36] as observers, and all 47 countries have ratified

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[33] American Convention on Human Rights, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, entered into force July 18, 1978, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992).

[34] As Thomas Buergenthal notes, the American Declaration is not a "treaty" within the meaning of Article 64(1) of the American Convention, since it was adopted in 1948 in the form of an inter-American conference resolution (Res. XXX, Final Act of the Ninth International Conference of American States (Pan American Union), Bogota, Colombia, Mar. 30-May 2, 1948, 38). Thomas Buergenthal also indicates "[i]t is generally recognized, however, that the Protocol of Buenos Aires [signed in 1967 and in force since 1970], which amended the OAS Charter, changed the legal status of the Declaration to an instrument that, at the very least, constitutes an authoritative interpretation and definition of the human rights obligations binding on OAS member states under the Charter of the Organization." (Thomas Buergenthal, "The Advisory Practice of the Inter-American Human Rights Court," *American Journal of International Law* 79, no. 1 (1985): 7).

[35] Albania (13.07.1995), Andorra (10.11.1994), Armenia (25.01.2001), Austria (16.04.1956), Azerbaijan (25.01.2001), Belgium (05.05.1949), Bosnia and Herzegovina (24.04.2002), Bulgaria (07.05.1992), Croatia (06.11.1996), Cyprus (24.05.1961), Czech Republic (30.06.1993), Denmark (05.05.1949), Estonia (14.05.1993), Finland (05.05.1989), France (05.05.1949), Georgia (27.04.1999), Germany (13.07.1950), Greece (09.08.1949), Hungary (06.11.1990), Iceland (07.03.1950), Ireland (05.05.1949), Italy (05.05.1949), Latvia (10.02.1995), Liechtenstein (23.11.1978), Lithuania (14.05.1993), Luxembourg (05.05.1949), Malta (29.04.1965), Moldova (13.07.1995), Monaco (05.10.2004), Montenegro (11.05.2007), Netherlands (05.05.1949), Norway (05.05.1949), Poland (26.11.1991), Portugal (22.09.1976), Romania (07.10.1993), Russian Federation (28.02.1996), San Marino (16.11.1988), Serbia (03.04.2003) (With effect from 3 June 2006, the Republic of Serbia is continuing the membership of the Council of Europe previously exercised by the Union of States of Serbia and Montenegro), Slovakia (30.06.1993), Slovenia (14.05.1993), Spain (24.11.1977), Sweden (05.05.1949), Switzerland (06.05.1963), "The former Yugoslav Republic of Macedonia" (09.11.1995),

the ECHR[37] (standing out the cases of Portugal and Spain that did not ratify the ECHR until the end of their dictatorial regimes); to date, in America only twenty-five[38] nations have ratified or acceded to the ACHR (two of which later denounced it) of the thirty five that are Member States of the OAS.

In the socio-political framework, in Europe the increase over time of the signatures of the Treaty of London coincides with the reduction of dictatorships; and at this time in history only two countries are under dictatorial regimes in Europe: Belarus under Alexander Lukashenko and Turkey under Recep Tayyip Erdoğan. By its part, in America, despite the above mentioned advances, in the second part of the 1900s the dictatorships continued to be an endemic disease even after 1970s and for instance the following dictatorships are to be highlighted:

- In Argentina Jorge Rafael Videla from 1976 to 1981.
- In Bolivia Hugo Banzer from 1971 to 1978.

Turkey (09.08.1949), Ukraine (09.11.1995), the United Kingdom (05.05.1949). In the case of Belarus, it is one applicant country; whose special guest status has been suspended due to its lack of respect for human rights and democratic principles.

[36] Canada, Japan, the Holy See, Mexico and the United States of America.

[37] Albania, (2/10/1996), Andorra (22/1/1996), Armenia (26/4/2002), Austria (3/9/1958), Azerbaijan (15/4/2002), Belgium (14/6/1955), Bosnia and Herzegovina (12/7/2002), Bulgaria (7/9/1992), Croatia (5/11/1997), Cyprus (6/10/1962), Czech Republic (18/3/1992), Denmark (13/4/1953), Estonia (16/4/1996), Finland (10/5/1990), France (3/5/1974), Georgia (20/5/1999), Germany (5/12/1952), Greece (28/11/1974), Hungary (5/11/1992), Iceland (29/6/1953), Ireland (25/2/1953), Italy (26/10/1955), Latvia (27/6/1997), Liechtenstein (8/9/1982), Lithuania (20/6/1995), Luxembourg (3/9/1953), Malta (23/1/1967), Moldova (12/9/1997), Monaco (30/11/2005), Montenegro (3/3/2004), Netherlands (31/8/1954), Norway (15/1/1952), Poland (19/1/1993), Portugal (9/11/1978), Romania (20/6/1994), the Russian Federation (5/5/1998), San Marino (22/3/1989), Serbia (3/3/2004), Slovakia (18/3/1992), Slovenia (28/6/1994), Spain (4/10/1979), Sweden (4/2/1952), Switzerland (28/11/1974), The former Yugoslav Republic of Macedonia (10/4/1997), Turkey (18/5/1954), Ukraine (11/9/1997) and the United Kingdom (8/3/1951).

[38] Argentina (14.08.1984), Barbados (27.11.1982), Bolivia (19.19.1979), Brazil (25.09.1992), Colombia (31.07.1973), Costa Rica (08.04.1970), Chile (21.08.1990), Dominica (11.06.1993), Ecuador (28.12.1977), El Salvador (23.06.1978), Grenada (18.07.1978), Guatemala (25.05.1978), Haiti (27.09.1977), Honduras (08.09.1977), Jamaica (07.08.1978), Mexico (24.03.1981) , Nicaragua (25.09.1979), Panama (22.06.1978), Paraguay (24.08.1989), Peru (28.07.1978), Dominican Republic (19.04.1978), Suriname (12.11.1987), Trinidad and Tobago (28.05.1991), Uruguay (19.04.1985) and Venezuela (09.08.1977). Trinidad and Tobago denounced the American Convention on Human Rights in a communication addressed to the Secretary General of the OAS on May 26, 1998. To date the United States of America and Canada have not ratified the Convention, although the United States of America signed it the 10 June 1977. Lately, on September 6, 2012, Venezuela denounced the ACHR.

- In Chile Augusto Pinochet from 1973 to 1990.
- In Paraguay Alfredo Stroessner, from 1954 to 1989.
- In Peru Manuel Odría from 1948 to 1956, Juan Velasco Alvarado from 1968 to 1975 and Francisco Morales Bermudez from 1975 to 1980.
- In Uruguay Juan María Bordaberry from 1972 to 1976 and then Gregorio Conrado Álvarez from 1981 to 1985.

Furthermore, within these military dictatorships even a coordinated plan took place: the "Operation Condor" in the 1960s and 1970s. This plan articulated the intelligence services of Argentina, Brazil, Uruguay, Paraguay, Bolivia, Chile and Peru creating an international clandestine organization for the practice of state terrorism that led to the assassination and disappearance of thousands of opponents of the dictatorships, most of them belonging to the movements of political left. The repercussions of this plan continue to the present and the human rights violations remain unpunished (for instance, in 2016 Italy requested the extradition of the Peruvian dictator Francisco Morales Bermudez but it was denied). In Latin America, not only dictatorial governments violated human rights during that period but also democratic ones, highlighting the need of a human rights enforcement mechanism.

4. REGIONAL COURTS OF HUMAN RIGHTS IN AMERICA AND EUROPE

4.1. BEGINNING OF THE COURTS

When the ECHR entered into force in 1953, it was the first international treaty that established an enforcement mechanism to ensure that its provisions were to be observed. The regional human rights enforcement mechanism created by the ECHR initially consisted of two bodies: the European Commission on Human Rights (hereinafter the "European Commission") and the European Court of Human Rights (hereinafter the "European Court").[39]

[39] The original text of Article 19 of the ECHR provided that:

> To ensure the observance of the engagements undertaken by the High Contracting Parties in the present Convention, there shall be set up:

In the Inter-American system in 1969 the ACHR also created a regional human rights enforcement system. The ACHR, in the same way that the European system did more than fifteen years before it, established as means of protection a mechanism integrated by two bodies: the IACHR (which already existed at that time and was in charge of drafting the ACHR) and the Inter-American Court of Human Rights (hereinafter the "Inter-American Court").[40]

When the ECHR and ACHR entered into force, the ratification of the jurisdiction of the respective Court was not an essential part of the treaty but an accessory to the ratification of the respective Convention on Human Rights and required an additional express declaration. In other words, the States Parties to the two Conventions could ratify the ECHR or the ACHR, respectively, and not be subject to the jurisdiction of the respective Court of Human Rights. It continues to be so in the Inter-American system.

In the European system, it was additionally necessary that eight High Contracting Parties declare that they recognized the Court's compulsory jurisdiction to create this body.[41] The 8th acceptance required to elect the members of the European Court for the first time was received in September 1958, and the Tribunal was established in

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1. A European Commission of Human Rights hereinafter referred to as 'the Commission';

2. A European Court of Human Rights, hereinafter referred to as 'the Court'.

[40] Article 33 of the ACHR.

[41] This has been amended. In the original text of the ECHR, the jurisdiction of the European Court was not compulsory for the State Parties and 8 High Contracting Parties had to declare that they recognized the jurisdiction of the Court as compulsory to establish the European Court. Before its amendments, the original text of the ECHR provided in Articles 56 and 46 that:

> Article 46
>
> 1. Any of the High Contracting Parties may at any time declare that it recognizes as compulsory 'ipso facto' and without special agreement the jurisdiction of the Court in all matters concerning the interpretation and application of the present Convention…
>
> Article 56
>
> 1. The first election of the members of the Court shall take place after the declarations by the High Contracting Parties mentioned in Article 46 have reached a total of eight.
>
> 2. No case can be brought before the Court before this election.

Strasbourg on January 21, 1959. The European Commission, for its part, was previously established, on July 12, 1954. The first public hearing[42] of the European Court took place in 1960.

In the Inter-American system, the Inter-American Court was created by the ACHR in 1969 and came into legal existence in 1978 upon entry into force of the ACHR. In contrast to the original text of the ECHR, the ACHR did not provide for a minimum number of declarations accepting the compulsory jurisdiction of the Inter-American Court. In the same manner as in the European system, the IACHR[43] was established before the Inter-American Court. The Inter-American Court was settled in San Jose, Costa Rica on September 3, 1979, twenty years after the establishment of the European Court. The first case[44] heard by the Inter-American Court was in 1981, 21 years later than the European Court. Taking into consideration this difference of two decades between the two Courts, the total number of decisions produced since their creation by the two Courts cannot be compared.

4.2.DEVELOPMENT OF THE COURTS

4.2.1. Institutional Evolution

In the European system the original enforcement mechanism envisaged in 1948 consisted only of a court of justice. The proposal of creating a Human Rights Commission in the European system emerged in 1949 when the European Movement drafted the ECHR.[45] As the Explanatory Report to Protocol No 11 to the ECHR explains, the European Commission was added to respond to the criticisms of those that feared that

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42 Case *Lawless v. Ireland.*

43 The IACHR was created in 1959 (as already mentioned), that is to say ten years before the ACHR and in the same year that the European Court was established.

44 Case *Viviana Gallardo v. Costa Rica.*

45 Furthermore, as the Explanatory Report referenced above also recalls, the creation of the European Commission was not a contentious issue during the drafting of the ECHR while the creation of the European Court faced a considerable opposition that argued that it would not correspond to a real need of the Member States. This controversy gave rise to Articles 46 and 48 of the original text of the ECHR which left it up to the Members States to the ECHR to accept or not the compulsory jurisdiction of the European Court.

that the human rights court to be created "would be inundated with frivolous litigation and its facilities would be exploited for political ends".[46]

Since the establishment of the European system of protection of human rights until November 1998, the implemented model consisted of a tripartite structure: the European Commission, the European Court and the Committee of Ministers. The original procedure established in the European system (before Protocol No 11 to the ECHR) was as follows:

- Firstly the European Commission carried out a preliminary examination determining the admissibility of the application.
- In cases where the application was declared admissible, the European Commission promoted a friendly settlement between the parties.
- When no agreement was achieved by the parties, the European Commission issued a report. This report, in which the European Commission established the facts and its opinion on the merits of the case, was submitted to the Committee of Ministers, with the following options:
    - In case that the respondent State had accepted the compulsory jurisdiction of the European Court, in the following three months to the transmission of the report to the Committee of Ministers, the European Commission (and also any Contracting State concerned by the application) had to bring the case before the European Court. The European Court issued a final binding adjudication which includes, where appropriate, an award of compensation.
    - As regards the States Parties that did not ratify the binding jurisdiction of the European Court, the Committee of Ministers decided whether there had been a violation of the ECHR or not, and, if appropriate, awarded compensation to the victim. Finally, the Committee of Ministers was responsible for the supervision of the execution of the Court´s judgments and its own decisions.

[46] Paragraphs 7 and 8 of the Explanatory Report to Protocol No 11 to the ECHR, restructuring the control machinery established thereby, accessed May 08, 2017, https://rm.coe.int/16800cb5e9.

In the original model the individuals were not entitled to bring a case before the European Court. Protocol No 9 to the ECHR amended this but only regarding the States Parties that ratified this Protocol. For those States Parties a panel composed of three judges decided on the admissibility of the application.

The proposal of establishing a single court instead of a commission and a court was resumed in Europe in 1982. The proposal for merging the European Court and the European Commission (hereinafter the "merge idea") was evoked in the Committee of Experts for the Improvement of the Procedure under the ECHR.[47] By 1985, the merge idea was raised at political level in the European Ministerial Conference on Human Rights in Vienna, giving rise to discussions and proposals.

The merge idea succeeded in 1994 and Protocol No 11 to the ECHR[48] was adopted. This Protocol entered into force in November 1998.[49] Protocol No 11 to the ECHR was adopted in light of the need to reform the European system and make it more efficient given the excessive increase in the number of applications. The European system was already overloaded with cases at that time and it was foreseen that the number of applications was going to continue to rise in the following years because of the growing popularity of this system and the increase in the number of contracting States to the ECHR.

Protocol No 11 to the ECHR restructured the entire European system of protection of human rights establishing, for the first time in history, an international human rights court that operated on a permanent basis. Moreover, it established a new judicial proceeding, in which the function of screening the application was transferred to the European Court, abolishing the European Commission and removing the adjudicative

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47 As the Explanatory Report to Protocol No 11 to the ECHR indicates in its paragraph 10.

48 Protocol No 11 to the Convention fort the Protection of Human Rights and Fundamental Freedoms, restructuring the control machinery established thereby, ETS No. 155, Strasbourg, 11.V.1994.

49 Protocol No 11 to the ECHR was opened for signatures on May 11, 1994 and entered into force on the first day of November 1998. All State Parties to the ECHR had to ratify it before it could enter into force.

function of the Committee of Ministers.[50] This Protocol improved the accessibility and visibility of the European Court, as well as having simplified its procedure.

Despite the fact that Protocol No 11 to the ECHR contributed to enhancing the effectiveness of the European system, in the following years further reforms were needed due to the overwhelming increase of the caseload of the new European Court. As the Explanatory Report to Protocol No 14 to the ECHR indicates, there was an urgent need to guarantee the long-term effectiveness of the European Court so that it could continue playing a prominent role in the protection of human rights in Europe.[51] Consequently, Protocol No 14 to the ECHR[52] was adopted in 2004 and it entered into force in June 2010.[53]

Protocol 14 to the ECHR aimed to solve the problem of the excessive caseload of the European Court. Unlike Protocol No 11 to the ECHR which made profound reforms in the structure of the European mechanism of protection of human rights, Protocol No 14 to the ECHR introduced reforms in the European Court providing for new judicial formations, a new admissibility criterion and a new term of office of the judges.[54]

For its part, the Inter-American system has also undergone several reforms since its creation but has kept its original organizational two-tier structure consisting of the IACHR and the Inter-American Court.[55] The reforms introduced in the Inter-American

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[50] Protocol No 11 to the ECHR abolished the Commission on Human Rights and modified the organization of the European Court establishing Committees, Chambers and the Grand Chamber and also introduced other reforms in the procedure.

[51] Paragraphs 2 and 5 of Explanatory Report to Protocol No 14 to the ECHR, amending the control system of the Convention, accessed May 8, 2017, https://rm.coe.int/16800d380f.

[52] Protocol No 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention, ETS No. 194, Strasbourg, 13.V.2004.

[53] Protocol No 14 to the ECHR was opened for signatures on May 13, 2004 and entered into force more than 6 years later, on the first day of June 2010. Being an amending protocol it also required that all States Parties to the ECHR ratified it.

[54] The Amendments made by Protocol No 14 to the ECHR aim to allow that the applications are processed in a timely fashion allowing the Judges to concentrate in the most important cases. The amendments regarding the admissibility of the cases will be analyzed in detail in the third chapter or the present study.

[55] In Inter-American System the original Rules of Procedure of the IACHR and the ones of the Inter-American Court were approved on 1966 and 1980, respectively, and afterwards were amended: In 1980 the original Rules of Procedure of the IACHR were amended for the first time. After that, the

system of protection of human rights are mainly related to the participation of the IACHR and the individuals before the Inter-American Court, and several reforms have been made in this regard, as described below:

- At the beginning, the victims or their next of kin were not referred when ruling the representation of the IACHR.[56]
- Later, the Rules of Procedure of the Inter-American Court of 1991[57] expressly mentioned for the first time that the IACHR could include the alleged victims among their delegates.[58] This gave start to the participation of the victims in the proceedings before the Inter-American Court while remaining dependent on the IACHR. Furthermore, while in the original version of the Rules of Proceeding of the Inter-American Court the application had to be notified only to the IACHR and the States concerned in the case,[59] as of 1991 it was

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Rules of Procedure of both Inter-American institutions were reformed several times, the last of them in 2009. The new Rules of Procedure of the IACHR were approved by the Inter-American Commission at its 137th Regular Period of Sessions, held from October 28 to November 13, 2009, and modified on September 2, 2011. The new Rules of Procedure of the Inter-American Court of Human Rights were approved by the Inter-American Court during its LXXXV Regular Period of Sessions, held from November 16 to 28, 2009.

[56] Article 21 of the Rules of Procedure of the Inter-American Court of Human Rights of 1980 provided that:

> The Commission shall be represented by the delegates whom it designates. These delegates may, if the so wish, have the assistance of any person of their choice.

[57] Rules of Procedure of the Inter-American Court of Human Rights, Annual Report of the Inter-American Court of Human Rights, 1991, O.A.S. Doc. OEA/Ser.L/V/III.25 doc.7 at 18 (1992), reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 145 (1992).

[58] Article 22 of the Rules of Procedure of the Inter-American Court of Human Rights of 1991 established that:

> 1. The Commission shall be represented by the Delegates whom it shall have designated for that purpose. The Delegates may be assisted by any person of their choice.
>
> 2. If the attorneys retained by the original claimant, by the alleged victim or by the next of kin of the victim are among the persons selected by the Delegates to assist them, pursuant to the preceding paragraph, this fact shall be brought to the attention of the Court.

[59] Article 26 of the Rules of Procedure of the Inter-American Court of Human Rights of 1980 provided that:

expressly established that the application has to be communicated additionally to the victim or the victim's next of kin if applicable.[60]

- After the amendment of the Rules of the Inter-American Court of 2001, the individuals were allowed to act in an autonomous way at all stages of the Inter-American Court´s procedure and not just in the reparations stage.

(Communication of the Application)

1. On receipt of the application provided for in Article 25 of these Rules, the Secretary shall notify the Commission whenever the application is submitted under Article 25.1 as well as the States concerned in the case, transmitting copies thereof to them.

2. The Secretary shall inform the other States Parties and the Secretary General of the OAS of the receipt of the application.

3. When giving the notice provided for in paragraph 1, the Secretary shall request the States concerned to designate, within a period of two weeks, an agent who shall have an address for the service at the seat of the Court to which all communications concerning the case shall be sent. If the State does not do so, a decision shall be deemed to have been notified twenty-four hours after it was rendered.

[60] Article 28 of the Rules of Procedure of the Inter-American Court of Human Rights of 1991 provided that:

Communications of the Application

1. On receipt of the application, the Secretary shall give notice thereof and transmit copies to the following:

a. the President and the judges of the Court;

b. the respondent State;

c. the Commission, when it is not also the applicant;

d. the original claimant, if known;

e. the victim or his next of kin, if applicable.

2. The Secretary shall inform the other Contracting States and the Secretary General of the filing of the application.

3. When giving the notice, the Secretary shall request that, within a period of two weeks, the respondent States designate their Agent and, if appropriate, the Commission appoint its Delegates, in accordance with Articles 21 and 22 of these Rules. Until the Delegates are duly appointed, the Commission shall be deemed to be properly represented by its President for all purposes in the case. (Emphasis added).

- After the amendment of the Rules of Procedure of the Inter-American Court of 2003[61] the concept "parties to the case" includes the victim or the alleged victim, the State and only procedurally the IACHR. In the referred reform of 2003 an Article which allows the alleged victims to submit pleadings, motions and evidence in an autonomous way was also added.[62] However, as Cecilia Medina Quiroga indicates, the last referred modification did not change in practice the participation of the IACHR in the proceedings.[63]

From the above it follows that greater prominence has been given over time to the participation of the alleged victims or their representatives in the proceedings before the

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[61] Rules of Procedure of the Inter-American Court of Human Rights reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L/V/I.4 rev.9 (2003).

[62] Articles 22 and 23 of the Rules of Procedure of the Inter-American Court of Human Rights of 2003 established that:

> Article 22. Representation of the Commission
>
> The Commission shall be represented by the Delegates it has designated for the purpose. The Delegates may be assisted by any persons of their choice.
>
> Article 23. Participation of the Alleged Victims
>
> When the application has been admitted, the alleged victims, their next of kin or their duly accredited representatives may submit their pleadings, motions and evidence, autonomously, throughout the proceedings.
>
> When there are several alleged victims, next of kin or duly accredited representatives, they shall designate a common intervenor who shall be the only person authorized to present pleadings, motions and evidence during the proceedings, including the public hearings.
>
> In case of disagreement, the Court shall make the appropriate ruling.

[63] Cecilia Medina Quiroga, "Modificación de los Reglamentos de la Corte Interamericana de Derechos Humanos y de la Comisión Interamericana de Derechos Humanos al procedimiento de peticiones individuales ante la Corte," *Anuario de Derechos Humanos* 7 (2011): 118.

Inter-American Court since the Rules of Procedure of the IACHR of 2011[64] and the Rules of Procedure Inter-American of the Court of 2009[65].

At the same time, in relation to the role of the IACHR in the proceedings before the Inter-American Court, several reforms were also introduced as described below:

- The IACHR continues initiating the proceedings but submits a report on the merits instead of an application.
- The role of the IACHR was also limited in other several aspects, particularly regarding the offering of witnesses under the justification that it has to "play the role of organ of the Inter-American system and guaranteeing procedural equality between the parties."[66]
- Other reforms were implemented in order to avoid what was seen as "a dual role before the Court" of the Inter-American Commission ("both as representative of victims and an organ of the system").[67] In this sense, the figure of the Inter-American Defender has been created in order to represent the alleged victims that do not have legal representation.
- The term "parties to the case" is no longer defined in the Rules of Procedure of the Inter-American Court[68] and these Rules also explicitly state that the States can be parties to a case, but regarding the IACHR and the alleged victims this is never explicitly indicated.[69]

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64 The new Rules of Procedure of the Inter-American Commission on Human Rights were approved by the Inter-American Commission at its 137th Regular Period of Sessions, held from October 28 to November 13, 2009, and lately modified on September 2, 2011: http://www.oas.org/en/iachr/mandate/Basics/22.RULES%20OF%20PROCEDURE%20IA%20COMMISSION.pdf

65 The new Rules of Procedure of the Inter-American Court of Human Rights were approved by the Inter-American Court during its LXXXV Regular Period of Sessions, held from November 16 to 28, 2009.

66 Statement of Motives for the Reform of the Rules of Procedure of the Inter-American Court of Human Rights, accessed May 8, 2017, http://www.corteidh.or.cr/sitios/reglamento/nov_2009_motivos_ing.pdf.

67 *Ibid*.

68 Article 2 of the Rules of Procedure of the Inter-American Court.

69 Article 23 of the Rules of Procedure of the Inter-American Court.

The analysis above demonstrates that both protection systems have undergone several reforms since their creation (summarized in Annex I-A) giving rise to a progressive evolution with the aim of protecting human rights of individuals in the respective region. It is an evolution (not involution) because the human rights protection mechanisms are developing to establish a more effective human rights protection system.

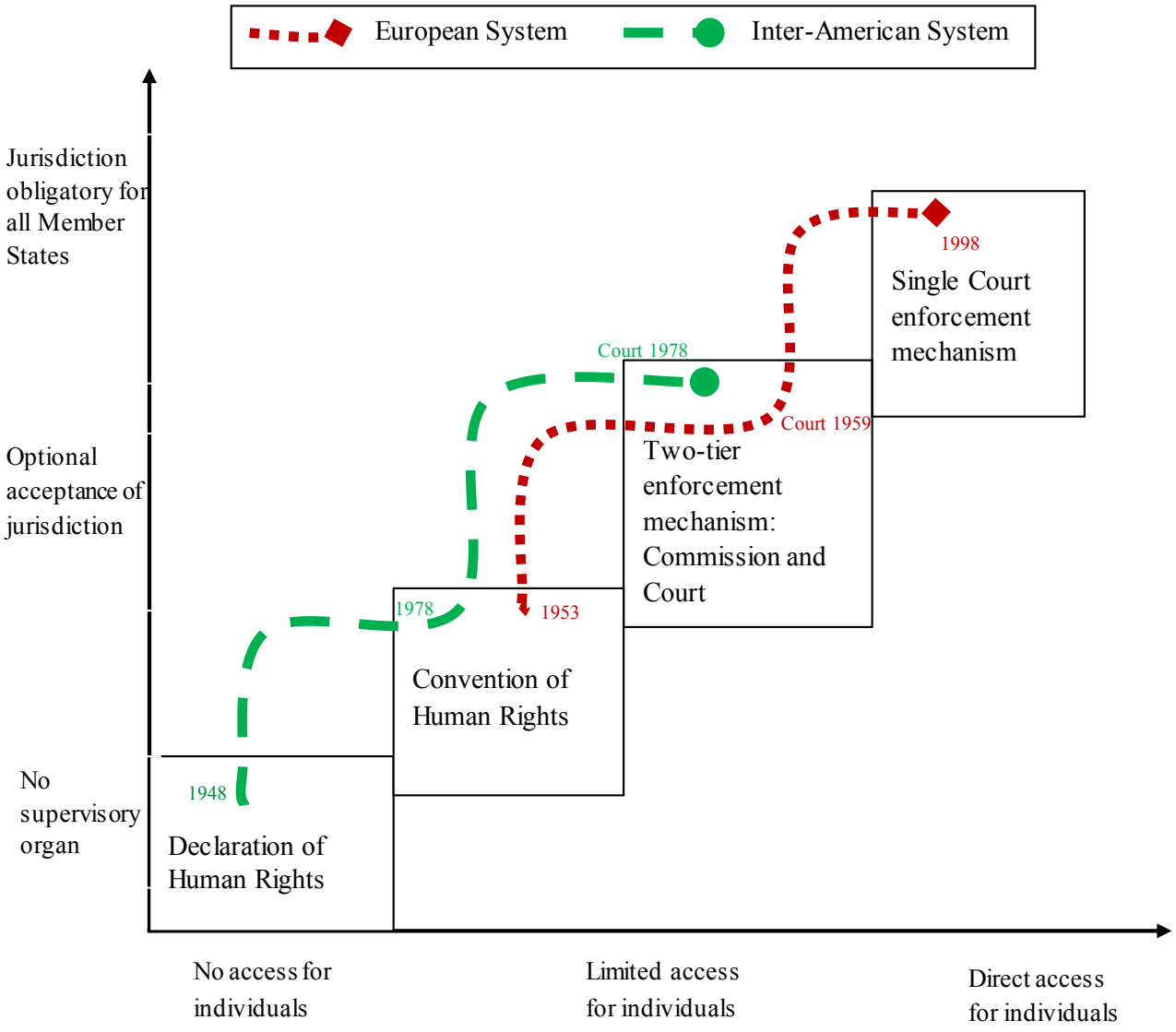
On the one hand, the effectiveness of the systems can be measured by taking into consideration the States' acceptance of a supervisory mechanism where the ultimate expression is a jurisdictional organ. On the other hand, it can be measured in terms of the access by individuals to the protection mechanism, as not only the creation of a supervisory organ is sufficient, but the access of the potential victims to that mechanism is necessary as well. In fact, both systems' evolution shows that these two factors have advanced together over time.

The evolution of the systems is progressive as the development of both systems show stages. The first stage, where the Inter-American system was a pioneer, was the enactment of a human rights declaration (step not taken by European system which started with the next step). The next two stages, which consist in the adoption of a human rights convention and in the establishment of a two-tier supervisory mechanism, were taken by the two systems, the European one first setting a basis that was taken into consideration by the American system. To date the most advanced step towards the regional protection of human rights, which implies jurisdiction over all States Parties to the Convention and direct access to individuals to the Court, has been only taken by the European system and will be analyzed in more detail in the following Chapters.

The last three paragraphs are summarized and graphed in the following figure:

Figure No 1:

Evolution of the human rights protection systems in Europe and America



4.2.2. The caseload of the European and Inter-American Courts

In 1960 A.H. Robertson indicated regarding the European Court that: "…the cases which come before it are likely for the most part to result from individual petitions. It is still quite uncertain whether the Court will have any appreciable volume of business, but this is probably inevitable at the start."[70] The first part of this quote successfully predicted the consequences of the individual petitions.

[70] Arthur Henry Robertson, "The European Court of Human Rights," *Am. J. Comp. L.* 9 (1960): 24.

With regard to the second part of the affirmation of A. H. Robertson, the following happened: Until 1998 (when Protocol No 11 to the ECHR entered into force and almost forty years after the European Court was established) the European Commission and the European Court had rendered a total of 38 389 decisions and judgments. After the single full-time Court replaced the Commission and Court machinery in the European system, in its first five years the "new" European Court was able to render 61 633 decisions and judgments, *i.e.* it doubled the production of the former two-tier mechanism in one eighth of the time.

Despite the aforementioned enhancement in the effectiveness of the system, the reform of the European system of 1998 was not enough to deal with the considerable and continuous rise in the number of individual applications. Therefore, Protocol No 14 was adopted and entered into force in June 2010 (see *supra* 4.2.1.). However, as indicated in the Declaration of the High Level Conference at Izmir of April 27, 2011, while the results of Protocol No 14 to the ECHR are encouraging, it "will not provide a lasting and comprehensive solution to the problems facing the Convention system".[71]

Due to the aforementioned, new proposals of reforms have continued to be explored.[72] In 2013 two additional protocols were opened for signatures, Protocol No 15 to the ECHR and Protocol No 16 to the ECHR. The first Protocol includes a reference to the principle of subsidiarity and the doctrine of the margin of appreciation, and reduces the time for submitting an application after the final national decision (from 6 to 4 months), and the second protocol, which is optional, allows the highest national tribunals to request advisory opinions to the European Court in regards to the interpretation or application of the ECHR.

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71 Declaration of the High Level Conference on the Future of the European Court of Human Rights, IZMIR, Turkey, 26 – 27 April 2011, accessed September 16, 2017, http://www.echr.coe.int/Documents/2011_Izmir_FinalDeclaration_ENG.pdf

72 For instance, in April 2012, under the British chairmanship of the Council of Europe, the United Kingdom proposed greater "subsidiarity", narrowing the criteria for admissibility at the European Court and ensuring that fewer cases are decided by the European Court; as well as a higher "margin of appreciation" for Member States when interpreting the human rights convention according to their national traditions (High Level Conference on the Future of the European Court of Human Rights Brighton Declaration, April 19-20, 2012, accessed May 09, 2017, http://www.echr.coe.int/Documents/2012_Brighton_FinalDeclaration_ENG.pdf

It is noteworthy that the causes of the case overload in the European system were already identified in 1994 by Andrew Drzemczewski and Jens Meyer-Ladewig. They indicated that the sources that lead the European system to a reform were:

> [F]irstly, the increase in the number and complexity of cases that are being brought; secondly, the full participation of an ever-increasing number of Central and Eastern European countries; and thirdly …the movement of the European Community (Union) towards a single market and political union with increased awareness of the legal and political importance of human rights protection as a component part of the European Union´s concerns.[73]

The overload of cases at the European Court remains a matter of high concern in the European system to the present. As stated in the Declaration of the High Level Conference at Interlaken of February 19, 2010, the States Parties to the ECHR note with deep concern that "the deficit between applications introduced and applications disposed continues to grow" and that this situation "causes damage to the effectiveness and credibility of the … [ECHR] and its supervisory mechanism and represents as well a threat to the quality and the consistency of the case law and the authority of the [European] Court."[74]

The evolution of the workload of the European Court since 1999 is represented in the following graph which shows the growth in the case-load of the Court since the establishment of the European system and in the number of judgments produced by it (the judgments however can be regarding more than one case):

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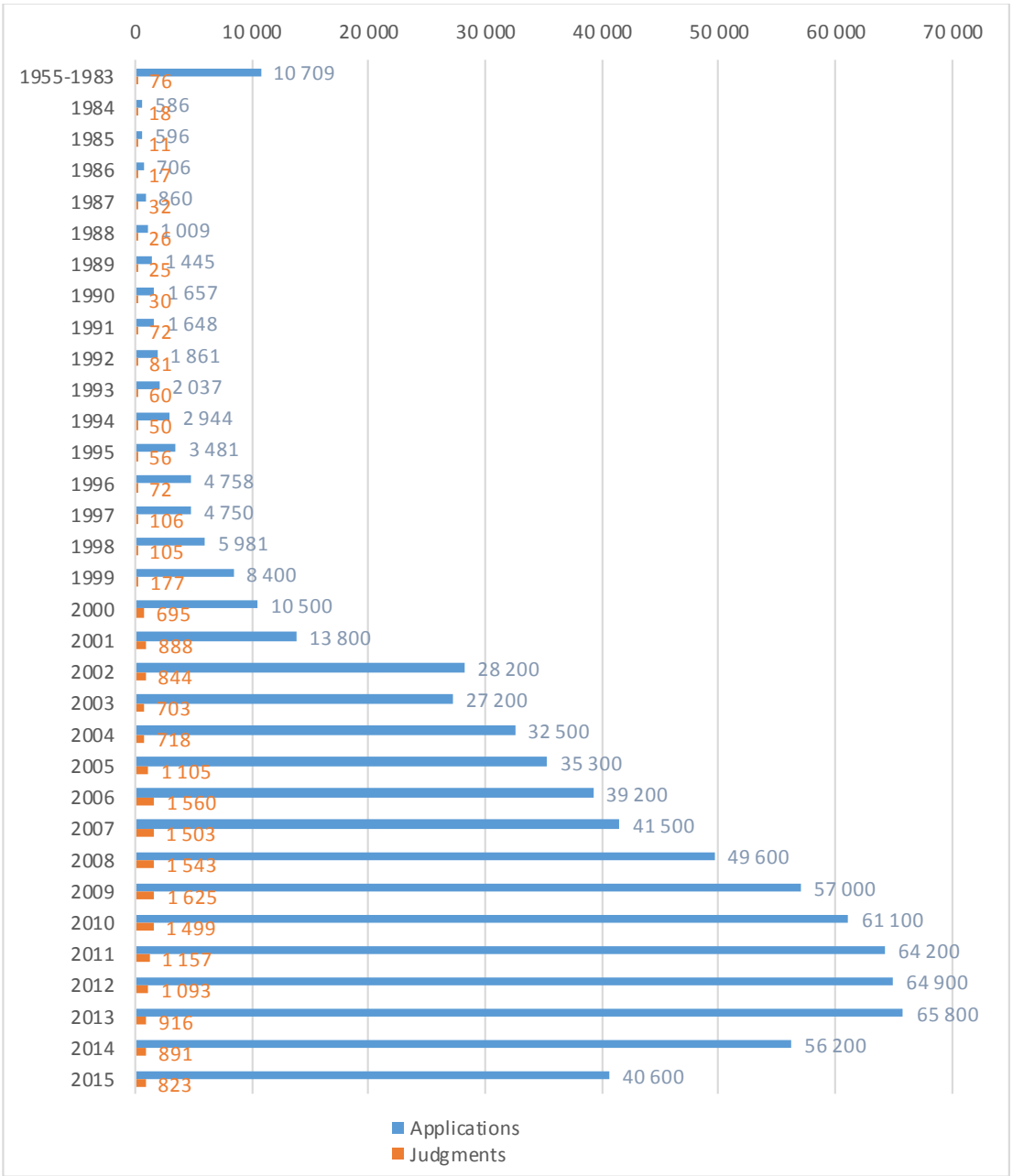
[73] Robert Blackburn and Jörg Polakiewicz, *Fundamental Rights in Europe The European Convention on Human Rights and its Member States 1950-2000,* (New York: Oxford University Press, 2001): 14.

[74] High Level Conference on the Future of the European Court of Human Rights, Interlaken Declaration, 19. February 2010, accessed January 31, 2013, http://www.eda.admin.ch/etc/medialib/downloads/edazen/topics/europa/euroc.Par.0133.File.tmp/final_en.pdf.

Figure No 2:

Comparative table of number of applications and judgments since the establishment of the European Court till 2015[75]



75 Elaborated with information found in European Court of Human Rights Annual Report 2015, accessed February 18, 2017, http://www.echr.coe.int/Documents/Annual_report_2015_ENG.pdf.

Figure No 2 illustrates a continuous rise in the number of individual applications to the European Court, as well as in the production of the Court since the creation of the human rights protection mechanism in the European system. The rise in the number of applications was tremendous, particularly after 1999, but the number of judgments produced had not been enough since the beginning. Despite all the reforms and efforts to improve the European system and the reduction of the backlog after 2013, the number of judgments continues to be insufficient.

Regarding the caseload of the Inter-American Court, Manuel E. Ventura Robles[76] identified by 2005 four different stages[77] in the history of this Court which relate to its caseload:

- First stage (from 1979 till 1986): The first contentious cases entered.
- Second stage (from 1986 till 1993): A few cases and advisory opinions were submitted and also the first provisional measures. The lack of resources prevented the Inter-American Court from continuing publishing its judgments and advisory opinions.
- Third stage (from 1994 to June 2001): The IACHR intensifies the referral of cases to the Inter-American Court.
- Fourth stage (since June 2001): The Rules of Procedure of the Inter-American Court giving *locus standi* to the victims or their representatives throughout the process entered into force. Moreover, the Rules of Procedure of the IACHR were amended, establishing that this organ had to refer to the Inter-American Court all cases in which it considered that the State Party violated its

[76] Manuel E. Ventura Robles, "La Corte Interamericana de Derechos Humanos: La necesidad inmediata de convertirse en un tribunal permanente," *La Corte Interamericana de Derechos Humanos Un Cuarto de Siglo: 1979-2004* (San José: Corte Interamericana de Derechos Humanos, 2005): 274-275.

[77] *Ibid*. Manuel Ventura Robles added that in the years following, once the locus standi was to be given to the victims, the logical consequence was that the fifth stage should start enabling the victims to submit their petitions directly to the Court after exhausting the proceeding before the Inter-American Commission. As analyzed earlier, an important reform in this regard was introduced in the Inter-American System, and therefore a new stage has started in 2009.

obligations under the ACHR, before that the IACHR decided which cases to refer and which not.[78]

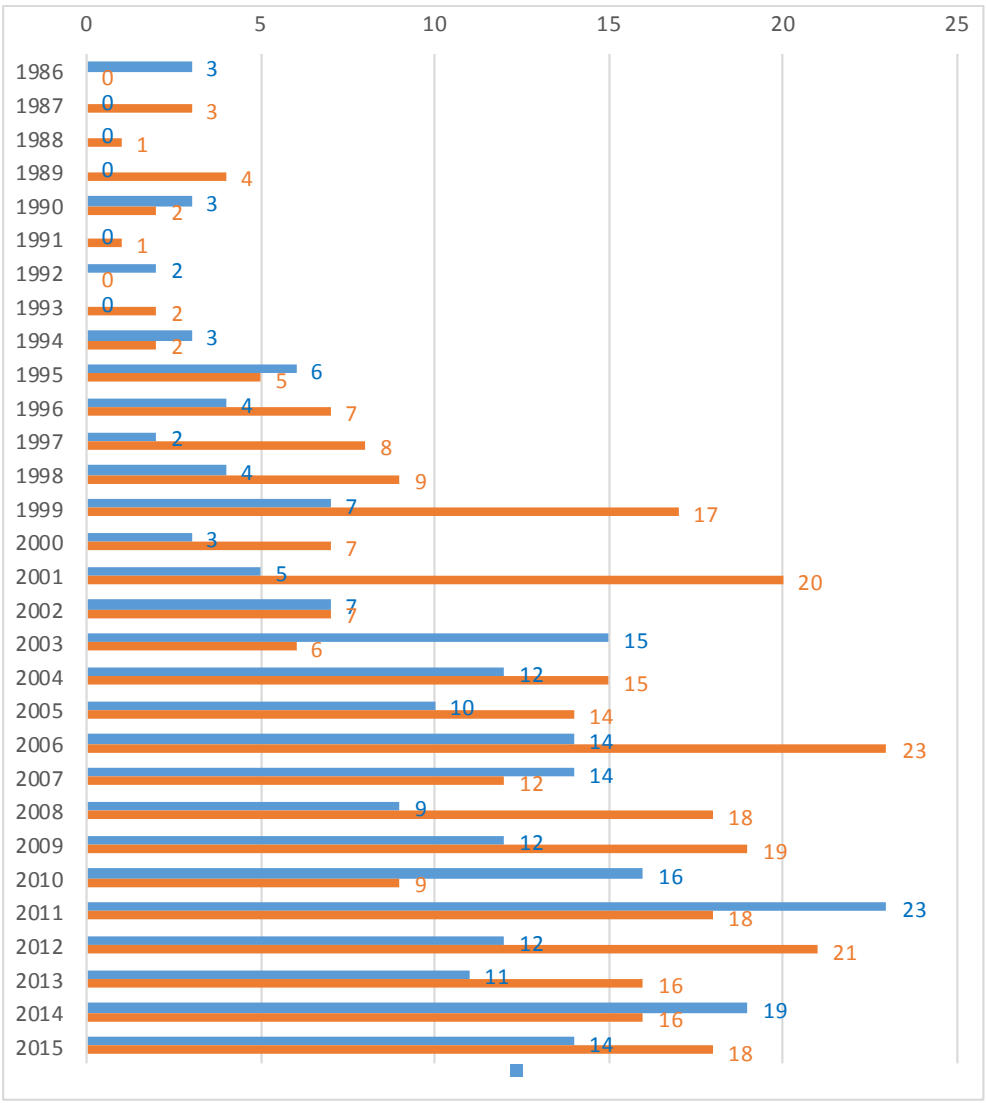
From 2001 onwards there was an increase in the number of applications submitted by the IACHR to the Inter-American Court. The year that the IACHR submitted more cases to the Inter-American Court was on 2011 when it submitted 23 applications. Nevertheless, despite this increase in the referral of cases, as shown in the following graph, it stands out that the Inter-American Court has a much lower caseload than the European Court:

[78] Article 44 of the Rules of Procedure of the Inter-American Commission on Human Rights of 2001 provided that:

> Referral of the Case to the Court
>
> 1. If the State in question has accepted the jurisdiction of the Inter- American Court in accordance with Article 62 of the American Convention, and the Commission considers that the State has not complied with the recommendations of the report approved in accordance with Article 50 of the American Convention, it shall refer the case to the Court, unless there is a reasoned decision by an absolute majority of the members of the Commission to the contrary.

Figure No 3:

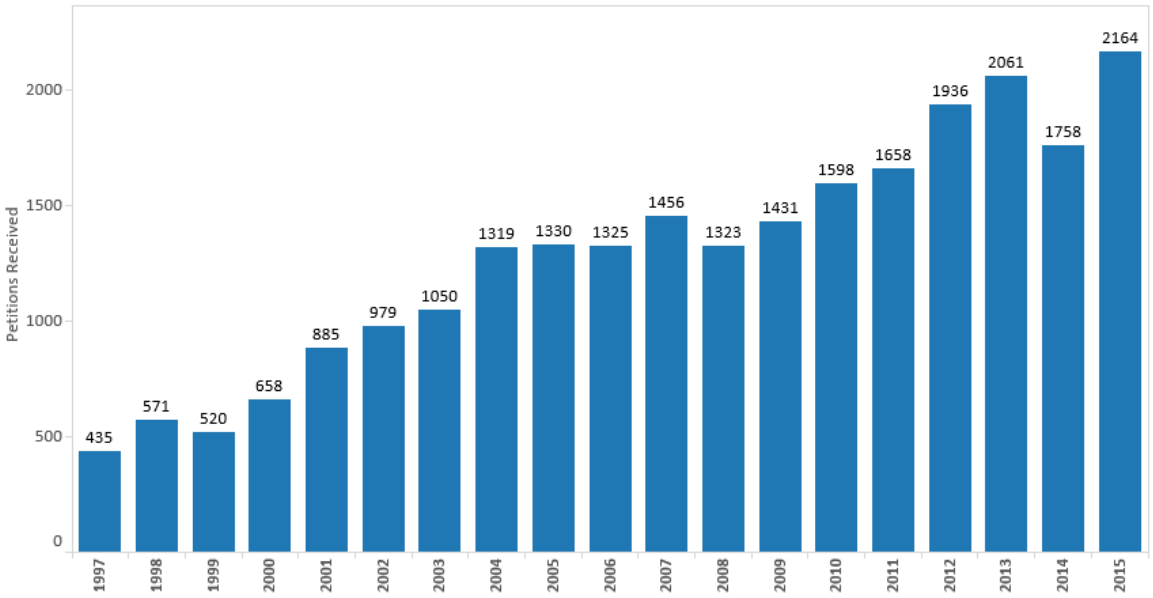
Comparative table of number of applications and judgments since the establishment of the Inter-American Court till 2015



Due to the fact that the Inter-American system continues to consist of a commission and a court continues in force, it is also important to review the number of complaints received by the IACHR. The next graph elaborated by IACHR provides this information from 1997 till 2015:

Figure No 4:

Number of petitions submitted to the IACHR till 2015



Source: *Statistics of the Inter-American Commission on Human Rights*[79]

Comparing the number of complaints received by the IACHR with the number of applications in the European system (Figure No 2 and Figure No 4), the current amount of petitions received by the IACHR is similar to the one that the European system received the beginning of the nineties and is substantially lower than the current caseload in the European system. For instance, the new applications of the European system in 2015 (40 600) were far above the complaints received by the IACHR (2 164) and of the cases referred to the Inter-American Court (14).

Regarding the number of judgments, the difference between the two systems is also overwhelming. By December 2015 the Inter-American Court had produced 300 Judgments since it was established, while by that time the new European Court had produced about 18 577 judgments. Furthermore, regarding the Inter-American Court,

[79] Statistics of the Inter-American Commission on Human Rights, accessed February 18, 2017, http://www.oas.org/en/iachr/multimedia/statistics/statistics.html.

these judgments often involve the same case because in several cases the Inter-American Court decides on one judgment on the preliminary objections and in another judgment on the merits or sometimes decides on both in the same judgment but produces another judgment for reparations and costs or interprets its judgments (as can be seen in Annex I-B).

CHAPTER II: JURISDICTION OF THE EUROPEAN AND THE INTER-AMERICAN COURTS

> *"The Court must emphasize, however, that modern human rights treaties in general, and the American Convention in particular, are not multilateral treaties of the traditional type concluded to accomplish the reciprocal exchange of rights for the mutual benefit of the contracting States. Their object and purpose is the protection of the basic rights of individual human beings irrespective of their nationality, both against the State of their nationality and all other contracting States. In concluding these human rights treaties, the States can be deemed to submit themselves to a legal order within which they, for the common good, assume various obligations, not in relation to other States, but towards all individuals within their jurisdiction."*(Inter-American Court of Human Rights, Advisory Opinion OC-2/82, September 24, 1982, § 29)

The present chapter compares in its first part the scope of both Courts' contentious jurisdiction to determine which factors contribute to provide a broader spectrum of protection taking into account procedural factors. In this chapter are compared first the contentious jurisdiction (*ratione personae, ratione materiae, ratione loci* and *ratione temporis*). The jurisdiction *ratione personae* is reviewed in its passive dimension while the *locus standi* to bring a case before the Court is analyzed in chapter III.[80] In the second part of this chapter the proposal to restrict the jurisdiction of these Courts and conceive them as "constitutional" courts is analyzed.

It is to be noted that in regards to the jurisdiction of the two Courts, while the contentious jurisdiction of the European Court is broader than the contentious

[80] This chapter is complemented by Annex II-A, which includes the signs and ratifications of the ACHR and acceptance of the binding jurisdiction of the Inter-American Court (document not necessary in regards to the European system where all Member States of the Council of Europe have ratified the ECHR and the jurisdiction of the European Court is binging for all States Parties to the ECHR); by Annex II-B which lists the Protocols and conventions that are under the jurisdiction of each Court, including references to the countries that ratified such instruments; and by Annex II-C which proves that the cases brought before the Inter-American Court took to date took always place within the territorial boundaries of the concerned country.

jurisdiction of the Inter-American Court, the contrary happens regarding the advisory jurisdiction where the Inter-American Court has a much broader scope of jurisdiction. As the advisory jurisdiction of both Courts fall outside of the scope of the present research but the comparison between the two systems in this regard demonstrates how one Court can serve as an example for the other one and, in addition, the advisory jurisdiction of the Inter-American Court has a fundamental role in the Inter-American system, this topic is described in Annex II-D.

1. CONTENTIOUS JURISDICTION

First of all, it has to be highlighted that one of the current main differences between the two systems is that in the European system the jurisdiction of the court is compulsory for all States Parties to the ECHR while in the Inter-American system it is only binding for certain States Parties to the ACHR (as listed in Annex II-A).

The optional nature given to the acceptance of the jurisdiction of the Court and even of the competence of the Commission was originally created in the European system. A. H. Robertson argues that the principle of optional jurisdiction was established in the European system because the proposal to create a Court with compulsory jurisdiction lacked the support of the majority and therefore was not included in the draft of the ECHR.[81] This model was later followed by the Inter-American system but only in regards to the Court, not in regards to the Commission.[82]

As mentioned in Chapter I, since the entry into force of Protocol No 11 to the ECHR in 1998 the European Court's jurisdiction is compulsory for all States Parties to the ECHR.[83] The current compulsory jurisdiction in the European system concerns the

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81 Arthur Henry Robertson. "The European Court of Human Rights," *Am. J. Comp. L.* 9 (1960): 1-28.

82 Developed in more detail in Chapter III.

83 Protocol No 11 to the ECHR removed Article 46 of the original version of the ECHR. Article 46 of the original ECHR contained the following provision:

> Any of the High Contracting Parties may at any time declare that it recognizes as compulsory 'ipso facto' and without special agreement the jurisdiction of the Court in all matters concerning the interpretation and application of the present Convention.

interpretation and application of the ECHR regarding individual applications.[84] For its part, in the Inter-American system the original text that provides that the jurisdiction of the Inter-American Court is optional was never amended and is still in force.[85]

1.1.JURISDICTION *RATIONE PERSONAE* (passive dimension)

In the European system, as Thomas Buergenthal, Dinah Shelton and David P. Stewart indicate "[a]lthough the Statute of the Council of Europe does not require the members to ratify the Convention, all Council members had ratified the Convention by the time the Cold War was over and the Council decided that new applicant States would be required to ratify the Convention as a condition of membership."[86]

Mark E. Villiger[87] distinguished two phases of growing membership in the European system: the first phase between 1950 and 1985, and the second phase from 1989 forward. In the first phase all 25 western European countries ratified the ECHR and in the second phase a further 16 eastern European countries became parties to the ECHR. The number of ratifications of the ECHR continued to increase and, as a result, all 47 State Members of the Council of Europe have ratified the ECHR, all of which are under the jurisdiction of the European Court.

In contrast, the Inter-American Court has jurisdiction over 20 of the 25 States that ratified or acceded the ACHR (see Annex II-A and Annex II-B).[88] While the European

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> 1. The declarations referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain other High Contracting Parties or for a specified period.
>
> These declarations shall be deposited with the Secretary- General of the Council of Europe who shall transmit copies thereof to the High Contracting Parties.

84 Article 32 of the ECHR.

85 Article 62 of the ACHR has a similar text to the former Article 46 of the ECHR.

86 Thomas Buergenthal, Dinah L. Shelton, and David P. Stewart, *International Human Rights in a Nutshell*, 4th ed., (Saint Paul: West Publishing, 2009): 29.

87 Mark E. Villiger, "The European Court of Human Rights." In *Proceedings of the Annual Meeting (American Society of International Law)*, The American Society of International Law (2001): 79.

88 The countries that ratified or acceded to the ACHR but have not ratified the competence of the Inter-American Court are: Dominica, Grenada, and Jamaica. Additionally, two countries recognized the binding jurisdiction of the Inter-American Court but later denounced the ACHR as analyzed in this Chapter (see also Annex I-A).

Court has advanced from being an optional control mechanism to become a mandatory control mechanism for all States Parties to the ECHR, in the case of the Inter-American Court the amount of countries that recognized its jurisdiction did not increase but decreased over time.

The original text of the ECHR stated that the States Parties had the option to recognize the jurisdiction of the European Court as compulsory *ipso facto* at any time and without special agreement, unconditionally or on condition of reciprocity on the part of several or certain other State Parties to the ECHR, or for a specified period.[89] This optional character was removed by Protocol No 11 to the ECHR and according to the current text all State Parties to the ECHR are under the jurisdiction of the European Court.[90]

The ACHR, for its part, has a formula similar to the original text of the ECHR.[91] In the Inter-American system the States Parties to the ACHR may or may not recognize the jurisdiction of the Inter-American Court as binding *ipso facto* at any time, unconditionally or on the condition of reciprocity, for a specific period or even for specific cases (for this last see *infra* 1.2.). As a consequence of this, some States Parties to the ACHR are not under the jurisdiction of the Inter-American Court because they did not ratify it.[92]

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[89] The original text of Article 46 of the ECHR provided that:

> 1. Any of the High Contracting Parties may at any time declare that it recognizes as compulsory 'ipso facto' and without special agreement the jurisdiction of the Court in all matters concerning the interpretation and application of the present Convention.
>
> 2. The declarations referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain other High Contracting Parties or for a specified period.
>
> 3. These declarations shall be deposited with the Secretary- General of the Council of Europe who shall transmit copies thereof to the High Contracting Parties.

[90] Article 46.1 of the ECHR.

[91] Article 62 of the ACHR and original text of Article 46 of the ECHR.

[92] See Annex II-A.

The IACHR can recommend a State Party to the ACHR which did not recognize as binding the jurisdiction of the Inter-American Court to accept the jurisdiction of this Court with regard to a particular case.[93] For instance, the IACHR did so on September 23, 1987 in its Resolution N° 25/87, Case 9726;[94] on February 13, 1991 in its Report N° 01/99, Case 9999;[95] and on March 10, 1993 in its Report N°2/93, Case Genie-Lacayo, recommending the Governments of Panama, El Salvador and Nicaragua, respectively, to accept the jurisdiction of the Inter-American Court with regard to the correspondent cases. In the first two cases, the jurisdiction of the Inter-American Court was not accepted by the States Parties concerned, but in the Case Genie-Lacayo the Government of Nicaragua followed the recommendation of the IACHR and accepted the jurisdiction of the Inter-American Court.[96]

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93 Article 41.b of the ACHR and Article 18.b of the Statute of the IACHR.

94 In the case 9726 the IACHR found that the Government of Panama violated Articles 4 (the right to life), 5 (the right to a personal integrity), 7 (right to personal freedom), 8 (legal guarantees) and 25 (the right to legal protection) of the ACHR, being responsible for the death of Dr. Hugo Spadafora Franco in September 1985 and the failure to conduct an impartial, exhaustive legal investigation on this regard. It recommended that the Government of Panama accept the jurisdiction of the Inter-American Court of Human-Rights with respect to this case. From that time to the present, the Government of Panama still has not followed the referred recommendation of the IACHR, but on May 9, 1990 recognized as binding the jurisdiction of the Inter-American Court.

95 In this case the IACHR declared that the Government of El Salvador was responsible for the violation of the right to personal freedom, to personal integrity and to life of Manuel Antonio Alfaro Carmona, who was detained by agents of the Government in November 1986 and later disappeared, in violation of Articles 4 and 7 of the ACHR. The IACHR invited the Government of El Salvador to accept the jurisdiction of the Inter-American Court in this specific case, because at that time El Salvador did not recognize as binding the jurisdiction of the Inter-American Court (El Salvador recognized the jurisdiction of the Inter-American Court later on June 6, 1995) but to date this recommendation has not been followed either.

96 Jean Paul Genie Lacayo was murdered on October 28, 1990 and Nicaragua accepted the binding character of the jurisdiction of the Inter-American Court later on February 12, 1991. Nicaragua in its declaration recognizing the jurisdiction of the Inter-American Court declared that "… this recognition of competence applies only to cases arising 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" (American Convention on Human Rights "Pact Of San Jose, Costa Rica" (B-32), accessed January 31, 2013, http://www.oas.org/juridico/English/sigs/b-32.html). Despite this fact, for this specific case the Government of Nicaragua accepted the jurisdiction of the Inter-American Court on March 21, 1994.

In contrast to Europe, in the Inter-American system the jurisdiction of the Court not only continues to be optional but two States which used to be under its jurisdiction have withdrawn their ratifications of the ACHR: Trinidad and Tobago denounced the ACHR on May 26, 1998; and Venezuela on September 10, 2012.[97] In both cases, the Countries indicated that their intention is to protect human rights and that, for this reason, they had to denounce the ACHR due to the fact they disagreed, in the case of Trinidad and Tobago, with the practices of the IACHR and, in the case of Venezuela, with the practices of the IACHR and the Inter-American Court.[98]

In addition, there was an unsuccessful attempt in 1999 to withdraw from the jurisdiction of the Inter-American Court without denouncing the ACHR. In this case Peru attempted to denounce the jurisdiction of the Inter-American Court without denouncing the ACHR, a declaration that was declared invalid by the Inter-American Court which indicated the following:

> There is no provision in the Convention that expressly permits the States Parties to withdraw their declaration of recognition of the Court's binding jurisdiction. Nor does the instrument in which Peru recognizes the Court's jurisdiction, dated January 21, 1981, allow for that possibility.[99]

In 2001 under a new government, Peru withdrew the statement made. In addition, it is noted that three other States Parties to the ACHR (Colombia, Ecuador and El Salvador), when declaring their recognition of the binding jurisdiction of the Inter-American Court, reserved their right to withdraw their recognitions of the Court competence.

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97 Pursuant to article 78 of the ACHR, the denunciations entered into effect a year after the notice was given to the Secretary General of the OAS and do not release the State Party from its obligations under the ACHR in respect to the acts committed prior to the date on which the denounce has effect.

98 Trinidad and Tobago indicated that it "is unable to allow the inability of the Commission to deal with applications in respect of capital cases expeditiously to frustrate the implementation of the lawful penalty". For its part, Venezuela indicated that both the IACHR and the Inter-American Court violated stipulations contained in the ACHR. American Convention on Human Rights "Pact of San Jose, Costa Rica" (B-32), accessed April 1, 2017, http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights_sign.htm.

99 Case *Constitutional Court v. Peru* §38.

In 2014 another State Party to the ACHR, the Dominican Republic, which declared its recognition of the binding jurisdiction of the Inter-American Court in 1999, raised concerns regarding a potential withdrawal from the jurisdiction of this Court (which as analyzed above would require it to denounce the ACHR). This concern was raised based on its Constitutional Tribunal's judgment TC/0256/14 issued in November 2014, which declared unconstitutional the instrument that accepted the jurisdiction of the Inter-American Court.[100] Up to the present time, the Dominican Republic has not denounced the ACHR nor declared its withdrawal from the jurisdiction of the Inter-American Court. However, as Dinah Shelton and Alexandra Huneuus note, "[t]he Dominican Republic now finds itself bound under international law to obey a court whose jurisdiction the Constitutional Tribunal has held unconstitutional. There is no easy way forward"[101].

1.2.JURISDICTION RATIONE MATERIAE

The European Court has jurisdiction in all matters concerning the interpretation and application of the ECHR and Protocols thereto, regarding Inter-State cases as well as individual applications.[102] For its part, the Inter-American Court also has jurisdiction in all cases[103] concerning the interpretation and application of the provisions of the ACHR;

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[100] Alfonso Calcaneo Sanchez when researching this case, finalized his analysis indicating the following indicates:

> I consider that once we get to know the outcome of the ongoing Dominican situation, a deeper legal and political study on the necessary changes to strengthen the Inter-American system will indubitably constitute a very useful research for the protection of human rights in the region.

(Alfonso Calcaneo Sanchez, "The Dominican withdrawal from the jurisdiction of the Inter-American Court of Human Rights: A legal and a contextual analysis" (Master's thesis, University of Oslo, 2015), 59.)

[101] Dinah Shelton and Alexandra Huneeus, "Inter-American Court of Human Rights-American Convention on Human Rights-Vienna Convention on the Law of Treaties-Jurisdiction-Estoppel-Internal Law as Justification for Failure to Perform Treaty Obligation," *The American Journal of International Law* 109, no. 4 (10, 2015): 871.

[102] Article 32 of the ECHR.

[103] On one hand, the ECHR refers to "matters" unlike the ACHR which refers to "cases", but this difference of terminology has not had any repercussion in the practice to date.

however, its jurisdiction has to be expressly recognized by the State Party as binding and can also be limited.[104]

Regarding the limitation of the jurisdiction, State Parties to the ACHR may limit the jurisdiction of the Inter-American Court[105] while this is not possible in the European System since Protocol No 11 to the ECHR entered into force. The original text of the ECHR stipulated that the States Parties could condition the acceptance of jurisdiction of the European Court and the possible conditions were two: 1. reciprocity on the part of several or certain other State Parties to the ECHR, and 2. for a specific period.[106] The ACHR stipulates one more possible condition which was never included in the text of the ECHR which is "for specific cases".

Reviewing the declarations that recognize the binding character of the jurisdiction of the Inter-American Court, it stands out that Bolivia, Brazil, Colombia, El Salvador, Nicaragua, Paraguay and Uruguay recognized as binding the jurisdiction of the Inter-American Court on the condition of reciprocity. The condition of reciprocity is no longer established in the ECHR and is not necessary in this system because, as was already mentioned, all States Parties of the ECHR are under the jurisdiction of the European Court.

Conditions for "specific cases" have been provided by some State Parties to the ACHR. Argentina and Chile restricted the jurisdiction of the Inter-American Court regarding Article 21 of the ACHR, which refers to the right to property. Argentina indicated that an international tribunal shall not review questions relating to the Argentinean government's economic policy or matters determined as 'public utility', 'social interest' or 'fair compensation' by and Argentinean national court.[107] Chile stated that the Inter-American Court and the IACHR "may not make statements concerning the reasons of public utility or social interest taken into account in depriving a person of his

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104 Article 62.1 of the ACHR.

105 Article 62.2 of the ACHR.

106 On merit of the Protocol No 11 to the ECHR the original text of the article 46 of the ECHR was amended. Its formula was similar to the text of Article 62 of the ACHR which allows States Parties to limit the recognition of jurisdiction of the Court.

107 American Convention on Human Rights "Pact of San Jose, Costa Rica" (B-32), accessed January 31, 2013, http://www.oas.org/juridico/English/sigs/b-32.html.

property."[108] Mexico for its part excludes the cases derived from the application of Article 33 of the Political Constitution of the United States of Mexico which rules the privileges and immunities of the foreigners. This Article prohibits foreigners from participating in the country´s political affairs and gives to the Executive Branch of the Federal Government the power to expel foreigners immediately and without trial from the national territory if their presence is considered to be inconvenient.[109]

As indicated by Judge Alejandro Montiel in paragraph 6 of its dissenting opinion regarding the Preliminary Objections in the case *Serrano-Cruz Sisters v. El Salvador*, the reservations and restrictions to the ratifications and declarations of recognition weaken considerably the Inter-American system of protection of human rights.[110] The exclusion of the jurisdiction made by Mexico is a clear example, since it deprives foreigners of the right to a fair trial and leaves to the discretion of the executive their expulsion from the country.[111]

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[108] *Ibid*.

[109] The condition "for a specific period" will be reviewed in the part of the Jurisdiction *ratione temporis*.

[110] In the case *Serrano-Cruz Sisters v. El Salvador*, in his dissenting opinion Judge Alejandro Montiel Argüello indicated:

> 6) I am in complete agreement with those who would like all the 35 member countries of the Organization of American States to ratify the American Convention on Human Rights, since only 24 of them have done so, and all those who ratify it to recognize the jurisdiction of the Inter-American Court of Human Rights, because currently only 21 countries do so. Moreover, the ratifications and the declarations of recognition contain numerous reservations and restrictions, all of which weaken considerably the American system for the protection of human rights. The system of the European Court of Human Rights is much more complete, following Protocol II and the Statute of the International Criminal Court. (Emphasis added)

(I/A Court H.R., Case of the *Serrano-Cruz Sisters v. El Salvador*, Preliminary Objections, Judgment of November 23, 2004, Series C No. 118, accessed January 31, 2013, http://www.corteidh.or.cr/docs/casos/articulos/seriec_118_ing.pdf).

[111] This position contradicts not only what is stated in Article 22.6 of the ACHR but also in 14 of the ICCPR. Even more, this position is incompatible with Article 36 of the Vienna Convention on Consular Relations, an article which Mexico enforced against the United States of America before the International Court of Justice in the case *Avena and other Mexican nationals*.

Regarding the jurisdiction *ratione materiae*, it has to be highlighted that the ECHR makes reference to its Protocols while the ACHR does not. As can be seen in Annex II-B, the Protocols have played a much more important role in the ECHR than in the ACHR. The ECHR has 16 protocols to date, some of which are obligatory for all its State Parties; while the ACHR has only additional Protocols with optional for the State Parties to the ACHR.[112] Nevertheless, the Inter-American Court has also jurisdiction regarding the Inter-American Convention on Forced Disappearance of Persons,[113] the Inter-American Convention to Prevent and Punish Torture[114] and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights[115] also known as the Protocol of San Salvador.

1.3.JURISDICTION RATIONE LOCI

The ECHR and the ACHR, have different formulas when ruling the obligation of the States Parties to respect the rights recognized in the respective Convention.[116] The ECHR indicates that its State Parties are obligated to respect human rights in regards to "everyone within their jurisdiction" and the ACHR makes reference to "all persons subject to their jurisdiction".

The ECHR additionally establishes the possibility to extend the application of the ECHR to the territories of other States for whose international relations a State Party to the ECHR is responsible.[117] For example, the United Kingdom recognized on September

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[112] For instance, the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador" was ratified or adhered to by 16 countries, and the Protocol to the American Convention on Human Rights to Abolish the Death Penalty was ratified or adhered by 13 countries.

[113] Jurisdiction conferred through the Resolution adopted at Belem do Pará, Brazil, in the 24th Regular Session of the General Assembly on June 9, 1994.

[114] Jurisdiction stated in the Article 8 *in fine* of the Inter-American Convention to Prevent and Punish Torture.

[115] Jurisdiction stated in Article 19.6 of the Protocol of San Salvador which establishes the jurisdiction of the Inter-American Court in regards to individual petitions related to the rights established in Article 8.a) (right of workers to organize trade unions) and in Article 13 (Right to Education) of that Protocol.

[116] Article 1.1 of the ACHR and Article 1 of the ECHR.

[117] Article 56 of the ECHR.

12, 1967 the compulsory jurisdiction of the European Court in respect of certain territories for whose international relations it is responsible. In the ACHR, there is no provision in this regard and such a provision in the Inter-American system would be just on the hypothetical basis that the case may arise in the future, since at the present none of the current State Parties to the ACHR is responsible for dealing with the international relations of another country.

In the European System several cases submitted to the Court involved extraterritorial facts.[118] As a result of this, the term "jurisdiction" in Article 1 of the ECHR has been analyzed several times in its case law.[119] It has been established that under certain circumstances the jurisdiction of the European Court is not restricted to the national territory of the respondent State.[120] The following parameters with regard to the competence *ratione loci* have been established by the European Court:

In the European System, regarding the dependent territories, it has to be taken into consideration that the Contracting State must make a declaration extending the application of the ECHR to the territory for whose international relations is responsible (Article 56 ECHR). This also applies by extension to the Protocols of the ECHR as stated in the case *Quark Fishing Limited v. United Kingdom.* The declarations automatically lapses in case that the dependent territory becomes independent (*Church of X v. United Kingdom*, Commission decision) and when the dependent territory becomes part to the metropolitan Contracting States the ambit of application of the ECHR is automatically extended (*Hinftaq 53 and Others v. Denmark*).

[118] For instance, in the case *Loizidou v. Turkey*, Turkey had control in the northern part of Cyprus (and consequently jurisdiction as determined by the Court) and, in general, as said by the European Court of Human Rights in *Banković and Others v. Belgium and 16 Other Contracting States,* "62. … there have been a number of military missions involving Contracting States acting extra-territorially since their ratification of the Convention (*inter alia*, in the Gulf, in Bosnia and Herzegovina and in the FRY)…"

[119] For instance in the cases *Ilaşcu and Others v. Moldova and Russia*, *Banković and Others v. Belgium and 16 Other Contracting States*, *Assanidzé v. Georgia*, *Soering v. the United Kingdom*, *Cruz Varas and Others v. Sweden*, *Vilvarajah and Others v. the United Kingdom*, *Loizidou v. Turkey*, *Issa and Others v. Turkey*, *Behrami and Behrami v. France and Saramati v. France, Germany and Norway*, *Drodz and Janousek v. France and Spain*, *Hess v. the United Kingdom.*

[120] It is to be highlighted in this regard what Cedric Ryngaert indicates:

> The ECHR founding States' reference to the concept of 'within their jurisdiction' rather than 'within their territory' implied that ECHR Contracting States could be obliged to secure ECHR-based rights also outside their territory, but the exact parameters of the extraterritorial reach of the ECHR remained unclear. Unfortunately, they remain unclear even after the Al-Skeini decision … [F]or those who brandish human rights, it is difficult to accept that States may do abroad what they are not allowed to do inside their borders.

- Firstly, the words "within their jurisdiction" mean that the jurisdictional competence of a State is primarily territorial (*Banković and Others v. Belgium and 16 Other Contracting States,* §61, *Soering v. The United Kingdom, §86*, *Chiragov and Others v. Armenia* §167*).*
- Secondly, this presumption may be limited in exceptional circumstances. For instance, when a Contracting State is prevented from exercising its authority in part of its territory as a result of military occupation by the armed forces of another State which effectively controls the territory concerned, acts of war or rebellion, or the acts of a foreign State supporting the installation of a separatist State within the territory of the State concerned (*Ilaşcu and Others v. Moldova and Russia,* §312).
- Thirdly, the concept of "jurisdiction" under Article 1 of the ECHR is not restricted to the national territory of the State Parties to the ECHR. Acts performed, or which produce effects outside their territory, may fall within their jurisdiction under the meaning of the referred article in the next cases:
    a) In case of effective control of an area situated outside its national territory. For example, as a consequence of a military action (lawful or unlawful), the State Party to the ECHR has the obligation to secure the ECHR rights and freedoms in the referred area through its armed forces or through a subordinate local administration (*Loizidou v. Turkey*, § 62). This includes the situation when the State Party to the ECHR exercises some of the public powers that normally would be exercised by a sovereign government (*Al-Skeini v. The United Kingdom* § 149).
    b) With regard to persons who are in the territory of another State but are found to be under the State Party to the ECHR authority and control through its agents operating (lawfully or unlawfully) in the other State (European

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(Cedric Ryngaert, "Clarifying the Extraterritorial Application of the European Convention on Human Rights," *MERKOURIOUS Utrecht Journal of International and European Law* 28 (2012): 58).

Commission decisions in *mutatis mutandis*, *W. M. v. Denmark* and *Illich Sanchez Ramirez v. France).*

c) State Parties to the ECHR are also responsible if their acts have sufficiently proximate repercussions on rights guaranteed by the ECHR, even if those repercussions occur outside its jurisdiction. For example, States Parties to the ECHR are responsible if they decide to expel an individual from its territory when substantial grounds had been shown for believing that the person concerned faces a real risk of being subject to torture or to inhumane or degrading treatment or punishment in the receiving country; this is because the action of the State Party to the ECHR has as a direct consequence the exposure of an individual to proscribed ill-treatment (*Soering v. The United Kingdom,* §85).

d) The European Court has also established "that other recognized instances of the extra-territorial exercise of jurisdiction by a State include cases involving the activities of its diplomatic or consular agents abroad and on board craft and vessels registered in, or flying the flag of that State. In these specific situations, customary international law and treaty provisions have recognized the extra-territorial exercise of jurisdiction by the relevant State" (*Banković and Others v. Belgium and 16 Other Contracting States,* §73).

- Finally, the European Court has stated that "the Convention is a multi-lateral treaty operating, subject to Article 56 of the Convention, in an essentially regional context and notably in the legal space (*espace juridique*) of the Contracting States... The Convention was not designed to be applied throughout the world, even in respect of the conduct of Contracting States." (*Banković and Others v. Belgium and 16 Other Contracting States,* §80).

Unlike the European System, in the cases submitted to the Inter-American Court the facts took place always within the territorial boundaries of the States Parties as shown in Annex II-C. After exhaustive revision of the cases before the Inter-American Court published as of December 2016 (218 cases), none of them was about extraterritorial acts (see Annex II-C). Only in the cases of *Goiburú et al. v. Paraguay* and *Gelman v. Uruguay* did the facts take place in two countries. In the first mentioned case, the facts took place in Paraguay and in Argentina, and in the second case in Uruguay and in

Argentina.[121] However, in both cases the facts were part of the "Operation Condor", in which the governments of the aforementioned countries had coordinated actions.[122]

To conclude the comparative analysis of the jurisdiction *ratione loci* of both courts, it is important to mention that the ACHR includes a federal clause which has no equivalent in the ECHR.[123] In this regard the European Court has indicated that "[u]nlike the American Convention on Human Rights, the European Convention does not contain a "federal clause" limiting the obligations of the federal State for events occurring on the territory of the states forming part of the federation" (*Assanidze v. Georgia*, §141). As noted by David Harris[124], this article is of limited significance, and included upon request of the United States to exclude matters of state's law outside its federal constitution.

1.4.JURISDICTION RATIONE TEMPORIS

As reviewed in Chapter I, the ECHR entered into force on September 3, 1953 and the ACHR entered into force almost 25 years later, on July 18, 1978. To enter into force, the ECHR required the deposit of ten instruments of ratification, while the ACHR required eleven instruments of ratification or adherence.[125] Subsequent ratifications

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[121] Agustín Goiburú Giménez was arbitrarily detained in Argentina by agents of the Paraguayan State or by persons acting with their acquiescence and then taken to the Police Investigations Department in Asunción, where he was kept incommunicado and tortured, and subsequently disappeared.

[122] With regard to the cases *Goiburú et al. v. Paraguay* and *Gelman v. Uruguay*, it is important to mention that the detention took place in February 1977 and 1976, respectively, before the Inter-American Court was established. The Inter-American Court had jurisdiction because of the forced disappearance, which constitutes a continuing act and had effects after the date of the acceptance of jurisdiction. In the second case the Inter-American Court also recognized that the abduction and suppression of identity of María Macarena Gelman García Iruretagoyena, which was a consequence of the detention and subsequent transfer of her pregnant mother to another State, can be qualified as a particular form of enforced disappearance of persons.

[123] Article 28 of the ACHR.

[124] David Harris, "Regional protection of human rights: the Inter-American achievement," in *The Inter-American system of human rights*, ed. David Harris and Stephen Livingstone (Oxford: Clarendon Press, 1998): 18.

[125] Article 74.2 of the ACHR and Article 59.3 of the ECHR. The ECHR only makes reference to "ratification" while the ACHR makes also reference to "adherence." The two terms are very similar; the difference is the proceeding to become a State Party: The ratification implies that the country has signed the convention shortly after it was approved, and then after completing all the national law proceedings ratifies it. The adherence is for the countries that have not signed the treaty and want to become a State Party. Nevertheless both have the same effect.

entered into force in both systems on the date of deposit of the instrument of ratification or adherence. As previously reviewed (under 1.1), the ratification or adherence to the ACHR and the declaration of acceptance of the jurisdiction of the Inter-American Court are two different facts (the second one not implicit in the first one), while in the European System since November 1998 the ratification of the ECHR implies the recognition of jurisdiction of the European Court.

In both systems, the recognition of jurisdiction of the respective Court of Human Rights is for the acts occurring after that date and indefinitely into the future, unless the State Party denunciates the Convention. In other words, both Courts have no competence to deal with breaches of the respective human rights conventions that occurred before their competence was accepted.[126]

In the Inter-American system (as noted above under 1.2.), the ACHR allows States Parties to condition their declaration of ratification or adherence to a specific period.[127] For example, Chile declared that it recognized the jurisdiction of the Court but specified that it "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".[128] Other State Parties to the ACHR have made similar declarations. In the European system, the article providing for the possibility to condition the acceptance of the European Court was deleted but a similar statement was made in the form of a reservation by Monaco.[129]

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[126] The prohibition of retroactivity is provided by Article 28 of the Vienna Convention on the Law of the Treaties of May 23, 1969, an article taken into consideration by the Inter-American Court in several cases.

[127] Article 62.2 of the ACHR.

[128] Chile ratified the ACHR on October 10, 1990 and therefore its declaration does not restrict the jurisdiction of the Inter-American Court.

[129] "The Principality of Monaco rules out any implication of its international responsibility with regard to Article 34 of the Convention, concerning any act or any decision, any fact or event prior to the entry into force of the Convention and its Protocols in respect of the Principality." (List of declarations made with respect to treaty No. 005, Convention for the Protection of Human Rights and Fundamental Freedoms, accessed April 03, 2017, http://conventions.coe.int/Treaty/Commun/ListeDeclarations.asp?NT=005&CM=8&DF=&CL=ENG&VL=1).

With regards to the jurisdiction *ratione temporis,* special attention has to be given to the denunciation, derogation allowed under exceptional circumstances, and particularly regarding the continuing situations that give rise to continuing violations.[130] Some parameters in this regard will be highlighted in the following paragraphs focusing in the comparison of the two Courts.

1.4.1. Denunciation

The denunciation mechanism is similar in the two systems, only the specified periods differ as well as the instances to which the notice of denunciation must be submitted, which in the European system is the Secretary General of the Council of Europe and in the Inter-American system is the Secretary General of the OAS.[131]

The States Parties to the ACHR and the ECHR cannot denounce the respective convention before five years have passed from the date of its entry into force. Furthermore, the notice of denunciation does not produce effects immediately in any case. In the European system the notice must be given six months in advance and in the Inter-American system this period is longer, one year. Both Courts continue having jurisdiction regarding the acts performed before the date in which the denunciation becomes effective, as established in the following cases:

- Before Protocol No 11 to the ECHR entered into force, in December 1969 Greece announced its decision to denounce the ECHR (and the Protocol of March 20, 1952). The Governments of Denmark, Norway and Sweden presented a second written complaint against Greece in April 1970. This complaint was examined by the European Commission according to the former Article 65 (now Article 58) of the ECHR under which the referred denunciation took effect in June 1970 (six months later) and therefore the referred complaint fell within the scope of the ECHR.

[130] The analysis in the following paragraphs regarding the derogation under exceptional circumstances and particularly the one regarding continuing violations is not an in-depth analysis of these topics. Such an analysis falls outside of the scope of the present research which is focused in procedural aspects and these two topics deserve an own research work.

[131] Article 78 of the ACHR and Article 58 of the ECHR.

- Regarding the attempt by Peru in July 1999 to withdraw from the binding jurisdiction of the Inter-American Court (previously analyzed under 1.1.), Peru stated that this withdrawal would take effect immediately and would apply to all cases in which Peru had not answered the application filed with the Court. The Inter-American Court declared inadmissible the claim of the Peruvian State. (As previously mentioned, in 2001, under a new government, Peru also removed the withdrawal of jurisdiction.)

1.4.2. Derogation under exceptional circumstances - State of emergency

The States Parties to the ACHR and the ECHR can take measures derogating from their obligations in time of war.[132] The derogation in the ACHR can also take place in case of "public danger or other emergency that threatens the independence or security of a State Party" while the ECHR refers to "other public emergency threatening the life of the nation". Both conventions provide that the measures must not be inconsistent with the other obligations of the States Parties under international law and the ACHR adds that they must "not involve discrimination on the ground of race, color, sex, language, religion, or social origin".[133]

An important difference lies on the fact that, while the ACHR makes reference to "other emergency that represents a threat to the independence or security of a State Party", the ECHR provides that the emergency has to be a public one and the threat has to be against "the life of the Nation". The formula of the ECHR is based on Article 4 of the International Covenant on Civil and Political Rights (hereinafter the "ICCPR").[134]

The term 'life of the nation' is defined in the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights (hereinafter the "Siracusa Principles"), which is a non-binding document adopted by the UN Economic and Social Council in 1985. According to the Siracusa Principles the life of the nation would be the whole population including their physical integrity, the whole or part of the territory of the State, the political independence of the State, the territorial

[132] Article 27 of the ACHR and Article 15 of the ECHR

[133] Article 15 of the ECHR and Article 27 of the ACHR.

[134] Guide on Article 15 of the ECHR, Derogation in time of emergency, issued by the Council of Europe in 2016, accessed April 03, 2017, http://www.echr.coe.int/Documents/Guide_Art_15_ENG.pdf.

integrity of the State or the existence or basic functioning of institutions indispensable to ensure and project the rights recognized by the ICCPR. [135]

Reviewing the case law of the European Court in *Lawless v. Ireland*, in *the Greek case* and in *A and others v. UK*, where the derogation in time of emergency was evaluated, in the last mentioned case the European Court made reference to the Siracusa Principles (in § 109). The European Court decided in this case that the 9/11 attacks and threat of international terrorism were an emergency threatening the life of the nation of the United Kingdom within the meaning of Article 15 of the ECHR and, among others, established the following:

> 176. The Court recalls that in *Lawless*, cited above, § 28, it held that in the context of Article 15 the natural and customary meaning of the words "other public emergency threatening the life of the nation" was sufficiently clear and that they referred to "an exceptional situation of crisis or emergency which affects the whole population and constitutes a threat to the organised life of the community of which the State is composed". In the *Greek*

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[135] UN Commission on Human Rights, The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, 28 September 1984, E/CN.4/1985/4, accessed April 03, 2017, http://www.unhcr.org/refworld/docid/4672bc122.html.

The Siracusa Principles provide that:

> 39. A state party may take measures derogating from its obligations under the International Covenant on Civil and Political Rights pursuant to Article 4 (hereinafter called "derogation measures") only when faced with a situation of exceptional and actual or imminent danger which threatens the life of the nation. A threat to the life of the nation is one that:
>
> (a) affects the whole of the population and either the whole or part of the territory of the State, and
>
> (b) threatens the physical integrity of the population, the political independence or the territorial integrity of the State or the existence or basic functioning of institutions indispensable to ensure and project the rights recognized in the Covenant.
>
> 40. Internal conflict and unrest that do not constitute a grave and imminent threat to the life of the nation cannot justify derogations under Article 4.
>
> 41. Economic difficulties per se cannot justify derogation measures.

> *Case* (1969) 12 YB 1, § 153, the Commission held that, in order to justify a derogation, the emergency should be actual or imminent; that it should affect the whole nation to the extent that the continuance of the organized life of the community was threatened; and that the crisis or danger should be exceptional, in that the normal measures or restrictions, permitted by the Convention for the maintenance of public safety, health and order, were plainly inadequate…

Thus, according to the European Court, the life of the nation refers to the whole population or nation and to the organized life of the community of which the State is composed.

The European Court did not agree with the dissenting opinion of Lord Hoffman regarding the factors that determine the nature and degree of the actual or imminent threat to the nation. Nevertheless, Lord Hoffman provided a clear definition or at least the elements of what the life of the nation is: the functioning of the institutions of government or the continuance of their existence as a civil community. Furthermore, in *A and others v. UK* § 18 *in fine* following is indicated:

> Lord Hoffman, who dissented, accepted that there was credible evidence of a threat of serious terrorist attack within the United Kingdom, but considered that it would not destroy the life of the nation, since the threat was not so fundamental as to threaten "our institutions of government or our existence as a civil community". He concluded that "the real threat to the life of the nation ... comes not from terrorism but from laws such as these".

Regarding this jurisprudence that analyses the term "life of the nation", consideration should also be given to the British Special Immigration Appeals Commission ('SIAC') when they affirmed that the "threat to the life of the nation was not confined to activities within the United Kingdom, because the nation's life included its diplomatic, cultural and tourism-related activities abroad", affirmation quoted by the European Court in §26. This opinion leads us to a broader spectrum than the one covered by the ACHR in its formula "independence or security of a State Party". Nonetheless, this was the opinion of the SIAC, not of the European Court.

The derogation under exceptional circumstances clauses is not unlimited in both systems. The measures of derogation must be taken to the extent strictly required by the exigencies of the situation (the ACHR makes also express reference to the period of time

strictly required) and cannot be inconsistent with other obligations under international law (the ACHR adds express allusion to the prohibition of discrimination). [136] Moreover, it has to be emphasized that in both systems it is very clear that the right to life [137] and the prohibition of torture, slavery and servitude cannot be derogated under any circumstances. [138] It is so provided in both conventions and recognized in the jurisprudence of the European Court of Human Rights (*Chahal v. the United Kingdom*, § 79, *Ahmet Özkan and others v. Turkey,* § 334) and of the Inter-American Court of Human Rights (*Caesar Vs. Trinidad y Tobago,* § 59, *Lori Berenson-Mejía v. Peru* § 100; *De la Cruz-Flores v. Peru,* § 125; *Tibi v. Ecuador*, § 143, *Gómez-Paquiyauri Brothers v. Peru,* § 111 and *Maritza Urrutia v. Guatemala,* § 89, and Advisory Opinion OC-8/87 regarding the *Habeas Corpus* in Emergency Situations).

1.4.3. Continuing violations

When reviewing the jurisdiction *ratione temporis* of the Courts it is necessary to determine what happens in both systems regarding continuing violations particularly when the violation started prior to the acceptance of jurisdiction of the respective Court. While the ACHR and the ECHR do not explicitly define the continuing breaches, there is a definition of continuing violations in other international instruments, and parameters can be found in the jurisprudence of both Courts, particularly in cases related to the right to property and forced disappearance.

The Draft Articles on the Responsibility of the States for Internationally Wrongful Acts (hereinafter "Draft Articles"), adopted by the International Law Commission (ILC) in August 2001 clarify the definition of continuing breaches.[139] The Draft Articles address the issue of the distinction between breaches not extending in time and continuing wrongful acts stating that:

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136 Article 27.1 ACHR and Article 15.1 of the ECHR.

137 Regarding the right to life, Article 15.2 of the ECHR ads and exception which is "in respect of deaths resulting from lawful acts of war".

138 Article 27.2 of the ACHR and Article 15 of the ECHR.

139 Draft Articles on the Responsibility of the States for Internationally Wrongful Acts, accessed May 11, 2017, http://untreaty.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf.

> Article 14. Extension in time of the breach of an international obligation
>
> 1. The breach of an international obligation by an act of a State not having a continuing character occurs at the moment when the act is performed, even if its effects continue.
>
> 2. The breach of an international obligation by an act of a State having a continuing character extends over the entire period during which the act continues and remains not in conformity with the international obligation.
>
> 3. The breach of an international obligation requiring a State to prevent a given event occurs when the event occurs and extends over the entire period during which the event continues and remains not in conformity with that obligation.

This article and its respective commentaries highlight the fact that a continuing wrongful act is different from a completed act whose effects or consequences continue over time (in the continuing violation the wrongful act as such is the one that continues). Furthermore, it is not necessary for the second one had to be completed in a single instance.[140]

1.4.3.1. Continuing violation and deprivation of right to property

In *Papamichalopoulos and others v. Greece*, the European Court held that there was a breach of the right to peaceful enjoyment of property provided in Article 1 of Protocol No 1 to the ECHR that continued after the referred Protocol entered into force. In § 40 the Court indicated that:

> …Admittedly, Greece did not recognise the Commission's competence to receive "individual" petitions (under Article 25) (art. 25) until 20 November 1985 and then only in relation to acts, decisions, facts or events subsequent to that date …, but the

[140] In the Spanish language, in the area of criminal law the term *"continuo"* is used for this last type of offenses (which implies that the author with the same determination carry out a set of several acts, each of which constitutes an offence) and uses the term *"permanente"* for what is regarded as a continuing violation in English (a single act that lasts or continues over time). In several documents of the Inter-American Commission and the Inter-American Court which were officially written in Spanish and English there is a mistake of translation, since they translate "continuous" as "*continuo*" or sometimes as *"continuo o permanente"* as if these two would have the same meaning in the legal language in Spanish. Comparing the English and Spanish official versions of the Declaration on the Protection of all Persons from Enforced Disappearance we find the correct translation: "continuing offence" as "delito permanente".

> Government did not in this instance raise any preliminary objection in this regard and the question does not call for consideration by the Court of its own motion. The Court notes merely that the applicants' complaints relate to a continuing situation, which still obtains at the present time. (Emphasis added)

Unlike the previous case, In *Louzidou v. Turkey*, which was also submitted because the applicant was denied access to her property, the respondent Government did raise preliminary objections. The respondent Government stated that the case fell outside of the European Court's jurisdiction because it related to events that occurred before Turkey declared its acceptance of the compulsory jurisdiction of the European Court. The European Court in its judgment indicated in § 104 that "[t]he Court recalls that it has endorsed the notion of a continuing violation of the Convention and its effects as to temporal limitations of the competence of Convention organs…"

The continuous violations in the Inter-American system regarding the right to property were analyzed in the case *Moiwana Village v. Suriname,* regarding victims forcefully displaced from their ancestral lands. The Inter-American Court recognized that "43. ... [a]lthough this displacement supposedly occurred in 1986, their inability to return to those territories has allegedly continued. The Court, then, has competence to rule upon these alleged facts and their legal implications…"

1.4.3.2. Continuing violation and forced disappearance

The term "continuing violation" was examined in the case law of the European Court not only regarding the deprivation of the right to property, but also regarding forced disappearances. In the case *Varnava and Others v. Turkey* (Grand Chamber Judgment) the European Court dismissed the preliminary objection as to lack of temporal jurisdiction and held that there was a continuing violation of Articles 2, 3 and 5 of the ECHR. This judgment (based also in the case *Cyprus v. Turkey*) provides for a comprehensive definition of forced disappearance which includes:

- The disappearances give rise to a continuing situation. It is not an instantaneous act, since it is characterized by an on-going situation of uncertainty and unaccountability, with a lack of information that can be even a deliberate concealment and obfuscation of what has occurred; situation that prolongs the torment of the victim´s relatives (§ 148).

- The failure of the authorities to conduct an effective investigation aimed at clarifying the whereabouts and fate of the person who has gone missing in life-threatening circumstances is regarded as a continuing violation and the procedural obligation continues as long as the fate of the person is unaccounted for, even if death may be eventually presumed (§ 148, § 187).
- In the cases of killings or suspicious deaths, where the loss of life of the victim is known for a certainty (even if the exact cause or ultimate responsibility is not) there is no continuing situation. The procedural obligation does not have a continuing nature either (§ 149).
- "Not all continuing situations are the same; the nature of the situation may be such that the passage of time affects what is at stake." The relatives of the disappeared person must bring the complaint about the ineffectiveness or lack of the investigation before the Court without undue delay (§161). Nevertheless the European Court admitted that allowances must be made for the uncertainty and confusion which frequently mark the aftermath of a disappearance (§ 162).
- The violations based on facts occurring before the crucial date of ratification of the right of individual petition by the respondent Government are excluded from examination by the Court (§ 121).

In the Inter-American system, the Inter-American Convention on Forced Disappearances of Persons explicitly states in its Article III that these offences "shall be deemed continuous or permanent as long as the fate or whereabouts of the victim has not been determined". Despite this, States Parties to the ACHR have questioned the jurisdiction *ratione temporis* of the Inter-American Court in cases regarding forced disappearances. For instance in the Case *Blake v. Guatemala*, the respondent government filed three preliminary objections, one of them because it considered that the Inter-American Court had no competence to try this case since the facts occurred before Guatemala recognized the compulsory jurisdiction of the Inter-American Court. The Inter-American Court, in its judgment on preliminary objections, considered this preliminary objection regarding to the acts of deprivation of liberty and murder of Mr.

Blake to be well-founded,[141] as it happened before the jurisdiction of the Inter-American Court was recognized, but the Inter-American Court considered itself competent regarding the facts after that date. The Inter-American Court held that:

> 39. … in accordance with the aforementioned principles of international law which are also embodied in Guatemalan legislation, forced disappearance implies the violation of various human rights recognized in international human rights treaties, including the American Convention, and that the effects of such infringements - even though some may have been completed, as in the instant case- may be prolonged continuously or permanently until such time as the victim's fate or whereabouts are established.
>
> 40. In the light of the above, as Mr. Blake's fate or whereabouts were not known to his family until June 14, 1992, that is, after the date on which Guatemala accepted the contentious jurisdiction of this Court, the preliminary objection raised by the Government must be deemed to be without merit insofar as it relates to effects and actions subsequent to its acceptance. The Court is therefore competent to examine the possible violations which the Commission imputes to the Government in connection with those effects and actions. (Emphasis added)

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[141] The Inter-American Court held that:

> 33. [t]he Court is of the view that the acts of deprivation of Mr. Blake's liberty and his murder were indeed completed in March, 1985 -the murder on March 29 according to the death certificate, as Guatemala maintains- and that those events cannot be considered *per se* to be continuous. The Court therefore lacks competence to rule on the Government's liability. This is the only aspect of the preliminary objection which the Court considers to be well founded.
>
> 34. Conversely, since the question is one of forced disappearance, the consequences of those acts extended to June 14, 1992. As the IACHR states in its application, government authorities or agents committed subsequent acts, and this, in the IACHR's view, implies complicity in, and concealment of, Mr. Blake's arrest and murder. Although the victim's death was known to the authorities or agents, his relatives were not informed despite their unstinting efforts to discover his whereabouts, and because attempts had been made to dispose of the remains. The IACHR also claims that there were further violations of the ACHR connected with these events.

As already indicated, the continuation of the effects of an act for a long time is different to the situation that the act itself is prolonged over time; however the effects can constitute themselves violations of the Convention. The wording of the latter quoted paragraph could connote that it refers only to the effects, situation which is not really a "continuing breach"; however, from the whole judgment we can conclude that the Inter-American Court indeed refers to a continuing violation, particularly because the facts relate to a forced disappearance.

In the case *Serrano Cruz Sisters v. El Salvador,* the respondent Government also raised a preliminary objection *ratione temporis* based on the circumstance that the facts occurred or started before El Salvador recognized the binding jurisdiction of the Inter-American Court. In this case the Inter-American Court excluded the acts relating to the "capture" or "taking into custody" of the Serrano Cruz girls by soldiers of the Atlacatl Battalion and even those acts regarding their subsequent disappearance because it considered that they all related to violations which happened before El Salvador recognized the contentious jurisdiction of the Inter-American Court.[142] However, the Inter-American Court held itself competent regarding the facts related to violations of the right to a fair trial, judicial protection and obligation to respect rights because they occurred after the recognition of its jurisdiction and refer to independent facts or autonomous violations concerning denial of justice. The Inter-American Court quoting the case *Alfonso Martín del Campo Dodd* (Preliminary objections), indicated that:

> 65. The above principle of non-retroactivity applies to the effective exercise of the juridical effects of the recognition of the Court's jurisdiction to hear a contentious case. Therefore, according to the provisions of the said Article 28 of the 1969 Vienna Convention on the Law of Treaties, the Court may consider acts and facts that have taken place after the date of recognition of the Court's jurisdiction and situations which, at that date, had not ceased to exist. In other

[142] It is beyond the scope of this research but I would like to mention that I do not agree with this last part because the fate of Ernestina and Erlinda Serrano Cruz has still not been clarified, so that this is a typical example of a continuing breach. This judgment of the Inter-American does not just confuse "continuous" and "permanent" violations, but also as mentioned before, does not distinguish an act that is permanent in time and an act that has already finished but has effects that last longer, and of course disregards what is provided in Article 17 of the Declaration on the Protection of all Persons from Enforced Disappearance.

> words, the Court has jurisdiction to consider continuing violations that persist after this recognition, based on the provisions of the said Article 28 and, consequently, the principle of no retroactivity is not violated.
>
> 66. The Court cannot exercise its contentious jurisdiction to apply the Convention and declare that its provisions have been violated when the alleged facts or the conduct of the defendant State which might involve international responsibility precede recognition of the Court's jurisdiction.
>
> 67. However, in case of a continuing or permanent violation, whose commencement occurred before the defendant State had recognized the Court's contentious jurisdiction and which persists even after this recognition, the Court is competent to consider the conducts that occurred after the recognition of its jurisdiction and the effects of the violations.

Despite these considerations, the Inter-American Court decided by a vote of six to one to admit the preliminary objection *ratione temporis* not just regarding the facts or acts that occurred before the date on which the state accepted the jurisdiction of the Inter-American Court (this part of the decision was unanimously) but also regarding the facts or acts that began prior to that date and which continued after that date. However, this position (of indicating that there is continuing violation and deciding this because it started prior to the recognition of the jurisdiction the Inter-American Court) was not followed by the same Court in the case *Heliodoro Portugal v. Panama*. In this latter judgment, the Inter-American Court considered that it did not have competence regarding acts that constitute instantaneous violations that occurred before Panama accepted its jurisdiction (the death, alleged torture and ill-treatment and violation of the freedom of expression of Mr. Portugal), but it considered itself competent to examine the failure to comply with the obligation to investigate the alleged forced disappearance as of the date in which its jurisdiction was recognized, and also proper the forced disappearance.

In summary, when dealing with cases about a "continuing violation", both Courts limit their competence to the facts that occurred after the acceptance of their jurisdiction by the State Party; for instance in cases regarding forced disappearance, leaving out the claims based on the right to life, when the death occurred prior the acceptance of

jurisdiction (position which is considered as an "undue fragmentation of the crime of forced disappearance" by Judge A. A. Cançado Trindade[143]).

2. INDIVIDUAL JUSTICE VS. CONSTITUONAL JUSTICE

The *divortium acuarium* on the nature of human rights bodies is leading to incompatible positions in regards to reform proposals. As explained in Chapter I, in the history of mankind a milestone towards effective human rights protection has been the creation of human rights courts with jurisdiction to adjudicate upon complaints of state's human rights violations. A comparative analysis of the current jurisdiction of the Courts has been made in the first part of this Chapter; however, regarding the jurisdiction of the Courts there is an academic debate that has a direct repercussion on the jurisdiction of these Regional Human Rights Courts: the debate regarding "individual justice" vs. "constitutional justice". While this debate is taking place mainly in regards to the European Court, as this is the only court where the right of petition has been granted to the individuals, it could potentially have also an impact in the Inter-American system in regards to its amendments reforms.

Stéphanie Hennette-Vauchez made a summary of the antagonism of these two perspectives in the following paragraph:

> One perspective, that of 'individual justice,' views as the soul of the Convention the entitlement of each and every complainant to examination of his or her complaint and, if it is upheld, to individualized relief. The other, that of 'constitutional justice' regards the Convention as a constitutional instrument of European public order in the field of human rights, and thus the mechanism of individual applications as the means by which defects in national protection of human rights are detected with a view to correcting them; thereby raising the general standard of protection of human

[143] See his separate opinions in the judgment on the preliminary objections and in the judgment on the merits in the Case *Blake v. Guatemala.*

> rights, both in the country concerned and in the Convention community of States as a whole.[144]

The "individual justice" position, considers the Regional Human Rights Courts as a supra national court of justice that has to ensure the observance of the respective Human Rights Convention by its Member States as established in the Convention; and, consequently, that it has to administer supra national human rights justice in all cases submitted to it. In contrast, the "constitutional justice" position aims to establish reasons for restricting the jurisdiction of the Regional Court, establishing that this administration of justice should be done only regarding certain cases and not regarding others despite the fact that they fall within its jurisdiction established by law. The author of the present research work supports the "individual justice" position based on the reasons describe in the paragraphs below.

2.1. WHY "INDIVIDUAL JUSTICE"

The aim is to protect the human rights of each individual. Human rights do not have as starting point the States, nor the social groups, but the individual. If there is something that distinguishes democracy to fascism, is that fascism claims that the individual is at the service of the State. Also in absolute monarchies only the rights of the king and those belonging to the nobility and cleric were taken into consideration, the rest of individuals were at their service and had no rights. In contrast to this, in a democracy the State is at the service of the individual.

Human dignity has become the basic value that underpins the construction of the rights of each person as a free subject and participant of a society. The UDHR, as well as the two United Nations Covenants on Civil and Political Rights and Economic, Social and Cultural Rights, in their respective Preambles recognize that dignity is inherent in all persons and constitutes the basis of fundamental rights. Yet, the idea of building rights on the basis of the individual has much deeper roots. For instance when Hierocles explains the existence of the *oikeiosis* around the individual:

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[144] Stéphanie Hennette-Vauchez, "Constitutional v. International? When Unified Reformatory Rationales Mismatch the Plural Paths of Legitimacy of ECHR Law," *The European Court of Human Rights between Law and Politics* (2011): 145.

> Each one of us is … entirely encompassed by many circles, some smaller, others larger, the latter enclosing the former on the basis of their different and unequal dispositions relative to each other. The first and closest circle is the one which a person has drawn as though around a centre, his own mind. This circle encloses the body and anything taken for the sake of the body … Next, the second one further removed from the centre but enclosing the first circle; this contains parents, siblings, wife, and children. The third one has in it uncles and aunts, grandparents, nephews, nieces, and cousins. The next circle includes the other relatives, and this is followed by the circle of local residents, then the circle of fellow-tribesmen, next that of fellow citizens, and then in the same way the circle of people from neighboring towns, and the circle of fellow-countrymen. The outermost and largest circle, which encompasses all the rest, is that of the whole human race (fragment reproduced in Long and Sedley 1987: 1349).[145]

Human beings by having self-consciousness are able to self-perceive, self-identify and consequently define their own space. At the same time, due to their gregarious nature, they are obliged to interact with the surrounding word what produces the *oikeiosis*. The instinct of conservation referred to by Zeno of Citium enables to mark the first circle around which relatives are included according to their proximity, friends, neighbors, etc. However, for the ancient Greek philosophy the family and the polis were built on the individuality.

Oikos in its narrow sense refers to the dwelling place of the individual and in its broad sense to their personal and patrimonial links, from the family to the slaves, including friends and neighbors in a process of synecism. In the Ancient Greece the sum of *oikos* conformed the *polis*, which recognized common ancestors, worshiped the same gods, had the same ethos, culture, etc. but always without losing sight of the fact that every Greek had a value in itself. This is the process of synecism without which the polis and nations would not exist.

Human rights are a historical product that arises from the need to be able to limit the State power vis-à-vis the individual. The consolidation of the State, in any of its forms, has been detrimental to the individual. While Rousseau tried to explain that this

[145] Lisa Hill, "Classical stoicism and the birth of a global ethics: Cosmopolitan duties in a world of local loyalties," *Social Alternatives* 34, no. 1 (2015): 15.

was a voluntary decision trough the social contract, this has been also interpreted as a form of violent domination. In any case, it is undoubtedly the dialectic between the individual and the State and it is inevitable that one holds predominance of the other.

In order to protect the human rights of individuals vs. the States that do not effectively recognize or protect them, human rights protection mechanisms have been developed. History has proven that the national laws, and even the constitutional norms, have not been sufficient to protect the human rights of the individuals. Otherwise, there would not have been need to create international norms and international organisms (described in more detail in Chapter I). Denying the right of the individuals to seek protection of their rights from international human rights protection mechanisms is to deny very essence of human rights.

2.2. WHY NOT "CONSTITUTIONAL JUSTICE"

The term "constitutional justice" in this context can be obscure or ambiguous; particularly taking into consideration the unratified treaty establishing a Constitution for Europe of 2004 which is not related to the ECHR. Steven Greer and Luzius Wildhaber, who are supporters of the so called "constitutional pluralism", indicate the following regarding the term "constitutional justice":

> Inherent in the notion of 'constitutional justice' in the ECHR context is the idea that the Convention system should ensure that cases are both selected and adjudicated by the ECtHR in a manner which contributes most effectively to the identification, condemnation, and resolution of violations, particularly those which are serious for the applicant, for the respondent state (because, for example, they are built into the structure or modus operandi of its public institutions), or for Europe as a whole (because, for example, they may be prevalent in more than one state).[146]

The "constitutional justice" position aims to reduce of the caseload of the European Court not by reducing the number of human rights violations but by restricting the individuals' access to justice. As previously explained, the human rights conventions were created to protect the human rights of individuals; consequently, their efficiency

[146] Steven Greer and Luzius Wildhaber, "Revisiting the Debate about "constitutionalising" the European Court of Human Rights'(2012)," *Human Rights Law Review* 12, no. 4 (2012): 671.

depends on the accessibility of the individuals to a protection mechanism that enforces the respective convention.

The approach underlining the "constitutional justice" proposal is the lack of resources of the European Court to process all the cases submitted to it. For Instance Steven Greer and Luzius Wildhaber propose that this court, which they indicate is not able to adjudicate more than 1,500 applications per year, should select the 1,500 that it considers most important and reject the rest.[147] This pragmatic point of view does not take into consideration that rights cannot be restricted due to the capacity of the enforcement mechanisms. For instance, criminality continues to exist despite the existence of Police forces but not for that it is officially declared that certain crimes will be ignored by the Police nor is the lack of efficacy of the system provided as a reason to legalize crimes.

While it is important that the enforcing mechanisms work is as efficient as possible, it's relieve of case overload cannot be done on the cost of leaving cases of human rights deliberately unpunished. This would create a margin of tolerance for States human rights violations which would be clearly a setback in the history of mankind regarding human rights protection. Moreover, it has to be taken into consideration that impunity affects not only the case under review but also future cases, encouraging States to continue with practices that violate human rights.

The proposed reduction of the cases that the European Court reviews would be based on a discretional selection of cases *in limine*. It is not clear which will be the criteria for selecting the cases and how a discretional power can be justified in a way consistent with human rights respect and protection. Furthermore, any new selection criteria would increase the risk of leaving plaintiffs defenseless in regards to human rights violation cases.

The supporters of this concept based their position in the argument that the goal to provide individual justice is not achievable, that it is not realistic due to the lack of resources. The protection of human rights is a task of the human rights court but also of other organs which role has to be reviewed as well. The fact that it faces serious

[147] *Ibid.,* 686.

difficulties due to the case overload does not imply that it is not working; the positive results have to be taken into consideration as well. Moreover, the main goal, which is the protection of the human rights of individuals in accordance with the ECHR, has to be considered.

The position in favor of a system similar to the *certiorari*, consider that the Courts of Human Rights should have an exclusively nomofilactic function. This implies that the function of the court would not be to protect human rights, but to use its case law to indicate what is considered to be the correct application of the rules of Human Rights. As if it would be considered that in cases of multiple robberies, if only one is punished, to specify the elements of the criminal type of theft, this is sufficient and the court of justice should proceed to left to all other cases without protection. In this way human rights violations are not just not prevented, but encouraged, as the transgressor would know that justice works like a wheel of fortune or a lottery, in which he might get the winning number - or loser in this case - and be sanctioned, but as that is in one case among thousands, it is worth taking the risk.

In addition to the paragraph above, the certiorari itself does not constitute to leave the individual defenseless. In the US system, the Supreme Court of the United States selects to review cases in which it considers that there are implications for the interpretation given to the Constitution of the United States but ordinary justice is exhausted in the Courts of Appeal or Supreme Courts of the States. The case of the human rights courts is different since, as we have argued previously in these tribunals the main task is protecting the individual against the State that transgresses the norms contained in special treaties. It is the protection of the defenseless man against the powerful state what is at stake.

It is also important to foresee the consequences of the implementation of this proposal. For instance, the following consequences could arise:

- The European system would have a human rights court that is not overloaded of work but would coexist with States that continue with a similar rate of human rights violations due to the high chance that a case against them is not reviewed. Currently the European Court has a big problem with the case overload, but the great advances in the area of human rights protection achieved through the “individual justice” cannot be disregarded. Moreover,

this case overload can be related to the credibility by the society which this Court has achieved with a lot of effort.

- Discussions regarding why a case was accepted or not would take place together with a perception in the society that human rights protection is a matter of discretion of the Judges, thus unpredictable. Consequently applicants might consider that they have to invest in expensive lawyers that can attract attention to their cases, leaving people who live in poverty without the opportunity to accede to the Court. Individuals could also consider that it is just a waste of time to submit a case and in that way the impunity of human rights violations by States would be guaranteed.
- The European Court Judges might face a constantly increased political pressure from States to ensure that certain cases are not reviewed. One thing is to not succumb to the pressure; however, suffering political pressure is in itself effort and time consuming. The independence of the Judges has to be guaranteed, among other by establishing in a clear way which cases are to be processed and which not.

For the reasons above mentioned, it cannot be considered that the "constitutional justice" position would contribute to an effective protection of human rights. Human rights violations are to be treated as a qualitative problem, not a quantitative one. Moreover, the purpose of the courts of justice is not a political one but that by adjudicating in individual cases these organs contribute to improve the system as a whole. It is in the interest of Europe that each individual has access to justice and no restriction to the realm of protection of a human rights protection mechanism should be admitted.

Most importantly, regarding this debate it has to be mentioned that the fundamental problem is not that the European Court is overloaded of cases, but the fact that so many human rights violations, including repetitive ones, continue to be committed by ECHR State Parties. All reforms should aim to reduce human rights violations not to create new ones within the organ that is supposed to protect these rights. The thought that once established the correct interpretation of the norms that protect human rights this will automatically cease violations, is to assume with some naivety that the violations are

produced by lack of knowledge. Surely that is not the case of America and I do not believe that this is the case of Europe either.

CHAPTER III: STANDING BEFORE THE EUROPEAN AND THE INTER-AMERICAN COURTS OF HUMAN RIGHTS

> *"14. [...]Without the locus standi in judicio of both parties any system of protection finds itself irremediably mitigated, as it is not reasonable to conceive rights without the procedural capacity to vindicate them directly.*
>
> *15. In the universe of the international law of human rights, it is the individual who alleges violations of his human rights, who alleges having suffered damages, who has to comply with the requirement of prior exhaustion of domestic remedies, who actively participates in an eventual friendly settlement, and who is the beneficiary (he or his relatives) of eventual reparations and indemnities.* (Loayza Tamayo Case, Judgment on the Preliminary Objections of January 31, 1996 Inter-Am. Ct. H.R. Separate Opinion of Judge A. A. Cançado Trindade)

In the present Chapter, the most outstanding difference between the two systems will be analyzed: the standing of individuals to the European and Inter-American human rights courts. In the European system "[t]he right of individual petition is rightly considered as the hallmark and greatest achievement of the European Convention on Human Rights", as indicated by the President of the European Court of Human Rights Dean Spielmann in November 2014.[148] For its part, in the Inter-American system, the proposal to provide to the individuals the right of petition to the Inter-American Court has extensively been justified by the doctrine but has not been included in the ACHR yet.

This Chapter compares the developments as well as the drawbacks of both systems in regards to the access by individuals to the protection mechanisms, outlining previous and making new proposals to be considered in future reforms. In addition, this Chapter also aims to draw attention to the fact that some of the latest reforms in both systems awaken the concern that both human rights systems show a tendency to

[148] Practical Guide on Admissibility Criteria, accessed April 24, 2017, http://www.echr.coe.int/Documents/Admissibility_guide_ENG.pdf, 7.

progressively restrict access to the respective courts of human rights, and in this way are reducing their realm of protection.[149]

1. ANTECEDENTS

1.1. AT THE BEGINNING OF THE COURTS

When discussing the origin of the European system of protection of human rights, A. H. Robertson indicates that the functions of the European Commission and the European Court envisaged in the draft of the ECHR were different to those finally established.[150] He indicates that a much less effective instrument was established than the one foreseen in the draft of 1949 by M. Pierre-Henri Teitgen, Sir David Maxwell-Fyfe and Professor Fernand Dehousse.[151] One of the reasons for his affirmation was that the right of the individuals to bring a case before the Court was suppressed[152] and the right of

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149 This Chapter is complemented by Annex III-A which describes the organization of the two systems, comparing its rules regarding their location, judge requirements and incompatibilities, number of judges and appointments, terms of office, *ad-hoc* judges, and composition of the courts. This additional information has a connection to the access by individuals to the protection mechanisms, but is not the main focus the scope of this research. Therefore it is included in an Annex.

150 Arthur Henry Robertson. "The European Court of Human Rights," *Am. J. Comp. L.* 9 (1960): 4.

151 A. H. Robertson also notes that:

> It is interesting to compare these original proposals with the provisions that were finally adopted; in doing so one notes inevitably how the powers which were to be conferred on the international organs (the Commission and the Court) were gradually watered down and the traditional rights of sovereign States asserted. The result, of course, was to make the Convention a much less effective instrument than had been originally envisaged. The right of individuals to petition the Commission was made subject to an express declaration of the governments that they accepted this procedure; the right of individuals to bring a case before the Court was suppressed entirely; the power of the Commission to "make recommendations to the State concerned, with a view to obtaining redress" was reduced to "placing itself at disposal of the parties concerned with a view to securing friendly settlement", and, if that failed, expressing an opinion to the Committee of Ministers. Finally, the powers of the Court (ordering reparation, cancellation of the act, and punishment of the offender) were reduced to "affording just satisfaction to the injured party", while its very existence was made conditional recognizing the jurisdiction of the Court as compulsory". (*Ibid.*, 5.)

152 As established by the former Article 44 of the ECHR, the individuals were not enabled to seize the Court. Article 44 of the original version of the ECHR provided that:

> Only the High Contracting Parties and the Commission shall have the right to bring a case before the Court.

the individuals to accede to the protection mechanism through the Commission of Human Rights was made optional subject to an express declaration of the governments accepting this right.[153] Moreover, a minimum number of declarations (six) were required to grant this right.

In the Inter-American system, in contrast to the European system, the standing to bring an individual petition to the IACHR was established in the text of the ACHR, even in spite of the fact that some American governments proposed to include the principle of optional competence of the IACHR in the same manner that it was established at that time in the European system.[154] Since the beginning of the system, any person, group of

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[153] Article 25 of the original text of the ECHR provided that:

> 1. The Commission may receive petitions addressed to the Secretary-General of the Council of Europe from any person, non-governmental organization or group of individuals claiming to the victim of a violation by one of the High Contracting Parties of the rights set forth in this Convention, provided that the High Contracting Party against which the complaint has been lodged has declared that it recognizes the competence of the Commission to receive such petitions. Those of the High Contracting Parties who have made such a declaration undertake not to hinder in any way the effective exercise of this right.
>
> 2. Such declarations may be made for a specific period.
>
> 3. The declarations shall be deposited with the Secretary-General of the Council of Europe who shall transmit copies thereof to the High Contracting Parties and publish them.
>
> 4. The Commission shall only exercise the powers provided for in this article when at least six High Contracting Parties are bound by declarations made in accordance with the preceding paragraphs. (Emphasis added)

[154] Observations in regards to the Preliminary Draft Convention on Human Rights elaborated by the IACHR (DOC. OEA/Ser.L/V/11.19, Doc. 48,Rev.)

> "OBSERVACIONES DEL GOBIERNO DE CHILE AL PROYECTO DE CONVENCIÓN SOBRE DERECHOS HUMANOS
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> ...
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> 20. El artículo 33 contempla de manera absoluta el llamado "derecho individual de petición". Indudablemente que la inclusión de este derecho en una Convención de Derechos Humanos es cuestión de primordial importancia para su efectiva aplicación. Pero hay que considerar debidamente la posición de los Estados llamados a suscribirla y ratificarla, pues si esta cláusula obligatoria va a hacer que disminuya notablemente el número de Estados Partes en ella, conviene considerar si no sería mejor el criterio seguido en la Convención Europea de hacer facultativo el reconocimiento de este derecho.

persons or non-governmental entity legally recognized in a Member State of the OAS has been entitled to lodge a petition with the IACHR in order to denounce violations of the ACHR.[155] Regarding these individual petitions, a declaration of the concerned State Party accepting the competence of the IACHR was never required, nor were a minimum number of declarations of acceptance a requisite to establish this right. [156]

Whereas since the beginning of the Inter-American system no declaration recognizing the competence of the IACHR to process individual petitions has been required, the access by individuals to the Inter-American Court has been always been restricted in a similar way to the early European system. Individuals may not submit a

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> …
>
> OBSERVACIONES Y COMENTARIOS DEL GOBIERNO ARGENTINO AL ANTEPROYECTO DE CONVENCIÓN INTERAMERICANA SOBRE PROTECCIÓN DE DERECHOS HUMADOS
>
> …
>
> Artículo 33: El derecho de petición individual queda contenido en esta disposición, que reconoce a la persona el carácter de "Sujeto Internacional Directo", permitiendo que un individuo pueda denunciar su propio Estado ante la Comisión. Se considera conveniente que dicha disposición se incluya dentro de la declaración opcional (o sistemamfacultativo) que prescribe el artículo 34 del Proyecto.
>
> …"

Actas y Documentos Conferencia Especializada Interamericana sobre Derechos Humanos, San José, Costa Rica 7-22 de Noviembre de 1969, acceded on May 9, 2017, http://www.oas.org/es/cidh/docs/enlaces/conferencia%20interamericana.pdf.

[155] Articles 44 and 45 of the ACHR.

[156] While the Inter-State complaints are outside of the scope of this research, it is interesting to note that the contrary to the above happened regarding the Inter-State complaints before the European Commission and the IACHR. The original text of the ECHR enabled any State Party to the ECHR to refer any alleged breach of the ECHR by another State Party to the European Commission.

> Article 24 of the original text of the ECHR provided that:
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> Any High Contracting Party may refer to the Commission, through the Secretary-General of the Council of Europe, any alleged breach of the provisions of the Convention by another High Contracting Party.

In the Inter-American system, by contrast, the IACHR only has competence regarding the States Parties' communications that allege that another State Party to the ACHR violated this Convention if this last State Party has declared that it recognizes the IACHR competence for this purpose (Article 45 of the ACHR).

case to the Inter-American Court; only the IACHR and States Parties to the ACHR may submit a case to the Inter-American Court and only if the State Party to the ACHR has accepted the Inter-American Court´s jurisdiction.[157]

1.2. DEVELOPMENT OVER TIME

In 1972 the polemic regarding the right of petition of individuals restarted in Europe. As a result of the discussions, Protocol No 9 to the ECHR[158] was adopted and it entered into force in 1994.[159] This Protocol enabled the individuals to request the European Court to deal with a case when the European Commission failed to secure a friendly settlement and to draw up a report on the facts stating its opinion as to whether a breach of the ECHR had occurred.

Before this Protocol entered into force, only the European Commission and the States concerned were entitled to refer a case to the European Court (and only if the State concerned had recognized the jurisdiction of the European Court). In this way, in 1994, for the first time individuals were granted the right to refer their cases to a human rights court regardless of whether the human rights commission or the State Party concerned had referred the case to the court or not. Nevertheless, as mentioned before (see *supra* 1.1.), the idea of empowering individuals to seize the European Court was not a new idea.[160] Furthermore, this reform was recognized as a logical development consistent

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[157] Article 61 of the ACHR. See also Chapter II 1.1.

[158] Protocol No. 9 to the Convention for the Protection of Human Rights and Fundamental Freedoms, ETS No. 140, Rome, 6.XI.1990.

[159] Protocol No 9 to the ECHR was opened for signatures on November 6, 1990 and entered into force on October 1, 1994. This Protocol has been repealed by Protocol N. 11 to the ECHR on November 1, 1998. See Annex II-A.

[160] The Explanatory Report to the Protocol No 9 to the ECHR indicates the following in this regard:

> 1. The idea of empowering individuals to seize the European Court of Human Rights is not a new one. It was mentioned as early as May 1948, at the Congress of Europe, and appeared in the draft European Convention on Human Rights drawn up by the European Movement in July 1949. This idea was, however, rejected in the course of the member states' discussions on the draft convention, it being argued in particular that »the interests of the individual would always be defended either by the Commission, in cases where the latter decided to seek a decision of the Court, or by a state in such cases as those listed under paragraphs b and c of Article 48.

with the spirit of the ECHR, as stated in the Explanatory Report to Protocol No 9 to the ECHR[161] which indicates:

> This reform is a logical development of the Convention's system of control. On the one hand, a most significant step had already been taken, through Article 25 of the Convention, in allowing individuals who claimed to be victims of human rights violations to submit their complaints against the state concerned to an international control machinery; all States Parties to the Convention have now made declarations under Article 25 and have also accepted the Court's compulsory jurisdiction under Article 46. On the other hand, through its Rules, the Court has accorded a form of locus standi to the individual once his case has been referred to the Court. However, although the new Rules of Court (adopted in 1982 and subsequently revised) have very significantly improved the procedural position of such individuals, they have left some disparities in treatment between them and states (for example, Rules 26, 56 and 57). To enable the individual himself to decide to take his case to the Court - rather than letting him remain dependent on the Commission or a State for this purpose - merely completes the existing structure. The situation whereby the individual is granted rights but not given the possibility to exploit fully the control machinery provided for enforcing them, could today be regarded as inconsistent with the spirit of the Convention, not to mention compatibility with domestic-law procedures in States Parties.[162] (Emphasis added)

Later on, more radical reforms in the European system were also implemented regarding the processing of individual applications. Protocol No 9 to the ECHR was repealed in November 1998 when Protocol No 11 to the ECHR entered into force. As previously mentioned[163] Protocol No 11 to the ECHR introduced major reforms in the European system including the dissolution of the European Commission. This Protocol also removed the optional clauses regarding the right of individual petition, making it compulsory for all State Parties to the ECHR. In this way, the right of individual petition has become one of the essential features or the European system today, as highlighted by

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[161] Explanatory Report to the Protocol No 9 to the Convention for the Protection of Human Rights and Fundamental Freedoms, accessed April 24, 2017, https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168000cb5dd.

[162] *Ibid*.

[163] Chapter I 4.2.1.

the Annual Report 2011 of the European Court of Human Rights[164] among other several documents.[165]

As described in Chapter I,[166] Protocol No 14 to the ECHR introduced the latest reform into the European system, which among other reforms does have an impact on the access by individuals to the European Court. While Protocol No 14 simplifies the procedures for determining the admissibility of the applications, it also introduced a reform that, to some extent, implies moving backwards, as it reduced the realm of protection of the European system. Protocol No 14 to the ECHR introduced a new admissibility criterion, the 'significant disadvantage', which is a restriction to the right of individual petition; it enables the selection of cases which implies the selection of protection of victims, leaving thousands of victims unprotected.[167] This effect was foreseen since the beginning as explained in the Explanatory Report to this Protocol issued by the Council of Europe:

> 79. The new criterion may lead to certain cases being declared inadmissible which might have resulted in a judgment without it. Its main effect, however,

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[164] Annual Report 2011 of the European Court of Human Rights, Council of Europe, accessed April 12, 2017, http://www.echr.coe.int/Documents/Annual_report_2011_ENG.pdf.

[165] For instance, in the Brussels Declaration dated March 27, 2015, the High-level Conference indicated first of all that it:

> Reaffirms the deep and abiding commitment of the States Parties to the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and their strong attachment to the right of individual application to the European Court of Human Rights ("the Court") as a cornerstone of the system for protecting the rights and freedoms set forth in the Convention. (Emphasis added)

(Accessed May 9, 2017, http://www.echr.coe.int/Documents/Brussels_Declaration_ENG.pdf).

Another example can be found in the Brighton Deliration, where it is also indicated that the right of individual application is the "cornerstone of the system for protecting the rights and freedoms" (Accessed May 9, 2017, http://www.echr.coe.int/Documents/2012_Brighton_FinalDeclaration_ENG.pdf).

[166] Chapter I 4.2.1.

[167] The admissibility criterion of the significant disadvantage generates controversy and is analyzed in detail in Chapter IV.

is likely to be that it will in the longer term enable more rapid disposal of unmeritorious cases…[168]

As previously indicated, human rights norms protect each and every individual. Leaving unprotected those who have not been fortunate to have their cases selected, is in itself a violation of the right to effective judicial protection. If this position gives too much work to the human rights court, the solution is not to leave many human beings without protection, but to adopt general policies to prevent States from violating human rights and punishing in an efficient manner those who do so. If the individuals do not feel sufficiently protected by their national instances, the protection system needs to grow in proportion to the needs. The opposite is to maintain that since there are many violations of human rights, only those selected should be protected, which is to say that if there are many patients, some are selected to cure them, others must die. Differentiated treatments cannot be accepted precisely by those bodies that were created as a result of the awareness that human rights of all individuals have to be protected.

Precisely one of the problems of the Inter-American system is that the right of individual petition has not been incorporated by the ACHR into the Inter-American system. The IACHR makes a selection of cases that it presents before the Inter-American Court and prioritizes the issues that are raised to it. In this way thousands of people are left without the possibility of disputing their claim before the human rights court. In the European system, as quoted above, the non-incorporation of this right was considered inconsistent with its Human Rights Convention. Furthermore, this omission is inconsistent with Article 25 of the ACHR, which establishes the Right to Judicial Protection as a right protected by this convention.

The reforms in the Inter-American protection mechanism have increasingly given individuals a more important role in the proceedings before the Inter-American Court.[169] As Judge Antônio A. Cançado Trindade indicates, the debate initiated in the 1990s

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[168] Explanatory Report to Protocol No 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention.

[169] As previously also described in Chapter I 4.2.1.

contributed to amendments with the aim of permitting individuals to appear before the Court "as true subjects of rights under the American Convention".[170]

The reforms in the Inter-American system were introduced through reforms in the Rules of Procedure of the Inter-American Court. A tendency towards recognizing the standing of the victims is evidenced in the evolution of the Rules of Procedure of the Inter-American Court: From only appearing in the hearings of the Inter-American Court as "assistants" to the IACHR, through being granted standing in the reparations phase (third Rules of Procedure of the Inter-American Court approved on 1996), to having almost full standing in the proceedings before the Inter-American Court (since the fourth Rules of Procedure of the Inter-American Court approved in 2000) even despite being subject to the condition that the IACHR submits the case to the this Court.

Nevertheless, the latest Rules of Procedure of the Inter-American court also took a step backwards in the protection of human rights by establishing limitations to the IACHR regarding the submission of evidence when filing a case to the Inter-American Court. In the Statement of Motives for the Reform of the Rules of Procedure the following is indicated:

> Accordingly, in these Rules of Procedure, under Article 35, the Commission will no longer initiate proceedings through the submission of an application, but though the submission of its merits report issued in accordance with Article 50 of the Convention. Upon submission of that report, the Commission shall state why it has chosen to present a case to the Court. Additionally, unlike under the previous Rules of Procedure, the Commission may no longer offer witnesses or the statements of alleged victims; according to Article 35, it may only offer expert witnesses under certain circumstances. (Emphasis added)[171]

[170] Lauri R. Tanner, "Interview with Judge Antônio A. Cançado Trindade, Inter-American Court of Human Rights," *Human Rights Quarterly* 31, no. 4 (2009): 991.

[171] Statement of Motives for the Reform of the Rules of Procedure, accessed April 24, 2017, http://www.corteidh.or.cr/sitios/reglamento/nov_2009_motivos_ing.pdf.

The Inter-American system has not yet introduced the right of individual petition, but has introduced a reform that restricts the IACHR role precisely in regards to the submission of cases to the Inter-American Court.[172]

2. REFORMS PROPOSED NOT IN PLACE TO DATE

Both systems continue facing challenges that require that further reforms to ensure their effectiveness. In this subchapter the main pending reform proposals made will be reviewed**.** The comparative analysis will take into account the European Court on the one hand and the Inter-American Court and the IACHR on the other hand, due to the fact that, as previously mentioned, the Inter-American protection system concerns primarily the IACHR and then the Inter-American Court in contrast to the European system, where the control mechanism consists of a full-time Court.[173]

2.1. Proposals in the European system

In the European system, the reform proposals mainly aim to reduce the case overload of the European Court.[174] After Protocol No 14 to the ECHR entered into force, several steps were taken showing a continuous commitment to ensure the long-term effectiveness of the European by making important proposals with this aim. In regards to

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[172] Regarding the text quoted of the Statement of Motives for the Reform of the Rules of Procedure, the following objections are to be mentioned as well:

Firstly, it has to be highlighted that Article 50 of the ACHR does make reference to a report, but the document referred to is the document to be transmitted to the State Party concerned; moreover, as per Article 50.2 it cannot be published. The ACHR has not regulated in that article the document that is transmitted by the IACHR to the Inter-American Court.

Secondly, it is to be noted that while the Statements of Motives document clearly indicates that the IACHR may no longer offer witnesses or statements of alleged victims, the new text of Article 35 of the Rules of Procedure of the Inter-American Court, does not expressly proscribe the IACHR from doing so. What the referred Article does is to not include the previous text of Article 33 of the previous Rules or Procedure that indicated that in the application the IACHR had to include "the supporting evidence, indicating the facts on which it will bear; the particulars of the witnesses and expert witnesses and the subject of their statements".

[173] Article 33 of the ACHR and Article 19 of the ECHR.

[174] See Chapter I 4.2.2.

the access by individuals to the European Court, the following proposals are to be highlighted[175]:

- In 2005 a Group of Wise Persons (consisting of eleven experts) was established to make proposals taking into consideration, among others, the initial effects of Protocol No 14 to the ECHR. As indicated one year later by the Group of Wise Persons in their Interim Report to the Committee of Ministers, while an assessment could be made only after the amendments of Protocol No 14 to the ECHR had been applied for a certain time, it was already anticipated that these reforms would not be sufficient to find a lasting solution to the overload of cases,[176] and history has proved that this was true.

  Regarding the access by individuals to the European Court it is noteworthy that this Group correctly opposed granting the European Court discretionary power to decide which cases to accept for examination, indicating the following:

> 33. The Group also decided not to pursue the idea of giving the Court a discretionary power to decide whether or not to take up cases for examination (a system analogous to the certiorari procedure of the United States Supreme Court). It felt that a power of this kind would be totally alien to the philosophy of the European human rights protection system. It was pointed out that the right of individual application was a key component of the convention system and that the introduction of a mechanism based on the certiorari procedure would be likely to call it into question and thus undermine the philosophy underlying the convention. Furthermore, a greater margin of appreciation would tend to politicise the system as the Court would have to select cases for examination. That might entail the risk of inconsistency, if not arbitrariness. Lastly, the

[175] For the purpose of the present research attention will be given only to the proposals in regards to the access by individuals to the European Court and particularly the ones that could hinder the individuals' access to the protection mechanism. Several proposals were done in these instruments regarding the principle of subsidiarity but as this principle is not considered a restriction to the right of individual petition (in contrast to the principle *de minimis non curat praetor*) its analysis is not relevant in this case.

[176] 116th Session of the Committee of Ministers (Strasbourg, 18-19 May 2006) – Interim report of the Group of Wise Persons to the Committee of Ministers, accessed May 12, 2017, https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805d7ff7.

introduction of this mechanism would be perceived as a lowering of human rights protection.[177] (Emphasis added.)

- In 2010 the Interlaken Declaration adopted an Action Plan "as an instrument to provide political guidance for the process towards long-term effectiveness of the Convention system". [178] Among other recommendations, this declaration confirmed the right of individual petition; however, at the same time it invited the European Court to give full effect to the admissibility criteria of the significant disadvantage created by Protocol No 14 to the ECHR and even "to consider other possibilities of applying the principle *de minimis non curat praetor*". This principle, as analyzed in further detail in Chapter IV, constitutes a restriction to the access by individuals to the European Court.
- In 2011 the Izmir Declaration, among others, reaffirmed the attachment by ECHR States Parties to the right of individual petition "as a cornerstone of the Convention mechanism". However, at the same time this declaration indicates that "appropriate measures must be taken rapidly to dissuade clearly inadmissible applications, without, however, preventing well-founded applications from being examined by the Court". This last quoted text is not clear, as it is not clear what should be understood as 'dissuasive measures' and it does not take into consideration that it can be determined that an application is well-founded or not only after the case has been reviewed by the Court.

  It is also of concern that the Conference invited the Committee of Ministers "to initiate work … on whether it would be advisable to introduce new criteria, with a view to furthering the effectiveness of the Convention mechanism". Establishing new admissibility criteria could imply creating new restrictions for individuals to access to the protection mechanism, and indeed it seems that this was the intention of the declaration as it also indicated that it "invites the Committee of Ministers to continue to examine the issue of charging fees to applicants and other possible new procedural rules or practices concerning access to the Court".

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[177] *Ibid*.

[178] Interlaken Declaration, dated February 19, 2010, accessed May 12, 2017, http://www.echr.coe.int/Documents/2010_Interlaken_FinalDeclaration_ENG.pdf.

In addition, it also requested the European Court to give full effect to the principle *de minimis non curat praetor*.[179]

- In 2012 the Brighton Declaration continued to affirm the right of individual application as the cornerstone of the ECHR system. Moreover, it indicated that this right should be practicably realizable and that the States Parties to the ECHR must ensure that they do not hinder in any way its effective exercise. However, in this declaration the suggestion to reduce the time limit for submitting applications from 6 to 4 months (Article 35(1) of the ECHR) was considered appropriate, as well as to remove the safeguard of Article 35(3)(b) regarding the requirement that no case may be rejected for the significant disadvantage requirement if it has not been duly considered by the domestic court (both analyzed in further detail in Chapter IV).[180]
- In 2015 the Brussels Declaration also reconfirmed the strong attachment of the States Parties to the ECHR to the right of individual application. Nevertheless, in line with the precedent declarations, it calls States Parties to the ECHR to sign and ratify Protocol No 15 to the ECHR, which contributes to extend the application of the principle *de minimis non curat praetor*.
- Further efforts continue, such as for example the meetings of the Committee of Experts on the System of the European Convention on Human Rights.

As a result of the above-mentioned group and declarations, two new protocols, Protocols No 15 and No 16 to the ECHR, were drafted and are opened for signature and ratification and are pending ratification to date.[181] These two Protocols have different purposes: while Protocol No 16 to the ECHR, which is optional, aims to foster judicial cooperation by enabling highest Courts of the States Parties to the ECHR to request advisory opinions from the European Court (as already mentioned in Chapter II.2), Protocol No 15 to the ECHR includes provisions that restrict the access by individuals to

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[179] Izmir Declaration, dated April 26-27, 2011, accessed May 12, 2017, http://www.echr.coe.int/Documents/2011_Izmir_FinalDeclaration_ENG.pdf.

[180] Brighton Declaration, dated April 19-20, 2012, accessed May 12, 2017, http://www.echr.coe.int/Documents/2012_Brighton_FinalDeclaration_ENG.pdf.

[181] See Annex II-A.

this Court by reducing the time limit for submitting applications from 6 to 4 months and by extending the realm of application of the significant disadvantage admissibility criterion (as analyzed in Chapter IV in more detail).[182]

Appropriately, the proposal to establish fees for the applications was not included in the new Protocols. As this proposal correctly notes, courts fees dissuade persons from submitting applications; furthermore, more than dissuade it can constitute an effective way of restraining the submission of applications, including those of persons whose human rights were violated by a State. It has to be taken into consideration that a human rights protection mechanism has to monitor the compliance of human rights and at the same time it has to respect the rights it is protecting. Moreover, if costs are incurred in the processing of the cases, these have to be paid by the State, noting that the persons have to submit applications to the Court due to the inefficiency of the States to protect their human rights.

While the case overload at the European Court implies that reforms in the system are required, the strategy of restricting access by individuals to the protection mechanism should not be followed, as it is against principles that the protection mechanism is defending and it could not make a human rights court more effective. The restriction of access to the European Court and consequent reduction of its caseload contributes to making the work of the referred court more efficient when processing the cases admitted, but the mechanism cannot be considered more effective, as its scope of protection has been reduced.

Searching for a solution, I agree with other strategies also adopted in the referred declarations in regards to the fact that the domestic courts are the first ones that have to enforce the ECHR and that the mechanism of execution of European Courts' judgments has to be improved. Dinah Shelton's comments in this regard are noteworthy:

> Examining the case law and the statistics, the article concludes that the European system appears to be in crisis less because of an influx of trivial cases, of which there are undoubtedly some (a crisis of success), than because the contracting parties and the Court have failed to insist on compliance with prior judgments and respect for human rights on the part of the four states that account for

[182] See below Chapter IV.

> approximately 60 per cent of the Court's caseload (a crisis of failure). If this conclusion is accurate, the focus should shift away from disadvantaging individual applicants to taking measures to improve compliance in those states where it is not occurring. [183]

In addition, it has to be noted that the risk that a human rights violation is not sanctioned by the current European system already exists and should not be increased. For instance, the United Nations Human Rights Committee in its Communication No. 1852/2008 found that there was a human rights violation (of Article 18 of the International Covenant on Civil and Political Rights) in a case concerning the expulsion of a student from a school for wearing a keski, while in similar cases submitted to the European court (case *Ranjit Singh v. France* and case *Jasvir Singh v. France*, also regarding students wearing a keski at school), the European court rejected the applications and declared that they were manifestly ill-founded.

2.2. Proposals in the Inter-American system regarding the Inter-American Court

In the Inter-American system, the main amendment proposals involve advances that were already made by the European system (mainly through Protocol No 11 to the ECHR). Some of the improvement proposals have been pending review since the beginning of the Inter-American Court. In the 1990s Judge A.A. Cançado Trindade made significant proposals, several of which were implemented in the Rules of Procedure of the Inter-American Court approved on 1996 and in the ones approved in 2000, but other fundamental ones are still pending to date, particularly the introduction of the right of individual petition to the Inter-American Court.[184]

The following main reform proposals in regards to the access by individuals to the Inter-American Court are to be highlighted:

- To establish a permanent court: The proposal that the Inter-American Court operates on a permanent basis has been suggested since the beginning of the

[183] Dinah Shelton, "Significantly Disadvantaged? Shrinking Access to the European Court of Human Rights," *Human Rights Law Review* 16, no. 2 (2016): 306.

[184] Antônio Augusto Cançado Trindade, "Bases para un Proyecto de Protocolo a la Convención Americana sobre Derechos Humanos," *El sistema interamericano de protección de los derechos humanos en el umbral del siglo XXI-Memoria del seminario (Nov. 1999)* (2003): 67-99.

system, as recalled by Thomas Buergenthal.[185] This is a need and clearly would provide the system with more celerity and efficiency in the processing of the cases. It would also be a crucial requirement if the right of individual petition to the court is introduced in the system.

Modern states have permanent domestic courts and the international justice should not be different. Human rights violations take place on a permanent basis and not only during a certain period of time. In the same way that hospitals need to work on a permanent basis and cannot work only for certain time period, the 'social pathology' of human rights violations by states requires permanent and immediate answers.

- To provide individuals the right of direct access to the Inter-American Court: In the Inter-American system a Draft Optional Protocol to the ACHR that grants individuals full access (*ius standi*) to the Inter-American Court of

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[185] Thomas Buergenthal narrated the following:

> In 1979, most of South America was either in the hands of military regimes or controlled by them, including Brazil, Argentina, Paraguay, Bolivia, Chile, and Uruguay. With the exception of democratic Costa Rica, the situation in Central America was not much better, nor in neighboring Panama, Haiti, or the Dominican Republic. Mexico's then so called "democracy" was also not favorably disposed to human rights or international human rights institutions. Yet, all these countries had a vote in deciding on the contents of our Statute and our budget, despite the fact they had not even ratified the Convention.
>
> That left basically only Costa Rica, Venezuela, and Colombia – Peru was just emerging from a leftist dictatorship – among the Latin American countries, in addition to the small Commonwealth Caribbean nations, willing in 1979 to see the Inter-American Commission on Human Rights and Court become effective institutions for the protection of human rights. But their influence was not significant enough to overcome the opposition of the non-democratic states. In short, the Assembly was dominated by States strongly opposed to regional institutions with power to protect human rights and they readily succeeded in blocking our efforts to strengthen the Court, including a proposal for a full-time Court.
>
> Although we could have anticipated the Assembly's rejection of a full-time Court, what came as a shock was the Assembly's failure to adopt a budget for the Court.

(Thomas Buergenthal, "Remembering the Early Years of the Inter-American Court of Human Rights," *Center for Human Rights and Global Justice* Working Paper no. 1 (2005): 5).

Human Rights has been under consideration since May 2001.[186] To date, the introduction of the right of individual petition continues to be pending in the agenda of the OAS.

Judge A.A. Cançado Trindade rightly emphasizes that the recognition of individual rights corresponds with the procedural capacity to vindicate them, at national and international levels.[187] Furthermore, as he explains:

> The protection of rights ought to be endowed with the *locus standi in judicio* of the alleged victims (or their legal representatives), which contributes to a better hearing of the cases at issue, without which the hearings would be lacking an essential element (in the search for truth and justice), besides being ineluctably mitigated and in flagrant procedural imbalance. The jurisdictionalization of the procedure greatly contributes to remedy and put an end to those deficiencies which can no longer find any justification.[188]

Consistent with Judge A.A. Cançado Trindade, by providing individuals full procedural capacity, the protection of human becomes a reality. This proposal is also clearly linked with the previous proposal as a work that works on a permanent basis would be indispensable for granting the right of individual petition to the Court.

The right of individual petition to the Inter-American Court proposal also takes into consideration that not all victims require a sort of "guardian" or "curator" who assists them to access to the international court of justice. One example of this is the case *Ivcher-Bronstein v. Peru*, where the petitioner was majority shareholder, Director and President of one of the most important television Channels in Peru. This proposal would not only alleviate the caseload of the IACHR, and enable this organ to dedicate itself to the cases

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[186] Lauri R. Tanner, "Interview with Judge Antônio A. Cançado Trindade, Inter-American Court of Human Rights," *Human Rights Quarterly* 31, no. 4 (2009): 991.

[187] Antônio Augusto Cançado Trindade, "Bases para un Proyecto de Protocolo a la Convención Americana sobre Derechos Humanos," *El sistema interamericano de protección de los derechos humanos en el umbral del siglo XXI-Memoria del seminario (Nov. 1999)* (2003): 7.

[188] Antônio Augusto Cançado Trindade, *The access of individuals to international justice*. Vol. 18 (New York: Oxford University Press, 2011): 42.

> where it is really needed, but it would also allow that the right to judicial protection enacted in the ACHR is respected by the Inter-American system itself.

Other amendment proposals that clearly are essential to strengthen the Inter-American system include the following: the ratification of the ACHR by all Member States to the OAS, to establish the automatic binding jurisdiction of the Inter-American Court to all Member States of the OAS and to not allow reserves to the jurisdiction of the Inter-American Court. Additionally, reforms are being requested in regards to the selection procedure of Members of the IACHR and the Judges of the Inter-American Court (in this regard see Annex III-A).

An additional essential proposal is to increase the funds allocated to the IACHR and particularly to the Inter-American Court. In 2016, two UN human rights mechanisms, Specials Procedures and the Human Rights Treaty Bodies regarding the IACHR had to "call on all governments and human rights stakeholders in the Americas to provide the necessary funds to save one of the leading regional rights systems."[189] As mentioned by Jo M. Pascualucci, in the Inter-American system there is a "[f]inancial [s]trangulation of the Commission and the Court".[190] At the moment no solution has been given, even in spite of several requests as indicated by Dinah Shelton:

> As a further sign of weak commitment to the system, despite repeated attempts by the IACHR and the Court to obtain the increased financial and human resources needed to exercise their functions, no additional resources have been allocated.[191]

Diplomatic channels are essential to ensure that sufficient funds are provided by the States; however, at the same time emphasis should be put on making States aware of the fact that if States violate human rights, they have to assume the costs of their

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189 UN Nations Human Rights Office of the High Commissioner news: "Inter-American Commission on Human Rights financial crisis", dated June 3, 2016, accessed May 13, 2017, http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20059&LangID=E.

190 Jo M. Pasqualucci, "The Inter-American Human Rights System: establishing precedents and procedure in human rights law," *The University of Miami Inter-American Law Review* (1994): 355.

191 Dinah Shelton, "The Rules and the Reality of Petition Procedures in the Inter-American Human Rights System," *Notre Dame Journal of International & Comparative Law* 5 (2015): 5.

violations. That awareness would also contribute to fostering the willingness of States to improve their internal mechanisms.

2.3. Proposals in the Inter-American system regarding the role of the IACHR

The amendment proposals in the Inter-American system are not only in regards to the Inter-American Court but also in regards to the functioning of the IACHR.[192] The mandate of the IACHR is very extensive, ranging from monitoring and compliance functions to the processing of individual petitions, and there is disagreement about which approach the IACHR should currently have, as described by Dinah Shelton:

> This broad expanse of functions gives rise to a range of views about the primary function of the IACHR and the role of the petition procedure; these views in turn shape attitudes about the importance of procedural regularity or "judicialization" of the system. On the one hand, many argue for retaining flexibility and an almost ad hoc approach to processing petitions, allowing for maximum negotiating ability and accommodation to the needs and desires of petitioners. On the other hand, many find that the adversarial nature of the petition process, which in many cases leads to proceedings before the Court, argues for procedural regularity, predictability and consistency in the handling of cases, i.e. a more judicial approach to the petition process. Tension between these two views and disagreement about the proper place of petitions in the overall system partly explain the current lack of coherence in the rules and procedures governing petitions, as well as disagreement about the nature and extent of further needed reforms. In part, the various views of Member States during the "strengthening" process reflected their own disagreement about the purpose and focus of the IACHR.[193]

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[192] For instance, among others, it has been proposed that the report prepared by the IACHR in accordance with Article 50 of the ACHR is also provided to the petitioner (Antônio Augusto Cançado Trindade, "Bases para un Proyecto de Protocolo a la Convención Americana sobre Derechos Humanos," *El sistema interamericano de protección de los derechos humanos en el umbral del siglo XXI-Memoria del seminario (Nov. 1999)* (2003): 46).

[193] Dinah Shelton, "The Rules and the Reality of Petition Procedures in the Inter-American Human Rights System," *Notre Dame Journal of International & Comparative Law* 5 (2015): 6-7.

In addition to the proposals in regards to the role of the IACHR in the protection mechanism, proposals regarding the processing of individual petitions before the IACHR have been made. For instance proposals regarding the processing of individual petitions were included among several proposals made in the 'Report of the Special Working Group to Reflect on the Workings of the Inter-American Commission on Human Rights with a view to Strengthening the Inter-American Human Rights System for consideration by the Permanent Council'.[194]

The above-mentioned Special Working Group, recognized the importance of the individual petitions to the IACHR for the system and at the same time correctly mentioned that these are not judicial petitions. However, it awakens concern that in one proposal they suggested (in the face of the overload of petitions submitted to the IACHR) developing and broadening the criteria for setting aside petitions (archiving them), including the cases where there is long inactivity of the petitioner. As previously mentioned in regards to the European systems proposals, the strategy of reducing the overload of cases by limiting the access by individuals to the protection mechanism is not only inefficient but does exactly what the convention intends to avoid: that victims of human rights violations are left defenseless.

In addition to the above, linked to the proposal of granting to individuals the right of petition to the Inter-American Court there are different positions regarding the role that the IACHR would have in that case. Some support the position that the IACHR should only preserve its non-contentious functions (Model 1) and not participate in the proceeding in a similar way to the reform made by Protocol No 11 to the ECHR in European System. Others propose establishing the IACHR as a sort of 'filtering and conciliating instance', as it should filter the petitions and promote friendly settlements (Model 2)[195] leaving the rest of the processing to the Inter-American Court. These two proposals can be plotted as follows:

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[194] Report of the Special Working Group to Reflect on the Workings of the Inter-American Commission on Human Rights with a view to Strengthening the Inter-American Human Rights System for consideration by the Permanent Council, accessed May 13, 2017, http://www.oas.org/en/council/gt/closed/gtdah.asp.

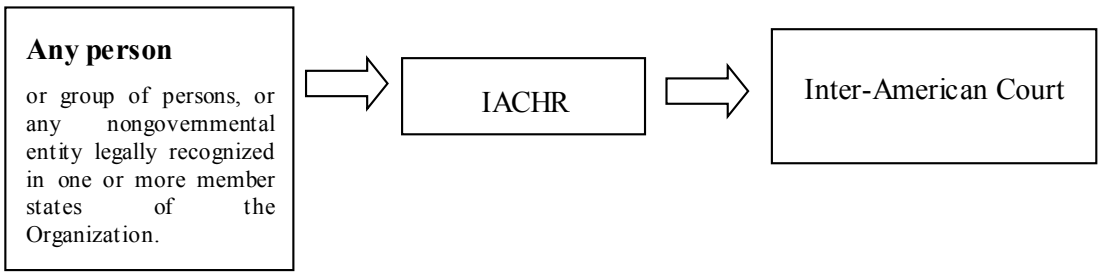
[195] For instance, Ariel Dulitzky proposes that the IACHR remains exclusively as an organ in charge of the admissibility and friendly settlements while the Inter-Court gathers and receives evidence and decides on factual and legal matters. (Ariel Dulitzky, "The Inter-American Human Rights System fifty years later: time for changes," *Quebec Journal of International Law 127 (Special Edition)* (2011): 151-152.)

Figure No 5:

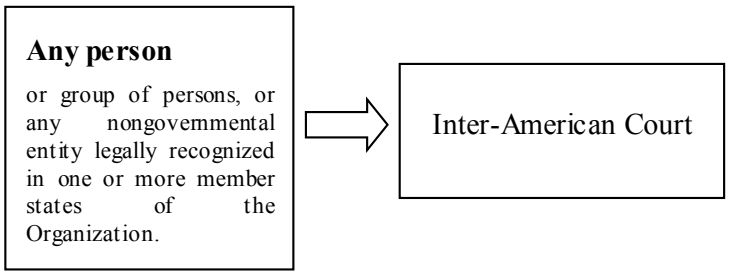
Previous Proposals

regarding the role of the Inter-American system in individual cases

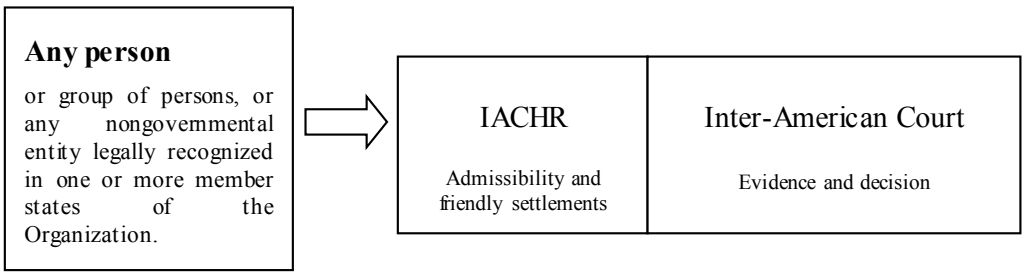
Current Model:



Model 1:



Model 2



None of the proposals referred to in the paragraph and figure above is satisfactory. The first position does not take into consideration that the experience of the system has demonstrated the fundamental role that the IACHR plays in the ACHR supervisory mechanism. The second position disregards the fact that, on the one hand, the IACHR is not a judicial body and, on the other hand, a court of justice should not be

deprived of its function to filter by itself the cases that it processes (this is described in the next subchapter). In addition, the friendly settlement process has to be carefully regulated; sufficient time has to be provided to the parties while at the same time the conciliation before the IACHR should not be used to delay the proceedings.

3. STANDING TO SUBMIT CASES TO THE COURTS

In the European and Inter-American systems, there are fundamental differences in regards to the standing to submit a case to the respective protection mechanism, as shown in the following figure:

Figure No. 6:

Standing to submit a case (in regards to individual complaints)

European Court	IACHR	Inter-American Court
The victim Any person, non-governmental organisation or group of individuals claiming to be the victim. (Article No of the 34 ECHR)	Any person Any person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization. (Article 44 of the ACHR)	The IACHR (Article 61.1 of the ACHR) *Additionally, the victims "may submit their brief containing pleadings, motions, and evidence autonomously and shall continue to act autonomously throughout the proceedings" (Article 25.1 of the Rules of Procedure of the Inter-American Court)

In the European system, the term "victim" has generated abundant case-law. The following definition can be found in its Practical Guide on Admissibility Criteria:

> 15. The word "victim", in the context of Article 34 of the Convention, denotes the person or persons directly or indirectly affected by the alleged violation. Hence, Article 34 concerns not just the direct victim or victims of the alleged violation, but also any indirect victims to whom the violation would cause harm or who would have a valid and personal interest in seeing it brought to an end (*Vallianatos and Others v. Greece* [GC], §§ 47). The notion of "victim" is interpreted autonomously and irrespective of domestic rules such as those

> concerning interest in or capacity to take action (*Gorraiz Lizarraga and Others v. Spain*, § 35), even though the Court should have regard to the fact that an applicant was a party to the domestic proceedings (*Aksu v. Turkey* [GC], § 52; *Micallef v. Malta* [GC], § 48). It. [196]

While the definition of victim is a very comprehensive one that includes direct and indirect victims and even potential victims under certain circumstances[197], it is to be highlighted that the requirement that there is a link between the harm and the petitioner is always requested. Furthermore, as indicated in the paragraph above, when interest is invoked, the interest has to be valid and personal.

In the Inter-American system, unlike the European one, the requirement to be a victim has not been established. Any person or group of persons, or any non-governmental entity legally recognized in one or more Member States of the OAS can submit a petition to the IACHR. This broad standing has proven to be of fundamental importance for the protection of human rights in a region where, among others weaknesses, the rates of poverty are very high, there are severe deficiencies in the access to education, and the fear of retaliation from the State exists.[198]

For example, in the provisional measures in the case *Bustios-Rojas* it was proven how essential is to give to any person the possibility of lodging a complaint before the human rights protection mechanism.[199] In this case, the complaint regarding the death of Hugo Bustios Saavedra (journalist who criticized abuses of human rights by armed forces in Peru and was investigating murders of peasants) was received from the Committee to

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[196] Practical Guide on Admissibility Criteria, accessed April 24, 2017, http://www.echr.coe.int/Documents/Admissibility_guide_ENG.pdf.

[197] *Ibid*.

[198] This regrettable situation continues to date. In Peru, for instance, human rights violations have been committed in recent years against farmers and journalists who opposed the mining projects Conga and Tia Maria. See also the documentary "When Two Worlds Collide".

[199] It has to be indicated that while the Bustios-Rojas case is a good example of prompt access to an international human rights protection mechanism, it is at the same time a good example of the inefficiency of the system. In the year 1990 this case was brought before the IACHR and only seven years later, in 1997, the IACHR issued its report on the case (Report N° 38/97). The report concluded that the Peruvian Government did not carry out due process and recommended the Peruvian Government perform a serious, impartial and efficient investigation. In the year 2001 in a declaration together, the Government of Peru and the IACHR indicated that the government of Peru would investigate this and another 164 cases of human rights violations. To date there is no sentence in this case. (Analyzed in more detail in Chapter IV.)

Protect Journalists, Human Rights Watch/Americas and CEJIL. These institutions requested precautionary and provisional measures, regarding which the IACHR indicated:

> The reasons which moved the petitioners to request these measures were, *inter alia,* the arrest of two witnesses to the attack on Bustíos and Rojas, threats against Bustíos's widow, Margarita Patiño, and the murder of eyewitness Alejandro Ortiz Serna, who had made a sworn statement on the events before a notary in Lima and a few days after doing so had expressly asked the office of the Attorney General of Lima for measures of protection for his life.[200]

Under those circumstances it would be unthinkable to expect that the widow of Hugo Bustios Saavedra had submitted a petition to the Inter-American protection system by herself. Furthermore, other institutions and particularly the IACHR were more able than the individuals to investigate the case, as was indicated by the IACHR:

> That during its on-site visit to the area in May of 1989 the Commission was able to confirm the level of violence and the defenselessness which characterize the conditions in which a great proportion of the civilian population in the emergency areas live, due to the "cross fire" nature of the situation, where insurgent groups are in action on one side and agents of the government on the other - a situation which the material in the Commission's possession suggests has not changed since."[201]

While a broad standing to bring a case before the IACHR has been provided, in contrast, the right of individual petition to the Inter-American Court has not been established to date, as previously mentioned. This restriction has proven to have detrimental consequences for the protection of human rights in the system. For instance, in the *Cayara* case the IACHR submitted a complaint to the Inter-American Court against the Peruvian State for the following facts:

> On May 13, 1988 … in the vicinity of the hamlet known as Erusco, a Peruvian Army convoy was ambushed by an armed group belonging

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[200] I/A Commission H.R., Case 10.548, Hugo Bustios Saavedra, Peru, Report N° 38/97, October 16, 1997, accessed April 24, 2017, http://www.cidh.oas.org/annualrep/97eng/Peru10548.htm.

[201] *Ibid*.

to the Peruvian Communist Party --also known as the Sendero Luminoso [Shining Path]--, leaving four soldiers dead and another 14 wounded…

The next day, May 14, military troops instituted a series of actions in the Cayara district which resulted in the arbitrary execution of 33 persons, the disappearance of 7, the torture of at least 6 who survived and damage to public and private property, all within the period from May 14, 1988 to September 8, 1989. In committing the violations mentioned herein, the military troops' purpose was to take reprisals - targeted at a community whom the military considered to be terrorists-- and to eliminate those persons whose names appeared in a letter that an anonymous informant sent to an Army officer in that area. Some of the persons whose names were mentioned in the letter were killed on May 14, while others were arrested and then killed on May 18. Others were arrested and disappeared on June 29 of that year, while another was summarily executed on December 14. Property belonging to some of the other people on the list was damaged and looted. Apart from the individuals on the list in question, military troops proceeded to execute arbitrarily other persons from the town, while other people were the victims of enforced disappearance. The soldiers also tortured an unknown number of persons to obtain information on the subversive group's activities.

The authors of these actions also committed acts calculated to conceal the truth. Pressure was used to force witnesses to change their testimony and those who would not were physically eliminated. And so it was that on September 8, 1989, the last of the key witnesses was murdered. The authors also took measures to cover up their tracks, which included efforts to wash away the bloodstains in the church and to hide the bodies of the victims, most of which have not yet been found. Their actions were also calculated to thwart the proceedings conducted by those organs of the Peruvian State that were endeavoring to ascertain the facts and, as the case gained notoriety, to obtain from organs of the Peruvian State versions that were consistent with those spread by the Army.[202]

[202] I/A Commission H.R., Cayara, Peru, Complaint, accessed April 24, 2017, https://www.cidh.oas.org/countryrep/Cayaraen/cayara.1.htm.

This case was filed by the Inter-American Court because of the expiration deadline established in Article No 51.1 of the ACHR.[203] Due to the delay of the IACHR, the Inter-American Court did not address the merits of the case. In other words, due to a negligence of procedural nature of the IACHR, in this case victims were left defenseless and the impunity of the transgressors of human rights has been reaffirmed. This outcome clearly argues in favor to providing to the petitioner the right of access to the Inter-American Court, as this could have contributed to overcoming the inaction of the IACHR.

In the *Cayara* case, it also has to be stressed that the petition to the IACHR was also not submitted by the victims but by Americas Watch, showing the great relevance of providing standing to other persons, particularly non-governmental entities. To date, the submission of the individual cases to the Inter-American Court depends on the IACHR, and neither the victims nor any non-governmental entities nor other person can help to remedy the inactivity of the IACHR or can question the decisions of the IACHR.[204]

Additionally, in regards to the standing required in the Inter-American system, it is also noted that, while in some cases the victims are in a vulnerable state that does not allow them to submit a petition to the Inter-American protection mechanism, in other cases the victims have the capacity to submit an application directly to the Inter-American Court. The case *Ivcher-Bronstein v. Peru* was mentioned above (see *supra* 2.2.) and another example is the provisional measure in the case *Constitutional Court*, as in this case (regarding the restitution of Magistrates of the Constitutional Court of Peru) the victim herself requested the provisional measures that the Inter-American Court adopted.

At this point it has to be highlighted that there is no legal aid system in the Inter-American system for the victims when filing a petition to the IACHR. The creation of a legal aid system which is of great importance represents a challenge in face of which the permanent financial crisis mentioned above which is accompanied of the following situation:

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[203] The Government of Peru submitted twelve preliminary objections.

[204] Moreover, in accordance with Article 50 of the ACHR the report elaborated by the IACHR setting forth the facts and stating its conclusions, is not even made known to the petitioners or victims but only to the State Party concerned and cannot be published. As indicated *supra* under 1.3., this is one of the articles that is proposed by the doctrine to be amended.

> Over the years, a number of countries have strongly disputed the IACHR and its rulings. Brazil, Nicaragua, Peru, Trinidad and Tobago, and Venezuela, among other countries, have suspended payment of organizational dues in some occasions, and they have even withdrawn their ambassadors from the organization, or threatened to leave altogether. The reaction of some member states when rulings have been brought against them, or when they have disagreed with the Commission or the Court, is proof that they have sometimes ignored the inter-American system altogether.[205]

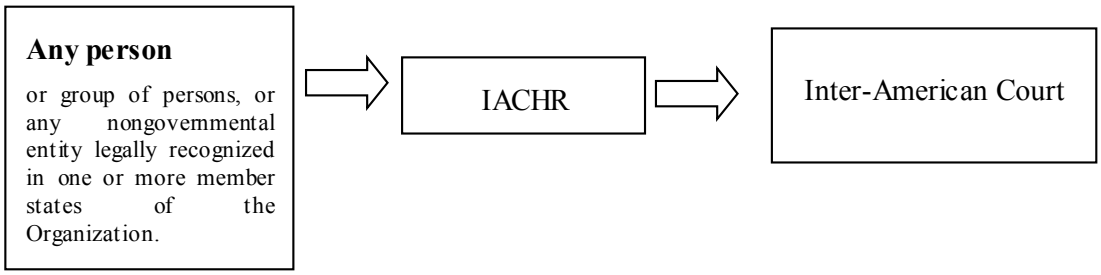
Taking the above findings into account, the following reform is proposed in regards to the Inter-American system:

[205] Laura Planas, *The Challenges of The Inter-American Commission on Human Rights*, (Washington D.C.: Council on Hemispheric Affairs, 2016) accessed May 14, 2017, http://www.coha.org/the-challenges-of-the-inter-american-commission-on-human-rights/.

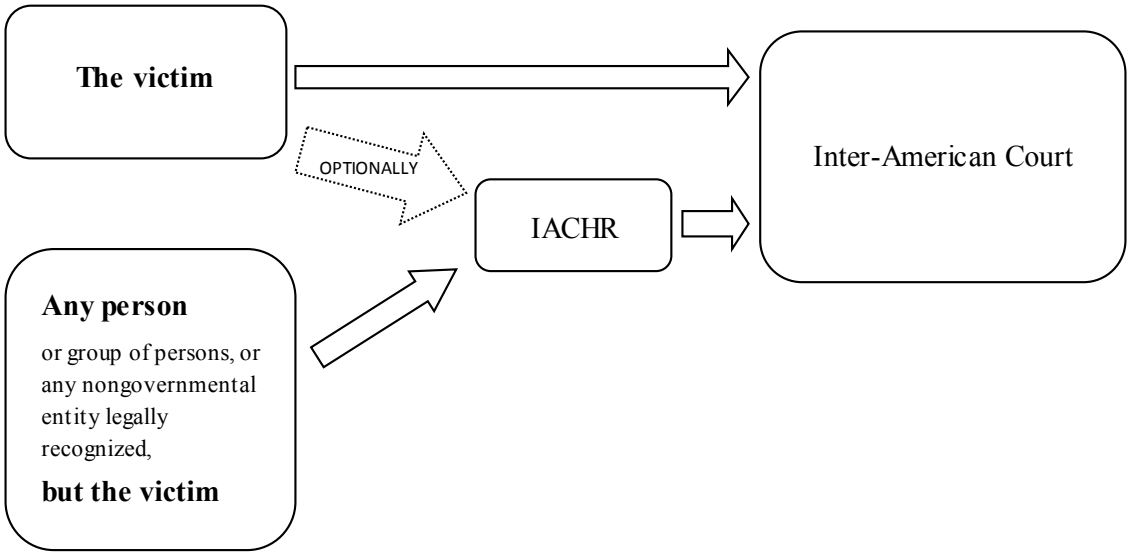
Figure No 7:

Proposal regarding the standing to submit a case in the Inter-American system regarding individual cases

Current Model:



Proposed Model:



The present research proposes that the IACHR continues to promote the defense of human rights in the contentious proceedings between individuals and State Parties by being a subsidiary optional organ to which the victims can decide to accede or not before submitting their cases to the Inter-American Court. Only in regards to any person that is not the victim are the petitions to be submitted first to the IACHR.

The proposed model has the following advantages:

a) Takes into consideration that the IACHR is not a jurisdictional organ.

The ACHR, which established the IACHR and the Inter-American Court as means of protection of the convention, defines the legal nature of these two organs. The ACHR did not create two jurisdictional bodies, it instituted two organs of protection with different functions. If it would have created two jurisdictional organs simultaneously, in addition to establishing the criteria for the distribution of functions, two courts ("doble instancia") would have been established.

The IACHR is not a jurisdictional body nor can it be, as it is an organ created as petitioner ("accionante"), in other words, it is an organ that claims ("pretensor"), which promotes the observance and defense of human rights in America through recommendations, among other functions. The IACHR can invite the parties to the conciliation but cannot execute its decisions (if that would be the case there would be no reason for recurring afterwards to the Court).[206] The jurisdictional

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[206] The OEA Charter indicates in its Transitional Provision Article 145 that while the ACHR entered into force, the IACHR was provided with the function of keeping the vigilance over the observance of human rights. The reform of the OAS Charter that entered into force in 1970 established in the first paragraph of its Article 106 the following:

> There shall be an Inter-American Commission on Human Rights, whose principal function shall be to promote the observance and protection of human rights and to serve as a consultative organ of the Organization in these matters. (Emphasis added)

The functions of the IACHR were amended by Resolution XXII, approved in November 1965, in the Second Extraordinary Inter-American Conference celebrated in Rio de Janeiro, Brazil, which amended and expanded the functions and powers of the IACHR which resolved the following:

> 3. To authorize the Commission to examine communications submitted to it and any other available information, to address to the government of any American State a request for information deemed pertinent by the Commission, and to make recommendations, when it deems this appropriate, with the objective of bringing about more effective observance of fundamental human rights.
>
> 4. To request the Commission to submit a report annually to the Inter-American Conference or Meeting of Consultation of Ministers of Foreign Affairs. This report should include a statement of progress achieved in realization of the goals set forth in the American Declaration, a statement of areas in which further steps are needed to give effect to the human rights set forth in the American Declaration, and such observations as the Commission may deem appropriate on

function was granted to the Inter-American Court, not to the IACHR, which carries out administrative and political functions in the broad sense.

b) Recognizes the right to judicial protection of the victims giving them at the same time the option to access to the IACHR.

The proposed model establishes the IACHR as an optional subsidiary organ. The victims should be able to decide whether to submit their petitions directly to the Inter-American Court or to submit them first to the IACHR, so that this organ helps them with the investigation and also provides an opportunity for conciliation before starting a judicial proceeding.

In regards to the conciliation before the start of a judicial proceeding, the IACHR capacity to contribute to friendly settlements has proved to be effective in certain cases. For instance in the case 12.059 (daughter of Ms Carmen Aguilar de Lapacó, which was detained, disappeared since March 17, 1977) where the parties signed a friendly settlement agreement where "the [Argentinian] State acknowledged its respect for and guarantee of the right to truth, and it pledged to adopt various measures to remedy the violations alleged by the petitioners"[207], so that there was no need to submit the case to the Inter-American Court. Additionally the recommendations of the IACHR have proved to be capable to provide full redress to the victims, as happened in case 12.689 (two persons discharged from the army because they have HIV), where the IACHR confirmed that Mexico fully complied with its recommendations, guaranteeing to the

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matters covered in the communications submitted to it and in other information available to the Commission. (Emphasis added)

In line with the above, the IACHR amended its Statute in April 1966. The main modification was the allocation of the power to examine individual petitions and, in that context, to make specific recommendations to the OAS Member States. This function is established in the Statute of the IACHR, approved in October 1979 and in the current Rules of Procedure of the IACHR approved in 2009, modified in 2011, and which entered into force in August 1, 2013.

From the above it clearly follows that the nature of the functions of the IACHR in regards to promoting the observance and protection of human rights is making recommendations for this purpose, which of course requires that it examines the cases submitted to it. It is also clear that this function cannot be compared with the one of a jurisdictional organ, which does not make recommendations but issues decisions.

[207] IACHR Report N° 21/00, accessed May 10, 2017, http://www.cidh.org/annualrep/99eng/Friendly/Argentina12.059.htm.

victims access to comprehensive healthcare services, including hospital and pharmaceutical services, reinstated the victims into the Armed Forces, paid all unpaid remunerations and a compensation for non-material damages and suffering, amended domestic laws, conducted a ceremony of acknowledgement of responsibility and created a training program for the Armed Forces.[208]

Moreover, any individual would be entitled to submit a case to the IACHR while only the victims, the IACHR and the States Parties could submit a case to the Inter-American Court, and so this Court is prevented from processing cases where the recurrent has no standing.

c) The fundamental role that the IACHR has been playing in providing redress and submitting cases to the Court that otherwise would have not reach the protection mechanism is also preserved in this way.

As previously indicated, in America there is large sector of victims of human rights violations that belong to the most impoverished socio-economic sectors, to the point that it could be said that these are the main victims of human rights violations. In these cases, it is indispensable that the IACHR carries out the functions of support, investigation and direct attempt to solve the conflict due to the following reasons:

- The victims do not have the possibility to defend their rights nor to activate the protection mechanism. The victims do not know the channels of access to protection or/and do not have the financial means to access to them, their state of poverty makes this impossible.
- Due to the complexity of the investigation (or the circumstances around it) it is not possible for individuals to carry it out.

d) The right of access to judicial protection should not have obstacles.

Individuals cannot be deprived of their right of access to judicial protection as provided in Article 25 of the ACHR, which in this case implies access to the

[208] IACHR Report N° 80/15, accessed May 12, 2017, https://www.oas.org/en/iachr/decisions/2015/mxPU12689EN.pdf.

international jurisdictional organ created with the purpose to protect their human rights. In several cases the IACHR, which is an organ created to contribute to the promotion and protection of human rights, has become an obstacle to access to the Inter-American Court as an important amount of cases are pending before it (in the year 2016 there were 5 297 petitions pending initial review and 2 333 pending petitions and cases)[209] and some of them have been pending since several years ago.

e) The functions of a jurisdictional organ should not be cut.

The decision on the admissibility of a petition is a fundamental part of a judicial proceeding. Firstly, this is a judicial function. Secondly, the examination of the petition should be done not only by a judicial organ but by the same organ that will decide on the case. In that way is avoided that the court rejects a case at the end of the proceeding for a deficiency that could have remedied when the petition was submitted.

Additionally, the current criteria under which the IACHR selects the cases to be processed has not been established by the ACHR nor was it jointly decided with the Inter-American Court. The IACHR, which has an overload of petitions, files petitions to the Inter-American Court that in some cases are two years old and in other cases have been pending for more than 10 years. Neither the petitioner nor the Inter-American Court can decide on this, in practice leaving to the discretion of the IACHR the selection of cases to be processed and no control by the Inter-American Court over its docket.

f) It was a great advance without precedent that, since the beginning, it was established in the Inter-American system that any person can submit a petition to the IACHR. However, the indication that the legal persons have to be recognized in an OAS Member State is not necessary, as any person has access to it.

[209] IACHR Statistics accessed May 10, 2017, http://www.oas.org/en/iachr/multimedia/statistics/statistics.html.

CHAPTER IV: ADMISSIBILITY CRITERIA IN THE EUROPEAN AND THE INTER-AMERICAN COURTS OF HUMAN RIGHTS BY INDIVIDUALS

> "*The Court cannot emphasise enough that the Convention is a system for the protection of human rights and that it is of crucial importance that it is interpreted and applied in a manner that renders these rights practical and effective, not theoretical and illusory. This concerns not only the interpretation of substantive provisions of the Convention, but also procedural provisions; it impacts on the obligations imposed on respondent Governments, but also has effects on the position of applicants*." (European Court on Human Rights, Case Varnava and Others v. Turkey, Grand Chamber Judgment, September 18, 2009, § 160)

The admissibility criteria have direct impact in the access to the protection mechanisms, making the right of access to the courts of justice feasible or not. While the standing for submitting petitions has been analyzed in Chapter III, in the present Chapter a comparative analysis of other main admissibility requirements established in the ACHR and ECHR is made. Focus is given to the differences that could lead to proposals to improve the other system and also to the new admissibility criterion created in the European system. The new admissibility criterion introduced in the European System has no equivalent in the Inter-American system and it is important to determine if it is an advance in the area of the international procedural law so that this could be taken into consideration in future reforms in the other international court.

1. ADMISSIBILITY CRITERIA REQUIRED BY THE TWO COURTS

Requirements of form and substance were established in both mechanisms that other courts of justice also establish, including domestic courts; for instance the non-anonymous applications or not manifestly ill-founded applications, among other formal requirements that enable the courts of justice to process the petitions. However, in addition to these requirements, other requirements were established taking into

consideration that these courts are courts of justice at the supranational level. The present Sub-chapter makes a comparative analysis of these latter admissibility criteria.

1.1. EXHAUSTION OF DOMESTIC REMEDIES

The first admissibility criterion to be analyzed in both systems is the exhaustion of domestic remedies which, as established in the ACHR and ECHR, is in accordance with the generally recognized principles or rules of international law, respectively (this difference of terminology has not had an impact in practice).[210]

This admissibility criterion was also established by other international bodies, including the International Court of Justice, and consists in allowing States to correct the harm or make the redress before the case is submitted to the supranational court. In effect what is denounced to the supranational court is the fact that, having requested the State to prevent or correct a situation, the State did not do so, permitting a human rights violation to take place. Consequently, this requirement is more a requirement of substance than a requirement of form.

What should be understood under the principles of international law in regards to this requirement was summarized by the Inter-American Court in the case of *Velasquez Rodriguez v. Honduras* (a case which is constantly quoted by this Court when the respondent States object to the admissibility of the petitions before the IACHR on the grounds that domestic remedies have not been exhausted). In this case the Inter-American Court indicated that the principles of international law in regards to the exhaustion of domestic remedies are the following:

- It can be waived by the respondent State, expressly of by implication.
- The objection has to be timely (at an early stage of the proceeding), otherwise a waiver is presumed.
- The respondent State has to prove that the domestic remedies not exhausted are effective.

The same criterion is found in the case law of the European Court, for instance in the case *Sejdovic v. Italy*.

[210] Article No 46.1 of the ACHR and Article No 35.1 of the ECHR.

Both Systems recognize that the mere existence of domestic remedies is not sufficient, but these have to be effective. In the ACHR it is established in its Article 46.2 that the exhaustion of domestic remedies cannot be requested if access to them was denied to the victim, if the victim was provided access but was prevented from exhausting them or if there has been an unwarranted delay. Furthermore, the effectiveness requested has been linked with the adequacy and has been defined in the case of *Velasquez Rodriguez v. Honduras* in the following way:

> 63. Article 46(1)(a) of the Convention speaks of "generally recognized principles of international law." Those principles refer not only to the formal existence of such remedies, but also to their adequacy and effectiveness, as shown by the exceptions set out in Article 46(2).
>
> 64. Adequate domestic remedies are those which are suitable to address an infringement of a legal right. A number of remedies exist in the legal system of every country, but not all are applicable in every circumstance...
>
> 66. A remedy must also be effective - that is, capable of producing the result for which it was designed. Procedural requirements can make the remedy of habeas corpus ineffective: if it is powerless to compel the authorities; if it presents a danger to those who invoke it; or if it is not impartially applied. (Emphasis added)

While the ECHR does not include a similar text, the European Court in its case law has clearly established this approach in several cases. For instance, in the previously quoted case *Sejdovic v. Italy* the European Court stated the following:

> 43. With regard to the remedy provided for in Article 175 of the CCP, the Court reiterates that the purpose of the rule on exhaustion of domestic remedies is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to it (see, among many other authorities, Selmouni v. France [GC], no. 25803/94, § 74, ECHR 1999-V, and Remli v. France, 23 April 1996, § 45. However, the obligation under Article 35 requires only that an applicant should have normal recourse to the remedies likely to be effective, adequate and accessible (see Sofri and Others v. Italy (dec.), no. 37235/97, ECHR 2003-VIII). In particular, the only remedies which the Convention requires to be exhausted are those

> that relate to the breaches alleged and are at the same time available and sufficient. The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (see Dalia v. France, 19 February 1998, § 38, Reports 1998-I). In addition, according to the "generally recognised rules of international law", there may be special circumstances which absolve applicants from the obligation to exhaust the domestic remedies at their disposal (see Aksoy v. Turkey, 18 December 1996, § 52, Reports 1996-VI). However, the existence of mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to exhaust domestic remedies (see Sardinas Albo v. Italy (dec.), no. 56271/00, ECHR 2004-I, and Brusco v. Italy (dec.), no. 69789/01, ECHR 2001-IX). (Emphasis added)

The case law of both systems has a similar approach where this criterion is concerned also in regards to burden of proof (Case *Velasquez Rodriguez v. Honduras* § 59 and case of *Dalia v. France* §38). Both Courts have stressed that the domestic remedies to be exhausted have to be adequate and effective and that when a State Party invokes that the remedies under domestic law were not exhausted, the State bears the burden of proof. Moreover, both Courts are of the view that they do not have the task to rectify the failure of the respondent State to do so. On this last point the Inter-American Court has based its asseveration that "it is not the Court or the Commission's task to identify *ex officio* which domestic remedies shall be exhausted, but instead it corresponds to the State to point out in a timely manner the domestic remedies that must be exhausted and their effectiveness"[211] taking as a reference case law of the European Court[212].

In addition, as this is a principle of international law, consideration has been given to the case law of other international tribunals as well; for instance, the European Court has done so in the case *Cardot v. France*, where the objection of the respondent State that the domestic remedies were not exhausted was declared well-founded, taking into consideration the reasoning of the decision of the Commission of Arbitration in the Ambatielos case.

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[211] Case *Reverón Trujillo v. Venezuela*, § 23.

[212] Cases *Deweer v. Belgium* and *Bozano v. France* § 46 among others.

In brief, reviewing the case law of both Courts regarding this admissibility criterion it is found that it provides an example of how the case law of one Court supports and influences the case law of the other Court, and that both Courts have adopted an approach in accordance with a system that protects human rights.

1.2. TIME LIMIT FOR APPLYING TO THE COURTS

While the six-month rule has been adopted in the European system and in the Inter-American system, the wording of this requirement is slightly different in the texts of the two conventions. The ECHR stipulates that the six months start "from the date on which the final decision was taken", and the ACHR indicates "from the date on which the party alleging violation of his rights was notified of the final judgment".[213]

The formula established in the ACHR is more accurate than the formula of the ECHR. In procedural law the deadlines are calculated from the dates in which the parties were notified, not the dates the decisions of the Court were taken. In my experience as trial lawyer and Legal Specialist of the Court of Justice in Peru, I have confirmed that the decisions of the Court often have a date entered that differs from the date on which the decision was signed or even printed. One of the reasons for this is that it is ensured that the decision indicates a date within the time limits prescribed by law, and another is that it is not possible to determine when the printed decision will be signed, particularly when the decision has to be signed by several judges.

In the European system, it is also accepted that the notification of the decision should be the starting point for the six months. While the text of the ECHR does not indicate this, it has been stated in the case law of the European Court since 1996, as can be seen in the case *Worm v. Austria* §33, and later reconfirmed in 2008 in the case of *Koç and Tosun v. Turkey* §6. The European Commission had the same view in the year 1995, and in regards to the Application No 21034/92 submitted by K.C.M against the Netherlands, where it stated the following:

> The Commission is of the opinion that the day on which the final national judgment was rendered forms no part of the six months' time-limit contained in Article 26 (Art. 26) of the Convention. This time-limit starts to count on the date following the date on which the

[213] Article 46.1.b of the ACHR and Article 35.1 of the ECHR.

> final decision has been pronounced orally in public, or - in cases where it is not pronounced in public - following the date on which the applicant or his representative was informed of this final decision. The time-limit expires six calendar months later.

As previously mentioned,[214] in the European system Protocol No 15 to the ECHR stipulates the reduction of the time limit from 6 to 4 months. Searching for the reasons given to reduce the time limit, all that was found in the Explanatory Report to Protocol No 15 of the ECHR is the following:

> The development of swifter communications technology, along with the time limits of similar length in force in the member States, argue for the reduction of the time limit.[215]

The arguments indicated in the Explanatory Report to Protocol No 15 of the ECHR are not sufficient for reducing the time limit. The development of the technology clearly contributes to informing the victim of the Court's decision in a faster way but not necessarily to preparing a defense in a shorter time. Furthermore, the contribution to the notification promptness should not affect the time limit since, as previously indicated, the time limit is to be calculated from the date on which the victim was notified. At the same time, the victim needs to have sufficient time to prepare his/her defense, and in general the time required to prepare an application to be submitted to an international tribunal cannot be compared to the time required for preparing an appeal (although of course this depends on the case).

As no further reasons were found in regards to the amendment proposal for the reduction of the time-limit, the reasons for establishing the current time limit in both systems were researched as well. The Practical Guide on Admissibility of the European system points out the following justification in regards to the current time limit:

> The primary purpose of the six-month rule is to maintain legal certainty by ensuring that cases raising issues under the Convention are examined within a reasonable time, and to prevent the authorities and other persons concerned from being kept in a state of

[214] See Chapter I, 4.2.2., and Chapter II, 2.1.

[215] Explanatory Report to Protocol No 15 amending the Convention for the Protection of Human Rights and Fundamental Freedoms, accessed May 16, 2017, http://www.echr.coe.int/Documents/Protocol_15_explanatory_report_ENG.pdf.

> uncertainty for a long period of time. It also affords the prospective applicant time to consider whether to lodge an application and, if so, to decide on the specific complaints and arguments to be raised and facilitates the establishment of facts in a case, since with the passage of time, any fair examination of the issues raised is rendered problematic (Sabri Günes v. Turkey [GC], § 39).[216]

With regard to this last quoted text, it indicates that the time limit was established first of all to maintain legal certainty, and additionally to provide individuals with time to consider whether to submit an application or not and prepare their application. Besides the fact that in a human rights protection system the second consideration should be the main reason, it is to be highlighted that this text does not make reference to 'sufficient time,' and not providing sufficient time for the application constitutes a procedural obstacle.

It is also not clear why certainty is invoked, how authorities and other persons are kept in a state of uncertainty. In no case do national courts delay the execution of their final judgments based on the possibility that a petition could be submitted to the respective regional human rights protection system. In fact, protective measures had to be created in both systems: interim measures in the European system and precautionary and provisional measures in the Inter-American system.

Establishing a time limit for the submission of petitions is a restriction to the right of access to the courts, and the period established has to be duly justified to be legitimate. The admissibility criteria should not be a tool for restricting of the right of access to courts but should only be established if it is indispensable for the purpose of enabling courts to review the cases. In light of the lack of information described above, it is not possible to establish how the time limit admissibility criterion in both systems is indispensable for the processing of cases; furthermore, it can be deduced that the period of time was established in order to reduce the caseload of the courts and the time period selected based on a 'rule of thumb'.

As a result of the above and taking into consideration that these are courts that protect human rights, rights which are imprescriptibly, we can conclude that the

[216] Practical Guide on Admissibility Criteria, accessed April 24, 2017, http://www.echr.coe.int/Documents/Admissibility_guide_ENG.pdf, 29.

reduction of the time limit already established is a step backwards in human rights procedural law. The goal to be pursued for future reforms is to remove this admissibility criterion.

1.3. *RES IUDICATA* AND DUPLICATION OF INTERNATIONAL PROCEEDINGS

Both human rights conventions have similar formulas when establishing that the respective court of human rights shall not deal with applications that are substantially the same as an application already examined by the same Court.[217] However, in regards to the applications that are substantially the same as another application before another international body, the wording of the ECHR and the ACHR is different: the ACHR indicates "not pending in another international proceeding or settlement" while the ECHR states "has already been submitted to another procedure of international investigation or settlement".[218]

The formula included in the ACHR is more accurate than the one on the ECHR. By indicating that the other petition 'is not pending', all stages of the proceeding are included and it is clear that the case is being processed by the other body. In contrast, when indicating that the application 'has already been submitted' this does not imply that the case was admitted, only that it was submitted and even may not longer be pending after a rejection of the application.

Another difference in this requirement concerns the safeguard indicated in the last part of Article 35.2(b) of the ECHR concerning 'relevant new information', which was not included in the ACHR. This safeguard is clear in regards to matters already examined by the same Court, as there would be no risk of having two decisions on the same issue or contradicting the previous decision. However, if the other application is being processed by another international body at the same time (which does not have the additional new information on hand), there is the risk that two decisions are taken on the same issues by two different international bodies.

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[217] Article 47.d of the ACHR and Article 35.2(B) of the ECHR.

[218] Article 46.1.c of the ACHR and 35.2(b) of the ECHR.

2. ADMISSIBILITY CRITERIA ESTABLISHED ONLY IN THE EUROPEAN SYSTEM

The admissibility criteria analyzed in the following paragraphs were only established in the ECHR. One of them was included in the original text of the ECHR; and the other admissibility criterion was introduced after the most recent reforms. Their contributions to the European system have to be analyzed and then a determination made as to whether there is a lack in the Inter-American system by not having included them.

2.1. ABUSE OF THE RIGHT OF INDIVIDUAL APPLICATION

The abuse of right criterion has only been established in the European system. The ACHR did not include this requirement even despite the fact that it had it as a reference in the original text of the ECHR. Searching in the records and documents of the Inter-American Specialized Conference on Human Rights of 1969[219], this topic was not discussed at that conference.

According to the European Court's admissibility guidelines, "[t]he cases in which the Court has found an abuse of the right of application can be grouped into five typical categories: misleading information; use of offensive language; violation of the obligation to keep friendly-settlement proceedings confidential; application manifestly vexatious or devoid of any real purpose; and all other cases that cannot be listed exhaustively".[220] In that way, requirements not only of substance but also of form (e.g. language used) fall under this criterion.

While the cases mentioned in the paragraph above could conduct to declare a petition inadmissible not only in the European but also in the Inter-American system, depending on the case these could be reviewed under the admissibility criterion established in the ACHR of 'petition obviously out of order' in which case it is not necessary to introduce this admissibility criterion into the ACHR.[221]

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[219] Inter-American Specialized Conference on Human Rights: Resolution and Recommendation Concerning American Convention On Human Rights, accessed May 19, 2017, https://www.jstor.org/stable/20690583?seq=1#page_scan_tab_contents.

[220] Practical Guide on Admissibility Criteria, accessed April 24, 2017, http://www.echr.coe.int/Documents/Admissibility_guide_ENG.pdf, 37.

[221] In regards to this admissibility criterion the IACHR has indicated the following (the same or similar formula has been also used in other cases):

In addition to the cases mentioned in the paragraph above, the financial impact of the matter on dispute has been also used to determine if there is an abuse of the right of individual petition. The case *Bock v. Germany* is often used as an example. In this case the European Court decided to reject the application by considering it an abuse of the right of application. The fundaments of the European Court were the following:

> The Court has carefully examined all the circumstances of the case at hand. In particular it had regard to the disproportion between the triviality of the facts, namely the pettiness of the amount involved and the fact that the proceedings concerned a dietary supplement, not a pharmaceutical product, and the extensive use of court proceedings - including the appeal to an international court - against the background of that Court's overload and the fact that a large number of applications raising serious issues on human rights are pending.

While the process at the national level started with Mr Bock´s request of reimbursement of EUR 7.99, his submission to the Court was not in regards to this amount, but he was complaining about the excessive length of the proceedings before the domestic court (from August 2002 to December 2007). Furthermore, the German Government accepted that there was a structural deficiency in Germany since there is still no effective legal remedy against excessively long court proceedings.

The decision of the European Court in this case implies that the violation of the right to a fair trial and of the right to an effective remedy is acceptable if the amount of the process at national level is petty. Additionally, if an amount was to be determined for the present case, the material and moral injury, as well as the loss of profit caused by the

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> For the purposes of admissibility, the IACHR must decide, pursuant to Article 47(b) of the American Convention, whether the facts alleged could characterize a violation of rights, or, pursuant to paragraph (c) of the same article, whether the petition is "manifestly groundless" or "obviously out of order." The criterion for analyzing admissibility differs from that used to analyze the merits of the petition, given that the Commission only conducts a *prima facie* analysis to determine whether the petitioners establish an apparent or possible violation of a right guaranteed by the American Convention. This is a matter of a cursory analysis that does not amount to prejudging or issuing a preliminary opinion on the merits of the matter.

(IACHR Report No 27/14, Petition 30-04, dated April 15, 2016, accessed May 19, 2017, http://www.oas.org/en/iachr/decisions/2016/PEIN30-04EN.pdf).

excessive length of the national proceeding and respective interests should have been considered. In addition, regarding applications that could imply claims of small amounts of money, I do not agree that these have to be rejected particularly not *in limine*, as explained in more detail in the following paragraphs regarding the significant disadvantage admissibility criterion.

2.2. SIGNIFICANT DISADVANTAGE

As Philip Leach indicates, "the introduction of this new admissibility provision into the Convention was not uncontroversial, on the basis of the risk that it might pose to the right of individual petition, its vagueness and the extent to which it added anything new".[222] This admissibility criterion, which is also included only in the ECHR, was included trough Protocol No 14 to the ECHR together with other amendments created with the aim of increasing the effectiveness of the European Court and overcome the problem of the European Court's case overload. While several reforms were introduced to the ECHR by Protocol No 14, the creation of a new admissibility criterion raises several issues described in the following paragraphs.

To enable a court of justice to process a case and issue a decision, the applications need to fulfill certain requirements. In general the requirements established for processing a case are an obstacle for accessing to a court of justice; but these obstacles are legitimate when these are indispensable to enable the application to be taken into account for subsequent decisions determining its admissibility. Admissibility criteria established with a different purpose cannot be considered legitimate.

Regarding the purpose of introducing the significant disadvantage admissibility, the Research Report 'The new admissibility criterion under Article 35 § 3 (b) of the Convention: case-law principles two years on' makes reference to the following:

> 4. The purpose of the new admissibility criterion is to enable a more rapid disposal of unmeritorious cases and thus to allow the Court to concentrate on its central mission of providing legal protection of human rights at the European level… The High Contracting Parties clearly wished the Court to devote more time to cases which warrant

[222] Philip Leach, *Taking a Case to the European Court of Human Rights,* 3rd ed. (Oxford: Oxford University Press, 2011): 146.

> consideration on the merits, whether seen from the perspective of the legal interest of the individual applicant or considered from the broader perspective of the law of the Convention and the European public order to which it contributes…[223]

Adding a new admissibility criterion does not simplify the processing of inadmissible cases but only ads a reason for declaring cases inadmissible. If too many inadmissible applications are being received and this is causing a delay in the processing of the cases, the solution for this could be linked to how applications are processed and particularly to the information available and training for petitioners, but this cannot be solved by adding a new admissibility criterion as this only can ensure that more cases are declared inadmissible or that inadmissible ones have one more reason to be rejected. In other words, adding a new criterion cannot contribute to making the disposal of 'unmeritorious' cases more rapid but only to declaring more cases as unmeritorious.

Indicating that violations of human rights that do not involve a significant disadvantage are unmeritorious is not in line with the advances achieved in the area of human rights protection. In the original text of the ECHR (Article No 19) it was established that the supervisory mechanism (at that time the European Commission and the European Court) was established to ensure the observance of the engagements of the States Parties under the ECHR. This power was not restricted to certain cases (including not to the ones that are more significant) but it was established in regards to all cases related to engagements under the ECHR of the States Parties. By establishing that some potential violations of human rights do not warrant consideration by this international tribunal, the reach of the protection mechanism is being reduced.

At the same time, by establishing that individuals are prevented from their right to be heard by the Court because it is considered that there is a potential violation of a human right but there is a lack of significant disadvantage, a margin of tolerance for human rights violations by States is being created. Due to the nature of human rights, the goal to be pursued is zero tolerance in regards to the violations of these rights. For instance, a torture case cannot be rejected because only a few of the victim's nails were pulled out by the police and they grew out again; even if one nail is pulled out the State

[223] Research Report 'The new admissibility criterion under Article 35 § 3 (b) of the Convention: case-law principles two years on', accessed May 18, 2017, http://www.echr.coe.int/Documents/Research_report_admissibility_criterion_ENG.pdf

must be sanctioned. Furthermore, violations that are considered minor ones have to be sanctioned as a preventive measure in regards to major ones, so that States can deduce that more serious violations will certainly be sanctioned.

It is clear that the degree of harm caused varies from one case to the other depending of several factors. For this reason the European Court has already established a priority policy based on the importance and urgency of the issues raised instead of a mere chronological basis.[224] This measure does not reduce the realm of protection of the European system, as it does not leave some cases of human rights violations defenceless, while at the same time prevents that irreversible damages are caused due to the length of the proceedings and the case overload.

This admissibility criterion was not defined in the text of the ECHR but its definition was left to the European Court, which has rejected applications without explaining the reason for this. During the transition period established after the entry into force of Protocol No 14 to the ECHR to enable the Chambers and Grand Chamber to define this requirement, some parameters were outlined; however, after this period single judges have been applying this criterion without a reasoned decision[225]. Dinah Shelton has noted the following in this regard:

> It is impossible to know on what basis the single judges declared inadmissible or struck out the 78,660 applications they rejected in 2014, because such information is not reported … a clear danger with the new criterion is that judges, or more accurately the Registry, will increasingly quantify human rights violations or

[224] European Court of Human Rights The Court's Priority Policy, accessed May 18, 2017, http://www.echr.coe.int/Documents/Priority_policy_ENG.pdf

[225] In the Action Plan established in the Brussels Declaration, regarding the Interpretation and application of the Convention by the Court, the Conference welcomed "the intention expressed by the Court to provide brief reasons for the inadmissibility decisions of a single judge, and invites it to do so as from January 2016" (accessed May 11, 2017, http://www.echr.coe.int/Documents/Brussels_Declaration_ENG.pdf). This intention has not taken place to the date of writing of the present work; however, it is expected that it will be implemented mid 2017.

> constantly raise the threshold of what is considered significant to reduce the caseload.[226]

In addition to the above, the introduction of this admissibility criterion does not tackle the cause of the problem of the case overload, which is that States continue to violate human rights in several cases. The Brighton Declaration indicated the following in the year 2012:

> The results so far achieved within the framework of Protocol No. 14 are encouraging, particularly as a result of the measures taken by the Court to increase efficiency and address the number of clearly inadmissible applications pending before it. However, the growing number of potentially well-founded applications pending before the Court is a serious problem that causes concern.[227]

Despite the controversy regarding this admissibility criterion, the trend in the European system is to increase the application of the significant disadvantage criterion. Protocol No 15 to the ECHR[228] removes the safeguard contemplated in regards to the application of the significant disadvantage admissibility only when the case was duly considered by a domestic court (Article 35.3(b) of the ECHR). The Explanatory Report to Protocol No 15 to the ECHR indicates that "this amendment is intended to give greater effect to the maxim de minimis non curat praetor".[229] However, this amendment proposal removes the warranty that claims of human rights violations will in all cases be duly considered, if not in principle by the domestic tribunal at least at a later stage by the European Court, consequently this amendment proposal cannot be considered an advance.

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[226] Dinah Shelton, "Significantly Disadvantaged? Shrinking Access to the European Court of Human Rights," *Human Rights Law Review* 16, no. 2 (2016): 319-320.

[227] High Level Conference on the Future of the European Court of Human Rights, Brighton Declaration, accessed May 11, 2017, http://www.echr.coe.int/Documents/2012_Brighton_FinalDeclaration_ENG.pdf.

[228] Protocol No 15 to the ECHR has not entered into force to date as it requires the ratification of all States Parties to the ECHR. The status of this protocol as of 18 April 2017 is that the signature of 14 States Parties to the ECHR are still pending (of which 10 have already signed it). See Annex II-A.

[229] Explanatory Report to Protocol No 15 amending the Convention for the Protection of Human Rights and Fundamental Freedoms, accessed April 24, 2017, http://www.echr.coe.int/Documents/Protocol_15_explanatory_report_ENG.pdf.

The introduction of this admissibility criterion is in line with the position of the "constitutional justice" which favors the principle *de minimis non curat praetor* as can be confirmed with the differentiation that Steven Greer and Andrew Williams provide:

> The model of individual justice assumes that the ECtHR exists primarily to provide redress for Convention violations for the benefit of the particular individual making the complaint, with whatever constitutional or systemic improvements at the national level might thereby result. The model of constitutional justice maintains, on the other hand, that the Court's primary responsibility is to select and to adjudicate the most serious alleged violations, brought to its attention by aggrieved applicants, with maximum authority and impact in the states concerned … Neither Protocol 14, nor the Wise Persons Report, expressly endorses the constitutional justice model. Yet, if implemented, both would move the system in this direction.[230]

The explanation why the "constitutional justice" model is undoubtedly a setback in the history of human rights protection is included in the second part of Chapter II and in the lines above; however, in face to the arguments provided by Steven Greer and Andrew Williams in the above quoted paper, the below additional clarifications are provided.

The argument that the ECHR was not originally set up for individual justice is apocryphal. As explained in Chapter I, since the creation of the Council of Europe, in the Political Resolution of the Hague Congress, which took place from 7 to 10 May 1948, the necessity of establishing a court of justice for individual petitions was already recognized:

> (13) IS CONVINCED that in the interests of human values and human liberty, the Assembly should make proposals for the establishment of a Court of Justice with adequate sanctions for the implementation of this Charter [of Human Rights], and to this end any citizen of the associated countries shall have redress before the

[230] Steven Greer and Andrew Williams, "Human Rights in the Council of Europe and the EU: Towards 'Individual','Constitutional'or 'Institutional'Justice?," *European Law Journal* 15, no. 4 (2009): 466 and 470.

> court, at any time and with the least possible delay, of any violation of his rights as formulated in the Charter [of Human Rights].[231]

Finally, regarding the argument that it is not realistic to expect justice being delivered systematically to every worthy applicant; this argument can only be based on the case overload problem. It is to be taken into consideration that this problem obeys to several reasons, not to the failure of the "individual justice" model but mainly to other problems to which solution the reform proposals have to be aimed at. For instance, one of the main problems is the failure of the execution of the Court´s decisions (task which was entrusted to another organ which is a non-judicial one: the Committee of Ministers of the Council of Europe) which is reflected in the high amount of repetitive cases. The introduction of the significant disadvantage admissibility criteria has not contributed so far to defeat the problem of the case overload and for sure has not contributed to reduce the human rights violations cases committed in the States Parties to the ECHR. Under the model of the "individual justice" the system is struggling (mainly due to other deficiencies as previously mentioned) but many successes have been achieved and the "terminal standstill" has not come.

[231] See above footnote 24.

CONCLUSIONS

An historical overview of the European and Inter-American systems of protection of human rights brings good news and hope as it enables us to determine that these two systems have been progressively evolving and developing towards establishing a more effective human rights protection mechanism for the regional protection of human rights.

The regional human rights Conventions and Courts were created in different times; the ECHR entered into force more than 25 earlier than the ACHR and the European Court has approximately 20 years more experience than the Inter-American Court. This difference of time enabled the European system of protection of human rights to serve as a baseline and influence the Inter-American system.

Both systems of protection of human rights were created with similar structural frameworks and shared several important similarities at their beginning; however, subsequent reforms have deepened their differences, especially after Protocol No 11 to the ECHR entered into force in 1998. This Protocol introduced important structural reforms in the European system which increased the differences between both systems.

The reforms implemented in the European system have been more radical that those in the Inter-American system and towards providing a greater scope of protection for the victims. These major reforms in the European System, among other things, led it to become a system with binding jurisdiction over all Member States of the European Council, and the right of individual petition has become compulsory for all States Parties, making the European system the most advanced human rights protection regional system. However, there is one important challenge pending in the European system: to overcome the problem of its overwhelming caseload.

While the European and the Inter-American Courts are both control mechanisms of regional human rights conventions, there are significant differences in their scope of jurisdiction. Some of these differences have existed since the creation of the Courts but other dissimilarities have arisen at a later stage, especially after Protocol No 11 to the ECHR entered into force:

- Concerning the compulsory jurisdiction, while the original text of the ECHR and the text of the ACHR contain optional clauses, Protocol No 11 to the

ECHR removed the optional character of the court jurisdiction and established the binding jurisdiction of the European Court for all States Parties to the ECHR. This gave rise to a substantial dissimilarity of both systems. To date, the European Court has jurisdiction over all States Parties to the ECHR while the Inter-American Court has jurisdiction only regarding those States Parties to the ACHR that explicitly accepted its jurisdiction. Moreover, in the Inter-American system two States Parties have denounced the ACHR and one more State Party unsuccessfully intended to relinquish the jurisdiction of the Inter-American Court without denouncing the ACHR. This shows opposite trends in both systems in regards to their jurisdiction and consequently in their realms of protection.

- Protocol No 11 to the ECHR also increased the differences between the two systems by removing the possibility to limit the jurisdiction of the ECHR. Before this Protocol entered into force, there was already an essential difference between the two systems, as the limitations in the European system could only be based on reciprocity or for a specific period, while in the Inter-American system an additional limitation possibility has been established (for specific cases). This reform in the European system shows its tendency to increase its scope of protection, an amendment that has no parallel the Inter-American system.

While in the European system there are several developments in its case law regarding the definition of the territorial delimitation of its jurisdiction, this is not the case in the Inter-American system. This difference does not trace back to a deficiency in the Inter-American system but to the fact that the States subject to the jurisdiction of the Inter-American Court do not have the historical pattern of behavior of intervening in other countries' territories.

Both Courts also have similarities in their jurisprudence regarding their jurisdiction and, for instance, both systems have established the non-retroactivity of the application of the respective Human Rights Convention in accordance with the Vienna Convention on the Law of Treaties. Particularly, jurisprudence of both Courts analyzes the application of the Convention in cases of continuing violations, such as enforced

disappearances, and both Courts agree that they are competent in regards to the facts that happened after the respective Convention was ratified.

With respect to the standing of individuals before the Courts both systems have also undergone several reforms. The Inter-American system started as the most protective human rights mechanism; however, over time the European system made more advances towards establishing a more effective mechanism. Now the Inter-American system has to learn from the advances of the European system:

- The European system experienced significant developments, and for the first time in history, individuals were granted direct access to the regional human rights court.
- The Inter-American system, for its part, has also introduced reforms in order to provide more rights to the individuals in the proceedings before the Inter-American Court; but these amendments were made only in the Rules of Procedure of the Court and the cornerstone is missing: the right of individual petition.

The most recent reforms in both Courts raise concerns in regards to the access to the protection mechanisms. In recent years, with the aim of alleviating its enormous backlog of cases, the European system has started to introduce an amendment that entails a restriction to this access. In addition, the latest reforms in the Rules of Procedure of the Inter-American Court raise the concern that, while the right of individual petition is not granted, the applications of the IACHR to the Inter-American Court are being restricted.

In regards to the admissibility criteria, this proves how the case law of one Court can support and influence the case law of the other Court, but at the same time reviewing the admissibility criteria of the Courts it stands out that reforms have to be proposed in order to ensure that the established requirements do not constitute procedural obstacles, but are only created when indispensable to enable the processing of cases.

The following recommendations are proposed:

- The Inter-American system should learn from the advances of the European system, but it should also learn from its drawbacks and above all it has to take into consideration the reality of the region, which includes profound social

disparities. The Inter-American Court should become a permanent court, and the right of individual petition should be granted, but at the same time the IACHR should be maintained as an optional subsidiary organ that accepts petitions from any person (victims and non-victims, as currently provided for), and that can investigate the facts of the complaints, particularly when this has to be done at the location of the alleged violation. Additionally, afterwards petitioners to the IACHR should be given the right to submit the case to the Inter-American Court if they disagree with the decision of the IACHR or when this organ considers that there is a violation of a fundamental right but fails to submit the case to the Inter-American Court.

- The European system requires the introduction of reforms to solve the problem of the case overload, but the strategy to be adopted cannot be to restrict the access to the protection mechanism, as this undermines the system. In regards to the latest amendments to the admissibility criteria of the ECHR and pending proposals, it should be verified that the European system is indeed ensuring the respect of the rights protected by the ECHR without restriction. At the same time the accuracy of the wording of some requirements should be reviewed as well, and the wording of the ACHR would be of help in this regard.

Finally, it stands out that important challenges faced by the European Court and the Inter-American Court are different, and therefore different solutions are needed. While the main challenge for the European system is regarding its overwhelming caseload, the main challenge the Inter-American Court consists in the lack of universality of the system and the non-introduction of the right of individual petition to the Inter-American Court. Both challenges are linked to problems with the access by individuals to courts; this is clear in regards to the Inter-American system, for which a proposal referred above was made. In regards to the European system, this arises from the fact that the new admissibility criteria and some reform proposals create a risk of undermining the system by restricting the access by individuals to the Court. In this way, access by individuals to the respective Human Rights Court has to be reviewed in both systems, and in that sense the present research intends to make a contribution.

ANNEX I-A

TIMELINE OF KEY DATES

EUROPEAN SYSTEM		INTER-AMERICAN SYSTEM
	1938	VIII International Conference of American States (Lima, Peru) → One of the first antecedents of the American Declaration of the Rights and Duties of Man
	1945	Inter-American Conference on Problems of War and Peace (Mexico City, Mexico) → Clearer antecedent of a Protection system
The Congress of Europe (The Hague) → Idea of a Human Rights Charter and the Court was for the first time evoked	**1948**	Creation of the Organization of American States and adoption of the **American Declaration of the Rights and Duties of Man**
Creation of the Council of Europe → Draft of the ECHR	**1949**	
Adoption of the **ECHR**	**1950**	
Adoption of Protocol 1 (entered into force in 1954)	**1952**	

Entry into force of the ECHR	**1953**	
European Commission establishment	**1954**	
Acceptance of the sixth State making available the right of individual petition (to inhabitants of Belgium, Denmark, Ireland, the Federal Republic of Germany and Iceland)	**1955**	
Eight ratification necessary for the establishment of the European Court	**1958**	
- **European Court** establishment - First members of the European Court elected - The European Court's first session - The European Court adopts its Rules of Court	**1959**	Fifth Meeting of Consultation of Ministers of Foreign Affairs at Santiago de Chile → Creation of the **IACHR**
The European Court delivers its first judgment: *Lawless v. Ireland*	**1960**	- Statute of the IACHR - First members of the IACHR elected - The IACHR was formally established in Washington DC.
Additional Protocol to the ECHR	**1962**	
- Adoption of Protocol No 4 to the ECHR (recognizing certain rights and freedoms in addition to those already	**1963**	

covered by the ECHR and the First Protocol to the ECHR) (came into force in 1968)

- Laying down of the foundation stone

Inauguration of the first "Human Rights Building"

1965 Second Extraordinary Inter-American Conference (Rio de Janeiro, Brazil)

→ The competence of the IACHR was expanded (to accept communications, request information from governments and make recommendations for a more effective observance of human rights)

Adoption of Protocol No 5 to the ECHR, amending Articles 22 and 40 of the ECHR

1966

1967 Protocol of Buenos Aires

→ IACHR became one of the main organs of the OEA

10th anniversary of the former European Court

1969 **ACHR** signed

→ IACHR jurisdiction to oversee Convention compliance

→ Creation of the Inter-American Court

1978

- The ACHR entered into force (the eleventh country ratified the ACHR)
- The **Inter-American Court** came into legal existence

	1979	- First members of the Inter-American Court elected - The Inter-American Court was formally established in San Jose, Costa Rica - The General Assembly of the OAS adopted the Statute of the Inter-American Court.
	1980	The Inter-American Court drafted and adopted its Rules of Procedure
Adoption of Protocol No 6 to the ECHR (regarding the abolition of the death penalty) (came into force in 1985)	1983	
Adoption of Protocol No 7 to the ECHR (came into force in 1988)	1984	
	1987	Inter-American Convention to Prevent and Punish Torture
	1988	Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador"
	1990	Protocol to the ACHR to Abolish the Death Penalty
Inauguration of the current "Human	1995	Inter-American Convention on the Prevention, Punishment and

Rights Building”		Eradication of Violence against Women "Convention of Belem do Para"
	1996	Inter-American Convention on Forced Disappearance of Persons
New European Court, in the context of Protocol No 11 to the ECHR (full-time permanent Court replacing the previous Commission and Court)	**1998**	
Adoption of Protocol No 12 to the ECHR (enshrining a general prohibition on discrimination) (came into force in 2005)	**2000**	
Adoption of Protocol No 13 to the ECHR (concerning the abolition of the death penalty in all circumstances) (came into force in 2003)	**2002**	
- The Court delivered its 10,000th judgment. - 10th anniversary of the “new Court”.	**2008**	
	2009	Latest reforms of the procedure before the IACHR and the Inter-American Court
Came into force Protocol No 14 to the ECHR (amending the control	**2010**	

system of the ECHR)

Protocol No 15 and 16 to the ECHR opened for signature and ratification

2013

ANNEX I-B

SENTENCES OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS FROM 1987 TO 2012

	PRELIMINARY OBJECTIONS	MERITS	REPARATIONS AND COSTS	INTERPRETATION	OTHERS
1	- Case of Velásquez-Rodríguez v. Honduras. Preliminary Objections. Judgment of June 26, 1987. Series C No. 1				
2	- Case of Fairén-Garbi and Solís-Corrales v. Honduras. Preliminary Objections. Judgment of June 26, 1987. Series C No. 2				
3	- Case of Godínez-Cruz v. Honduras. Preliminary Objections. Judgment of June 26, 1987. Series C No. 3				
4		- Case of Velásquez-Rodríguez v. Honduras. Merits. Judgment of July 29, 1988. Series C No. 4			
5		- Case of Godínez-Cruz v. Honduras. Merits. Judgment of January 20, 1989. Series C No. 5			
6		- Case of Fairén-Garbi and Solís-Corrales v. Honduras. Merits. Judgment of March 15, 1989. Series C No. 6			
7			- Case of Velásquez-Rodríguez v. Honduras. Reparations and Costs. Judgment of July 21, 1989. Series C No. 7		
8			- Case of Godínez-Cruz v. Honduras. Reparations and Costs. Judgment of July 21, 1989. Series C No. 8		
9				- Case of Velásquez-Rodríguez v. Honduras. Interpretation of the Judgment of Reparations and Costs. Judgment of August 17, 1990. Series C No. 9	
10				- Case of Godínez-Cruz v. Honduras. Interpretation of the Judgment of Reparations and Costs. Judgment of August 17, 1990. Series C No. 10	

11		- Case of Aloeboetoe et al. v. Suriname. Merits. Judgment of December 4, 1991. Series C No. 11				
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203		- Case of Garibaldi v. Brazil. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 23, 2009. (Spanish and Portuguese)Versão em português Series C No. 203				

204		- Case of Dacosta-Cadogan v. Barbados. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 24, 2009. Series C No. 204			
205		- Case of González et al. (“ Cotton Field”) v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205			
206		- Case of Barreto-Leiva v. Venezuela. Merits, Reparations and Costs. Judgment of November, 17 2009. Series C No. 206			
207		- Case of Usón Ramírez v. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2009. Series C No. 207			
208				- Case of Escher et al. v. Brazil. Interpretation of the Judgment of Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2009. Português Series C No. 208	
209		- Case of Radilla-Pacheco v. Mexico. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2009. Series C No. 209			
210				- Case of Acevedo-Buendía et al. ("Discharged and Retired Employees of the Office of the Comptroller") v. Peru. Interpretation of the Judgment of Preliminary Objection, Merits, Reparations and Costs. Judgment of November 24, 2009. Series C No. 210	
211		- Case of the “ Las Dos Erres” Massacre v. Guatemala. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 24, 2009. Series C No. 211			
212		- Case of Chitay Nech et al. v. Guatemala. Preliminary Objections, Merits, Reparations, and Costs. Judgment of May 25, 2010. Series C No. 212			

213		- Case of Manuel Cepeda-Vargas v. Colombia. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 26, 2010. French Version. Series C No. 213			
214		- Case of the Xákmok Kásek Indigenous Community. v. Paraguay. Merits, Reparations and Costs. Judgment of August 24, 2010. Series C No. 214			
215		- Case of Fernández-Ortega et al. v. Mexico. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 30, 2010. Series C No. 215			
216		- Case of Rosendo-Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations, and Costs. Judgment of August 31, 2010. Series C No. 216			
217		- Case of Ibsen-Cárdenas and Ibsen-Peña v. Bolivia. Merits, Reparations and Costs. Judgment of September 1, 2010. Series C No. 217			
218		- Case of Vélez Loor v. Panama. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2010 Series C No. 218			
219		- Case of Gomes-Lund et al. (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 24, 2010 Versão em Português - French Version Series C No. 219			
220		- Case of Cabrera-García and Montiel-Flores v. Mexico. Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 26, 2010. Series C No. 220			

221		- Case of Gelman v. Uruguay. Merits and Reparations. Judgment of February 24, 2011 Series C No. 221			
222			- Case of Salvador-Chiriboga v. Ecuador. Reparations, and Costs. Judgment of March 3, 2011 Series C No. 222		
223		- Case of Abrill-Alosilla et al. v. Peru. Merits, Reparations and Costs. Judgment of March 4, 2011. Series C No. 223			
224				- Case of Fernández Ortega et al. v. Mexico. Interpretation of the Judgment of Preliminary Objection, Merits, Reparations and Costs. Judgment of May 15, 2011. Series C No. 224	
225				- Case of Rosendo Cantú et al. v. Mexico. Interpretation of the Judgment of Preliminary Objection, Merits, Reparations and Costs. Judgment of May 15, 2011. Series C No. 225	
226		- Case of Vera-Vera et al. v. Ecuador. Preliminary Objection, Merits, Reparations, and Costs. Judgment of May 19, 2011. Series C No. 226			
227		- Case of Chocrón-Chocrón v. Venezuela. Preliminary Objection, Merits, Reparations, and Costs. Judgment of July 1, 2011. Series C No. 227			
228		- Case of Mejía-Idrovo v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs. Judgment of July 5, 2011. Series C No. 228			
229		- Case of Torres Millacura et al. v. Argentina. Merits, Reparations and costs. Judgment of August 26, 2011. Series C No. 229			
230				- Case of Salvador Chiriboga v. Ecuador. Interpretation of the Judgment of Reparations and Costs. Judgment of August 29, 2011. Series C No. 230	

231		- Case of Grande v. Argentina. Preliminary Objections and Merits. Judgment of August 31, 2011. Series C No. 231				
232		- Case of Contreras et al. v. El Salvador. Merits, Reparations and costs. Judgment of August 31, 2011. Series C No. 232				
233		- Case of López Mendoza v. Venezuela. Merits, Reparations, and Costs. Judgment of September 1, 2011. Series C No. 233				
234		- Case of Barbani Duarte et al. v. Uruguay. Merits, Reparations and Costs. Judgment of October 13, 2011. Series C No. 234				
235				- Case of Abrill Alosilla et al. v. Peru. Interpretation of the Judgment of Merits, Reparations and Costs. Judgment of November 21, 2011. Series C No. 235		
236		- Case of Fleury et al. v. Haiti. Merits and Reparations. Judgment of November 23, 2011. Versión en francés. Series C No. 236				
237		- Case of Family Barrios v. Venezuela. Merits, Reparations and Costs. Judgment of November 24, 2011. Series C No. 237				
238		- Case of Fontovecchia y D'Amico v. Argentina. Merits, Reparations and Costs. Judgment of November 29, 2011. Series C No. 238				
239		- Case of Atala Riffo and daughters v. Chile. Merits, Reparations and Costs. Judgment of February 24,2012 Series C No. 239				
240		- Case of Gonzalez-Medina and relatives v. Dominican Republic. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 27, 2012				

		Series C No. 240			
241		- Case of Pacheco Teruel et al. v. Honduras. Merits, Reparations and Costs. Judgment of April 27, 2012. Series C No. 241			
242		- Case of Forneron and daughter v. Argentina. Merits, Reparations and Costs. Judgment of April 27 (Only in Spanish) Series C No. 242			
243					- Case of Barbani Duarte et al. v. Uruguay. Request for Interpretation of the Judgment of Merits, Reparations and Costs. Judgment of June 26, 2012 (Only in Spanish) Series C No. 243
244		- Case of Díaz-Peña v. Venezuela. Preliminary Objection, Merits, Reparations, and Costs. Judgment of June 26, 2012. (Only in Spanish) Series C No. 244			
245		- Case of Pueblo Indígena Kichwa de Sarayaku v. Ecuador. Fondo y reparaciones. Judgment of June 27, 2012. (Only in Spanish) Series C No. 245			

ANNEX II-A

SIGNS AND RATIFICACIONS IN THE INTER-AMERICAN SYSTEM

Country	OEA (member)	ACHR (firm)	ACHR (ratification)	Inter-American Court (acceptance of jurisdiction)
Antigua and Barbuda	X			
Argentina	X	X	X	X
Bahamas	X			
Barbados	X			
Belize	X			
Bolivia	X		X	X
Brazil	X		X	X
Canada	X			
Chile	X	X	X	X
Colombia	X	X	X	X
Costa Rica	X	X	X	X
Cuba	*			
Dominica	X		X	
Dominican Republic	X	X	X	

Ecuador	X	X	X	X
El Salvador	X	X	X	X
Grenada	X	X	X	
Guatemala	X	X	X	X
Guyana	X			
Haiti	X		X	X
Honduras	X	X	X	X
Jamaica	X	X	X	
Mexico	X		X	X
Nicaragua	X	X	X	X
Panama	X	X	X	X
Paraguay	X	X	X	X
Peru	X	X	X	X
Saint Kitts and Nevis	X			
Saint Lucia	X			
Saint Vincent and Grenadines	X			
Suriname	X		X	X
Trinidad and Tobago	X		**	**
United States of	X	X		

America				
Uruguay	X	X	X	X
Venezuela	X	***	***	***

* The Government of Cuba was excluded from participation in the OAS by resolution of the Eight Meeting of Consultation of Ministers of Foreign Affairs (1962).This resolution has ceased to have effect as decided in the OAS's 39th General Assembly that took place on June 3, 2009 in San Pedro Sula, Honduras. Resolution AG/RES 2438 (XXXIX-O/09), which reads as follows:

"…*RESOLVES:*

1. That Resolution VI, adopted on January 31, 1962, at the Eighth Meeting of Consultation of Ministers of Foreign Affairs, which excluded the Government of Cuba from its participation in the Inter-American system, hereby ceases to have effect in the Organization of American States (OAS).

2. That the participation of the Republic of Cuba in the OAS will be the result of a process of dialogue initiated at the request of the Government of Cuba, and in accordance with the practices, purposes, and principles of the OAS."

** On May 26, 1998 Trinidad and Tobago denounced the American Convention on Human Rights by a communication addressed to the General Secretary of the OAS.

*** On September 6, 2012 Venezuela presented a notice of denunciation of the ACHR to the Secretary General of the OAS.

ANNEX II-B

GENERAL HUMAN RIGHTS TREATIES AND PROTOCOLS THAT SUPPLEMENT THE EUROPEAN AND THE INTER-AMERICAN SYSTEMS

European Court of Human Rights	Inter-American Court of Human Rights
Convention for the Protection of Human Rights and Fundamental Freedoms (47 Countries: Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, Montenegro, Netherlands, Norway, Poland, Portugal, Republic of Moldova, Romania, Russian Federation, San Marino, Serbia, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, The former Yugoslav Republic of Macedonia, Turkey, Ukraine, and United Kingdom**).**	**American Convention on Human Rights "Pact of San Jose, Costa Rica" (23 Countries:** Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominica, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Dominican Republic, Suriname and Uruguay**).**
Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms → This Protocol adds new fundamental rights: the right to peaceful enjoyment of property, the right to education and the right to free elections by secret ballot. • 45 States Parties to the ECHR ratified/acceded it**,** 2 (Monaco and Switzerland) signed it but did not ratified it.	**Protocol to the American Convention on Human Rights to Abolish the Death Penalty** → This Protocol provides for the abolition of the death penalty, but gives the possibility to reserve the right to apply it in wartime. • 13 of the States Parties of the ACHR ratified/acceded it (Argentina, Brazil, Chile, Costa Rica, Dominica Republic, Ecuador, Honduras, Mexico, Nicaragua, Panama, Paraguay, Uruguay, and Venezuela).
Protocol No 2 to the Convention for the Protection of Human Rights and Fundamental Freedoms, conferring upon the European Court of Human Rights competence to give advisory opinions → This Protocol was an integral part of the ECHR since its entry into force, but its provisions have been replaced by Protocol No 11. • The 47 States Parties to the ECHR ratified/acceded it.	**Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol Of San Salvador"** → This Protocol extends the scope of protection including the following rights: right to work, right to social security, right to health, right to a healthy environment, right to food, right to education, right to the benefits of culture, right to the formation and protection of families, rights of children, protection of elderly, protection of handicapped. The jurisdiction of the Court is established just with regard to the protection of the right to organize and join trade unions and the

	right of education. • 16 States Parties to the ACHR ratified/acceded it (Argentina, Bolivia, Brazil, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Uruguay), 4 signed it but did not ratify it (Chile, Dominican Republic, Haiti, Venezuela).
Protocol No 3 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending Articles 29, 30 and 34 of the Convention → This Protocol was an integral part of the ECHR since its entry into force, but its provisions have been replaced by Protocol No 11. • The 47 States Parties to the ECHR ratified/acceded it.	**Inter-American Convention on Forced Disappearance of Persons** → This Convention aims to prevent, punish, and eliminate the forced disappearance of persons in the Hemisphere. • 15 States Parties to the ACHR ratified/acceded it (Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, Guatemala, Honduras, Mexico, Panama, Paraguay, Peru, Uruguay, Venezuela), 2 signed it but did not ratify it (Brazil, Nicaragua).
Protocol No 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto. → This Protocol secures the no deprivation of liberty for non-fulfillment of contractual obligations, the right to liberty of movement and freedom to choose one's residence, the prohibition of a State's expulsion of a national, the prohibition of collective expulsion of aliens. • 44 States Parties to the ECHR ratified/acceded it, 2 signed it but did not ratify it (Turkey and the United Kingdom), and 1 did not sign or ratify it (Switzerland).	**Inter-American Convention to Prevent and Punish Torture** → This Convention aims to prevent and punish torture in accordance with the terms of this Convention. • 18 States Parties to the ACHR ratified/acceded it (Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Uruguay, Venezuela), 2 signed it but did not ratify it (Haiti and Honduras).
Protocol No 5 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending Articles 22 and 40 of the Convention . → This Protocol was an integral part of the ECHR since its entry into force, but its	**Inter-American Convention On The Prevention, Punishment And Eradication Of Violence Against Women "Convention Of Belem Do Para"** → Convention on the prevention, punishment and eradication of all forms of violence

provisions have been replaced by Protocol No 11. • The 47 States Parties of the ECHR ratified/acceded it.	against women within the framework of the Organization of American States. Its Article 11 establishes that "States Parties to this Convention and the Inter-American Commission of Women may request of the Inter-American Court of Human Rights advisory opinions on the interpretation of this Convention." • 32 Member States of the OAS ratified/acceded it (Antigua & Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, St. Kitts & Nevis, St. Lucia, St. Vincent & Grenadines, Suriname, Trinidad & Tobago, Uruguay and Venezuela)
Protocol No 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty → This protocol covers the abolition of the death penalty and was amended by Protocol No 11. • 46 States Parties to the ECHR ratified/acceded it, and 1 (Russian Federation) signed it but did not ratify it.	
Protocol No 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms → This Protocol extends the list of rights protected: the right of aliens to procedural guarantees in the event of expulsion from the territory of a State, the right of a person convicted of a criminal offence to have the conviction of sentence reviewed by a higher tribunal, the right to compensation in the event of a miscarriage of justice, the right not to be tried or punished in criminal proceedings for an offence for which one has already been acquitted or convicted (*ne bis in idem)*, the equality of rights and	

responsibilities as between spouses. It was amended by Protocol No 11.

- 44 States Parties to the ECHR ratified/acceded it, 2 signed it but did not ratify it (Germany and Netherlands), and 1 did not sign or ratify it (United Kingdom).

Protocol No 8 to the Convention for the Protection of Human Rights and Fundamental Freedoms

→ This Protocol gave to the European Commission of Human Rights the possibility to set up chambers and committees. Its provisions have been replaced by Protocol No 11.

- The 47 States Parties to the ECHR ratified/acceded it.

Protocol No 9 to the Convention for the Protection of Human Rights and Fundamental Freedoms

→ This Protocol afforded an applicant whose petition has been the subject of a report by the Commission the right to request the Court to deal with the case, regardless of whether the Commission or the State concerned have referred the case to the Court. This Protocol was repealed by Protocol No 11.

- 24 States Parties to the ECHR ratified/acceded it (Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, Germany, Hungary, Ireland, Italy, Lichtenstein, Luxembourg, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, San Marino, Slovak Republic, Slovenia, Sweden, Switzerland), and 5 signed it but did not ratify it (France, Greece, Lithuania, Malta, and Turkey).

Protocol No 10 to the Convention for the Protection of Human Rights and Fundamental Freedoms

→ This Protocol changed to simply majority

the one required when the Committee of Ministers was going to take decisions relating to its judicial functions. It lost it purpose since the entry into force of Protocol No 11. • 26 States Parties to the ECHR ratified/acceded it (Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, Germany, Ireland, Italy, Lichtenstein, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, San Marino, Slovak Republic, Slovenia, Sweden, Switzerland, and United Kingdom), and 3 signed it but did not ratify it (France, Greece, and Hungary).
Protocol No 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, restructuring the control machinery established thereby → This Protocol restructured the European System, abolishing the Commission and the part time Court and establishing instead a permanent Court and providing other transcendental changes that are analyzed throughout this research. • The 47 States Parties to the ECHR ratified/acceded it.
Protocol No 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms. → This Protocol provides for a general prohibition of discrimination. • 20 of the States Parties to the ECHR ratified/acceded it (Albania, Andorra, Armenia, Bosnia and Herzegovina, Croatia, Cyprus, Finland, Georgia, Luxembourg, Malta, Montenegro, Netherlands, Portugal, Romania, San Marino, Serbia, Slovenia, Spain, The former Yugoslav Republic of Macedonia, and Ukraine), and 19 signed it but did not ratify it (Austria, Azerbaijan, Belgium, Czech Republic, Estonia, Germany,

Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Norway, Poland, Republic of Moldova, Russian Federation, Slovak Republic, and Turkey).

Protocol No 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances

→ This Protocol provides for the abolition of the death penalty in all circumstances, including for crimes committed in times of war and imminent threat of war.

- 44 States Parties to the ECHR ratified/acceded it, 1 signed it but did not ratify it (Armenia), and 2 that did not sign it or ratify it (Azerbaijan and Russian Federation).

Protocol No 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention

→ This Protocol has the aim of maintaining and improving the efficiency of its control system for the long term and with this purpose provides for several changes to the ECHR that are analyzed throughout this research work.

- The 47 States Parties of the ECHR ratified/acceded it.

Protocol No 14bis to the Convention for the Protection of Human Rights and Fundamental Freedoms

→ This Protocol introduces two procedural elements of Protocol No 14: single judge can reject inadmissible applications and three-judges committees can additionally declare applications admissible and decide on their merits when there is a well-established case law of the European Court. (Interim measure until Protocol 14 entered into force.)

- 12 States Parties to the ECHR (Denmark, Georgia, Iceland, Ireland, Luxembourg, Monaco, Norway, San Marino, Slovak

Republic, Slovenia, Sweden, and The Former Yugoslav Republic of Macedonia) ratified/acceded it; and 10 signed it but did not ratify it (Austria, Cyprus, France, Hungary, Lithuania, Republic of Moldova, Poland, Romania, Spain, and Ukraine).

Protocol No 15 to the Convention for the Protection of Human Rights and Fundamental Freedoms

→ This Protocol introduces five procedural changes in regards to: add the principle of subsidiarity and doctrine of margin of appreciation, shortening time limit for the submission of application to four months, amends the 'significant disadvantage' admissibility criterion, removes the right to object the relinquishment of jurisdiction by a Chamber in favor of the Grand Chamber and regarding the upper age limit for the European Court judges.

- 33 States Parties to the ECHR ratified/acceded it (Albania, Andorra, Armenia, Azerbaijan, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Hungary, Ireland, Lichtenstein, Lithuania, Monaco, Montenegro, Netherlands, Norway, Poland, Portugal, Republic of Moldova, Romania, San Marino, Serbia, Slovak Republic, Sweden, Switzerland, The former Yugoslav Republic of Macedonia, Turkey, and United Kingdom), and 11 signed it but did not ratify it (Austria, Belgium, Croatia, Greece, Iceland, Italy, Luxembourg, Russian Federation, Slovenia, Spain, and Ukraine).

Protocol No 16 to the Convention for the Protection of Human Rights and Fundamental Freedoms

→ This Protocol enables the highest courts/tribunals of the States Parties to the ECHR to request advisory opinions from the European Court regarding the interpretation and application of the ECHR.

- 7 States Parties to the ECHR ratified/acceded it (Albania, Armenia, Finland, Georgia, Lithuania, San Marino, Slovenia); and 11 signed it but did not ratify it (Estonia, France, Greece, Italy, Netherlands, Norway, Republic of Moldova, Romania, Slovak Republic, Turkey, Ukraine).

ANNEX II-C

CASES OF THE INTER-AMERICAN COURTS OF HUMAN AND

COUNTRIES WHERE THE FACTS TOOK PLACE

Case	Country where the facts took place
Case of Velásquez-Rodríguez v. Honduras	Honduras
Case of Fairén-Garbi and Solís-Corrales v. Honduras	Honduras
Godínez-Cruz v. Honduras	Honduras
Case of Aloeboetoe et al. v. Suriname.	Suriname
Case of Gangaram-Panday v. Suriname	Suriname
Case of Neira-Alegría et al. v. Peru	Peru
Case of Cayara *v*. Peru	Peru
Case of Caballero-Delgado and Santana v. Colombia.	Colombia
Case of Maqueda *v*. Argentina	Argentina
Case of El Amparo *v*. Venezuela	Venezuela
Case of Genie Lacayo v. Nicaragua	Nicaragua
Case of the "White Van" (Paniagua-Morales et al.) v. Guatemala.	Guatemala
Case of Castillo-Páez v. Peru	Peru
Case of Loayza-Tamayo v. Peru	Peru
Case of Garrido and Baigorria v. Argentina	Argentina
Case of Blake v. Guatemala	Guatemala
Case of the "Street Children" (Villagrán-Morales et al.) v. Guatemala	Guatemala
Case of Suárez-Rosero v. Ecuador	Ecuador
Case of Benavides-Cevallos v. Ecuador	Ecuador
Case of Cantoral-Benavides v. Peru	Peru
Case of Castillo-Petruzzi et al v. Peru	Peru

Case of Cesti-Hurtado v. Peru	Peru
Case of Durand and Ugarte v. Peru	Peru
Case of Ivcher-Bronstein v. Peru	Peru
Case of the Constitutional Court v. Peru	Peru
Case of the Caracazo v. Venezuela	Venezuela
Case of Baena-Ricardo et al. v. Panama	Panama
Case of Trujillo-Oroza v. Bolivia	Bolivia
Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua	Nicaragua
Case of Las Palmeras v. Colombia	Colombia
Case of Bámaca-Velásquez v. Guatemala	Guatemala
Case of "The Last Temptation of Christ" (Olmedo-Bustos et al.) v. Chile	Chile
Case of Barrios Altos v. Peru	Peru
Case of Hilaire v. Trinidad and Tobago	Trinidad and Tobago
Case of Benjamin et al. v. Trinidad and Tobago	Trinidad and Tobago
Case of Constantine et al. v. Trinidad and Tobago	Trinidad and Tobago
Case of Cantos v. Argentina	Argentina
Case of the 19 Tradesmen v. Colombia	Colombia
Case of the "Five Pensioners" v. Peru	Peru
Case of Juan Humberto Sánchez v. Honduras	Honduras
Case of Bulacio v. Argentina	Argentina
Case of Myrna Mack-Chang v. Guatemala	Guatemala
Case of Maritza Urrutia v. Guatemala	Guatemala
Case of the Plan de Sánchez Massacre v. Guatemala	Guatemala
Case of Molina-Theissen v. Guatemala	Guatemala
Case of Herrera-Ulloa v. Costa Rica	Costa Rica
Case of the Gómez-Paquiyauri Brothers v. Peru	Peru

Case of Ricardo Canese v. Paraguay	Paraguay
Case of the "Juvenile Reeducation Institute" v. Paraguay	Paraguay
Case of Alfonso Martín del Campo-Dodd v. Mexico	Mexico
Case of Tibi v. Ecuador	Ecuador
Case of De la Cruz-Flores v. Peru	Peru
Case of Carpio-Nicolle et al. v. Guatemala	Guatemala
Case of the Serrano-Cruz Sisters v. El Salvador	El Salvador
Case of Lori Berenson-Mejía v. Peru	Peru
Case of Huilca-Tecse v. Peru	Peru
Case of the Mapiripán Massacre v. Colombia	Colombia
Case of Caesar v. Trinidad and Tobago	Trinidad y Tobago
Case of the Moiwana Community v. Suriname	Suriname
Case of the Yakye Axa Indigenous Community v. Paraguay	Paraguay
Case of Fermín Ramírez v. Guatemala	Guatemala
Case of Yatama v. Nicaragua	Nicaragua
Case of Acosta-Calderón v. Ecuador	Ecuador
Case of the Girls Yean and Bosico v. Dominican Republic	Dominican Republic
Case of Gutiérrez-Soler v. Colombia	Colombia
Case of Raxcacó-Reyes v. Guatemala	Guatemala
Case of Palamara-Iribarne v. Chile	Chile
Case of Gómez-Palomino v. Peru	Peru
Case of García-Asto and Ramírez-Rojas v. Peru	Peru
Case of Blanco-Romero et al v. Venezuela	Venezuela
Case of Ximenes-Lopes v. Brazil	Brazil
Case of the Pueblo Bello Massacre v. Colombia	Colombia
Case of López-Álvarez v. Honduras	Honduras

Case of Acevedo-Jaramillo et al. v. Peru	Peru
Case of the Sawhoyamaxa Indigenous Community v. Paraguay	Paraguay
Case of Baldeón-García v. Peru	Peru
Case of the Ituango Massacres v. Colombia	Colombia
Case of Montero-Aranguren et al. (Detention Center of Catia) v. Venezuela	Venezuela
Case of Claude-Reyes et al. v. Chile	Chile
Case of Servellón-García et al. v. Honduras	Honduras
Case of Goiburú et al. v. Paraguay	Paraguay, Argentina
Case of Almonacid-Arellano et al. v. Chile	Chile
Case of Vargas-Areco v. Paraguay	Paraguay
Case of the Dismissed Congressional Employees (Aguado - Alfaro et al.) v. Peru	Peru
Case of the Miguel Castro-Castro Prison v. Peru	Peru
Case of Nogueira de Carvalho et al. v. Brazil	Brazil
Case of La Cantuta v. Peru	Peru
Case of the Rochela Massacre v. Colombia	Colombia
Case of Bueno-Alves v. Argentina	Argentina
Case of Escué-Zapata v. Colombia	Colombia
Case of Zambrano-Vélez et al. v. Ecuador	Ecuador
Case of Cantoral-Huamaní and García-Santa Cruz v. Peru	Peru
Case of García-Prieto et al. v. El Salvador	El Salvador
Case of Boyce et al. v. Barbados	Barbados
Case of Chaparro-Álvarez and Lapo-Íñiguez. v. Ecuador	Ecuador
Case of Albán Cornejo et al. v. Ecuador	Ecuador
Case of the Saramaka People. v. Suriname	Suriname
Case of Kimel v. Argentina	Argentina
Case of Salvador-Chiriboga v. Ecuador	Ecuador

Case of Yvon Neptune v. Haiti	Haiti
Case of Apitz-Barbera et al. ("First Court of Administrative Disputes") v. Venezuela	Venezuela
Case of Castañeda-Gutman v. Mexico	Mexico
Case of Heliodoro-Portugal v. Panama	Panama
Case of Bayarri v. Argentina	Argentina
Case of Tiu-Tojín v. Guatemala	Guatemala
Case of Ticona-Estrada et al. v. Bolivia	Bolivia
Case of Valle-Jaramillo et al. v. Colombia	Colombia
Case of Tristán-Donoso v. Panama	Panama
Case of Ríos et al. v. Venezuela	Venezuela
Case of Perozo et al. v. Venezuela	Venezuela
Case of Kawas-Fernández v. Honduras	Honduras
Case of Reverón-Trujillo v. Venezuela	Venezuela
Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Office of the Comptroller") v. Peru	Peru
Case of Escher et al. v. Brazil	Brazil
Case of Anzualdo-Castro v. Peru	Peru
Case of Dacosta-Cadogan v. Barbados	Barbados
Case of González et al. ("Cotton Field") v. Mexico	Mexico
Case of Barreto-Leiva v. Venezuela	Venezuela
Case of Usón Ramírez v. Venezuela	Venezuela
Case of Radilla-Pacheco v. Mexico	Mexico
Case of the "Las Dos Erres" Massacre v. Guatemala	Guatemala
Case of Chitay Nech et al. v. Guatemala	Guatemala
Case of Manuel Cepeda-Vargas v. Colombia	Colombia
Case of the Xákmok Kásek Indigenous Community. v. Paraguay	Paraguay

Case of Fernández-Ortega et al. v. Mexico	Mexico
Case of Rosendo-Cantú et al. v. Mexico	Mexico
Case of Ibsen-Cárdenas and Ibsen-Peña v. Bolivia	Bolivia
Case of Vélez Loor v. Panama	Panama
Case of Gomes-Lund et al. (Guerrilha do Araguaia) v. Brazil	Brazil
Case of Cabrera-García and Montiel-Flores v. Mexico	Mexico
Case of Gelman v. Uruguay	Uruguay, Argentina
Case of Abrill-Alosilla et al. v. Peru	Peru
Case of Vera-Vera et al. v. Ecuador	Ecuador
Case of Chocrón-Chocrón v. Venezuela	Venezuela
Case of Mejía-Idrovo v. Ecuador	Ecuador
Case of Torres Millacura et al. v. Argentina	Argentina
Case of Grande v. Argentina	Argentina
Case of Contreras et al. v. El Salvador	El Salvador
Case of López Mendoza v. Venezuela	Venezuela
Case of Barbani Duarte et al. v. Uruguay	Uruguay
Case of Fleury et al. v. Haiti	Haiti
Case of Family Barrios v. Venezuela	Venezuela
Case of Fontovecchia y D`Amico v. Argentina	Argentina
Case of Atala Riffo and daughters v. Chile	Chile
Case of Gonzalez-Medina and relatives v. Dominican Republic	Dominican Republic
Case of Pacheco Teruel et al. v. Honduras	Honduras
Case of Forneron and daughter v. Argentina	Argentina
Case of Díaz-Peña v. Venezuela	Venezuela
Case of Pueblo Indígena Kichwa de Sarayaku v. Ecuador	Ecuador
Case of Furlan and Family v. Argentina	Argentina

Case of Palma Mendoza et al. v. Ecuador	Ecuador
Case of Vélez Restrepo and family v. Colombia	Colombia
Case of Uzcátegui et al. v. Venezuela	Venezuela
Case of the Río Negro Massacres v. Guatemala	Guatemala
Case of Nadege Dorzema et al. v. Dominican Republic	Dominican Republic
Case of the Massacres of El Mozote and nearby places v. El Salvador	El Salvador
Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala	Guatemala
Case of Mohamed v. Argentina	Argentina
Case of Castillo González et al. v. Venezuela	Venezuela
Case of Artavia Murillo et al. ("In vitro fertilization") v. Costa Rica	Costa Rica
Case of García and family members v. Guatemala	Guatemala
Case of the Santo Domingo Massacre v. Colombia	Colombia
Case of Mendoza et al. v. Argentina	Argentina
Case of Suárez Peralta v. Ecuador	Ecuador
Case of Mémoli v. Argentina	Argentina
Case of the Supreme Court of Justice (Quintana Coello et al.) v. Ecuador	Ecuador
Case of García Lucero et al. v. Chile	Chile
Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador	Ecuador
Case of Luna López v. Honduras	Honduras
Case of the Afro-descendant communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia	Colombia
Case of Gutiérrez and Family v. Argentina	Argentina
Case of the Pacheco Tineo Family v. Plurinational State of Bolivia	Bolivia
Case of García Cruz and Sánchez Silvestre v. Mexico	Mexico
Case of Osorio Rivera and Family members v. Peru	Peru
Case of J. v. Peru	Peru
Case of Liakat Ali Alibux v. Suriname	Suriname

Case of Veliz Franco et al. v. Guatemala	Guatemala
Case of Brewer Carías v. Venezuela	Venezuela
Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile	Chile
Case of Landaeta Mejías Brothers et al. v. Venezuela	Venezuela
Case of Expelled Dominicans and Haitians v. Dominican Republic	Dominican Republic
Case of Human Rights Defender et al. v. Guatemala	Guatemala
Case of Kuna de Madungandí and Emberá de Bayano Indigenous Communities and its members v. Panamá.	Panama
Case of Rochac Hernández et al. v. El Salvador	El Salvador
Case of Tarazona Arrieta et al. v. Peru	Peru
Case of Rodríguez Vera et al. (The Disappeared from the Palace of Justice) v. Colombia	Colombia
Case of Argüelles et al. v. Argentina	Argentina
Case of Espinoza Gonzáles v. Peru	Peru
Case of Cruz Sánchez et al. v. Peru	Peru
Case of Granier et al. (Radio Caracas Televisión) v. Venezuela	Venezuela
Case of Canales Huapaya et al. v. Peru	Peru
Case of Wong Ho Wing v. Peru	Peru
Case of Gonzales Lluy et al. v. Ecuador	Ecuador
Case of Santa Bárbara Peasant Community v. Peru	Peru
Case of Omar Humberto Maldonado Vargas et al. v. Chile	Chile
Case of Galindo Cárdenas et al. v. Peru	Peru
Case of López Lone et al. v. Honduras	Honduras
Case of Ruano Torres et al. v. El Salvador	El Salvador
Case of Garífuna de Punta Piedra Community and its members v. Honduras	Honduras
Case of Garífuna Triunfo de la Cruz Community and its members v. Honduras	Honduras
Case of García Ibarra et al. v. Ecuador	Ecuador

Case of Velásquez Paiz et al. v. Guatemala	Guatemala
Case of Quispialaya Vilcapoma v. Peru	Peru
Case of the Kaliña and Lokono Peoples v. Suriname	Surinam
Case of Duque v. Colombia	Colombia
Case of Maldonado Ordoñez v. Guatemala	Guatemala
Case of Chinchilla Sandoval v. Guatemala	Guatemala
Case of Tenorio Roca et al. v. Peru	Peru
Case of Flor Freire v. Ecuador	Ecuador
Case of Herrera Espinoza et al. v. Ecuador	Ecuador
Case of Hacienda Brasil Verde workers v. Brasil	Brasil
Case of Pollo Rivera et al. v. Peru	Peru
Case of Yarce et al. v. Colombia	Colombia
Case of Gómez Murillo et al. v. Costa Rica	Costa Rica
Case of Valencia Hinojosa et al. v. Ecuador	Ecuador
Case of Members of Aldea Chichupac and neighboring communities of the Municipality of Rabinal v. Guatemala	Guatemala
Case of I.V. v. Bolivia	Bolivia
Case of Andrade Salmón v. Bolivia	Bolivia

ANNEX II-D

ADVISORY JURISDICTION

The ECHR and the ACHR conferred advisory functions to both Courts besides their contentious jurisdiction. Comparing both Courts, the advisory jurisdiction of the Inter-American Court is much broader than the advisory jurisdiction of the European Court. However, it is envisaged that the European Court´s competence to give advisory opinions will be expanded when Protocol No 16 to the ECHR enters into force, enabling domestic highest tribunals to request the European Court to give advisory opinions.[232]

In the European system, Protocol No 2 to the ECHR conferred upon the European Court the competence to give advisory opinions.[233] When doing so, this Protocol provided that only the Committee of Ministers can request advisory opinions.[234] By contrast, in the Inter-American system, the ACHR has conferred advisory jurisdiction to

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[232] Protocol No 16 to the ECHR requires 10 Ratifications to entry into force. To date only 7 States Parties to the ECHR have ratified it (see Annex II-A).

The topic regarding who can request an advisory opinion was examined and it was considered that no other authority but "highest" courts or tribunals should be able to request the European Court to give an advisory opinion, as indicated in the Meeting Report Drafting Group "B" on the Reform of the Court, GT-GDR-B, (2012) R1, (accessed April 06, 2017, http://www.coe.int/t/dghl/standardsetting/cddh/GT_GDR_B/GT-GDR-B%282012%29R1en_Rapport.pdf),

Additionally it has to be highlighted that the term included in Protocol No 16 to the ECHR indicates "highest" and not "the highest", with the intention to include courts or tribunals inferior to the constitutional or supreme courts but that are the court of last resort for a particular category of case, i.e. national court of final instance; as explained in the Explanatory Report to Protocol No 16 to the ECHR (accessed April 06, 2017, https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168000d383e)

Finally, it is noteworthy that, since the Wise Person´s Report, the proposal that the European Court is empowered to deliver advisory opinions when the national courts of last instance request it is still pending.

[233] Protocol No. 2 to the Convention for the Protection of Human Rights and Fundamental Freedoms, conferring upon the European Court of Human Rights competence to give advisory opinions ETS No, 044, Strasbourg, 6.V.1963. This function is now established under Articles 47 to 49 of the ECHR.

This Protocol was an integral part of the ECHR since September 21, 1970 till November 1, 1998, when Protocol No. 11 entered into force, amending the provision added by Protocol No. 2 to the ECHR.

[234] Article 1.1 of Protocol No 2 to the ECHR.

the Inter-American Court since the beginning. Furthermore, according to the ACHR every OAS Member State, including those that did not recognize the jurisdiction of the Inter-American Court and even those that did not ratify the ACHR, as well as other organs of the OAS (listed in the next paragraph) have standing to seek advisory opinions.[235]

The European Court can give advisory opinions on legal questions concerning the interpretation of the ECHR and the Protocols thereto.[236] For its part, the Inter-American Court can, in a much broader scope, give advisory opinions in the following cases:

1) when a Member State of the OAS or an organ listed in Chapter VII, Article 53 of the Charter of the OAS[237] - which are the General Assembly, the Meeting of Consultation of Ministers of Foreign Affairs, the Councils, the Inter-American Juridical Committee, the Inter-American Commission on Human Rights, the General Secretariat, the Specialized Conferences, and the Specialized Organizations - request it for the interpretation of the ACHR;

2) when the aforementioned organs request it for the interpretation of other treaties concerning the protection of human rights in the American States; and

3) when a Member State of the OAS requests an opinion regarding the compatibility of any of its domestic laws with the ACHR or other treaties concerning the protection of human rights in the American States.[238]

In the European system the restriction is not just that the legal questions must concern the interpretation of the ECHR and Protocols thereto, but also the judges of the European Court cannot issue advisory opinions regarding questions relating to the content or scope of the rights or freedoms defined in the first Section of the ECHR and the Protocols thereto. The European Court is also prevented from providing an advisory opinion regarding any question which the European Court or the Committee of Ministers

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235 Article 64 of the ACHR.

236 Article 47 of the ECHR.

237 At that time Chapter X Article 51 as amended by the Protocol of Buenos Aires.

238 Article 64 of the ACHR.

might have to consider in consequence of any such proceedings as could be instituted in accordance with the ECHR.[239]

As mentioned before, in the Inter-American system, the advisory jurisdiction of the Inter-American Court can be consulted with regard to the interpretation of the ACHR and other treaties concerning the protection of human rights in the American States, as well as pertaining to the compatibility of the domestic law of a Member State of the OAS with these treaties. The fact that the ACHR makes reference not just to human rights treaties among American nations but also to any other human rights treaty gave rise to the following advisory opinions of the Inter-American Court:

- Advisory Opinion OC-1/82 of September 24, 1982. Series A No. 1: "Other treaties" subject to the advisory jurisdiction of the Court (Art. 64 American Convention on Human Rights).[240] In this advisory opinion the term "other treaties" was widely interpreted as follows:

> [T]he advisory jurisdiction of the [Inter-American] Court can be exercised, in general, with regard to any provision dealing with the protection of human rights set forth in any international treaty applicable in the American States, regardless of whether it be bilateral or multilateral, whatever be the principal purpose of such a treaty, and whether or not non-Member States of the inter-American system are or have the right to become parties thereto… [T]he Court may decline to comply with a request for an advisory opinion if it concludes that, due to the special circumstances of a particular case, to grant the request would exceed the limits of the [Inter-American] Court's advisory jurisdiction for the following reasons, *inter alia*: because the issues raised deal mainly with international obligations assumed by a non-American State or with the structure or operation of international organs or bodies outside the inter-American system; or because granting the request might have the effect of altering or weakening the system established by the Convention in a manner detrimental to the individual human being. (Emphasis added)

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239 Article 47.2 ECHR.

240 I/A Court H.R., "Other Treaties" subject to the advisory jurisdiction of the Court (Art. 64 American Convention on Human Rights). Advisory Opinion OC-1/82 of September 24, 1982, Series A No. 1, accessed April 06, 2017, http://www.corteidh.or.cr/docs/opiniones/seriea_01_ing1.pdf

- Advisory Opinion OC-10/89 of July 14, 1989. Series A No. 10: Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights.[241] In this Advisory Opinion, the Inter-American Court was of the opinion that it can render advisory opinions interpreting the American Declaration.

It is also noteworthy that the Inter-American Court in its Advisory Opinion OC-16/99[242] held that it was competent to render this advisory opinion interpreting Articles of the Vienna Convention on Consular Relations and of the ICCPR. As Tomas Buergenthal highlights, the OAS Charter and the ACHR besides to civil and political rights, refer to economic, social and cultural rights "which suggests the pervasive scope of the [Inter-American] Court's advisory jurisdiction."[243]

There is only one restriction provided by the ACHR which exclusively regards the capacity to consult the Inter-American Court of the organs listed in Chapter VII of the Charter of the OAS. According to the ACHR these organs may request an advisory opinion within their spheres of competence.[244] In this regard, the Inter-American Court has indicated that the ACHR distinguishes between Member States of the OAS and organs of the Organization and "while OAS Member States have an absolute right to seek advisory opinions, OAS organs may do so onsly [sic.] within the limits of their competence…restricted consequently to issues in which such entities have a legitimate institutional interest."[245] Notwithstanding this restriction, the scope of the advisory

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241 I/A Court H.R., Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights, Advisory Opinion OC-10/89 of July 14, 1989, Series A No. 10, accessed April 06, 2017, http://www.corteidh.or.cr/docs/opiniones/seriea_10_ing1.pdf.

242 I/A Court H.R., The Right to Information on Consular Assistance. In the Framework of the Guarantees of the due Process of Law, Advisory Opinion OC-16/99 of October 1, 1999, Series A No. 16, accessed February 10, 2013, http://www.corteidh.or.cr/docs/opiniones/seriea_16_ing.pdf

243 Thomas Buergenthal, "The Advisory Practice of the Inter-American Human rights Court", *The American Journal of International Law*, Vol 79, No 1 (1985) 7.

244 Article 64.1 of the ACHR.

245 I/A Court H.R., The Effect of Reservations on the Entry into Force of the American Convention on Human Rights (Arts. 74 and 75), Advisory Opinion OC-2/82 of September 24, 1982, Series A No. 2, accessed April 06, 2017, http://www.corteidh.or.cr/docs/opiniones/seriea_02_ing.pdf.

jurisdiction of the Inter-American Court is still much broader than the one of the European Court.

In regards to the advisory jurisdiction of the Inter-American Court, taken into consideration that the Advisory Opinions of the Inter-American Court do not have the same compulsory effect as its judgments, the Inter-American Court has clearly indicated that this mechanism should not be used as a strategy to undermine its contentious jurisdiction:

> The Court realizes, of course, that a State against which proceedings have been instituted in the Commission may prefer not to have the petition adjudicated by the Court under its contentious jurisdiction, in order thus to evade the effect of the Court's judgments which are binding, final and enforceable under Articles 63, 67 and 68 of the Convention. A State, confronted with a Commission finding that it violated the Convention, may therefore try, by means of a subsequent request for an advisory opinion, to challenge the legal soundness of the Commission's conclusions without risking the consequences of a judgment. Since the resulting advisory opinion of the Court would lack the effect that a judgment of the Court has, such a strategy might be deemed to "impair the rights of potential victims of human rights violations" and "undermine the Court's contentious jurisdiction.[246]

As of the end of 2016, the Inter-American Court has rendered 22 Advisory Opinions. In only one case did the Inter-American Court refuse to render an advisory opinion on the grounds of the risk of undermining the contentious jurisdiction in a manner that might impair the human rights of the claimants in the cases pending before the IACHR.[247] In contrast and due to its limited advisory jurisdiction, in the European system only two cases have been brought before the European Court. In the first case[248] the European Court decided that it did not have competence to give an advisory opinion on the matter referred, and in the second case (concerning the lists of candidates

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246 I/A Court H.R., The Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism, Advisory Opinion OC- 5/85 of November 13, 1985, accessed April 12, 2017, http://www.corteidh.or.cr/docs/opiniones/seriea_05_ing.pdf

247 I/A Court H.R., Compatibility of Draft Legislation with Article 8(2)(h) of the American Convention on Human Rights, Advisory Opinion OC-12/91 of December 6, 1991, Series A No. 12, accessed April 06, 2017, http://www.corteidh.or.cr/docs/opiniones/seriea_12_ing.pdf.

248 Recommendation 1519 (2001) of the Parliamentary Assembly of the Council of Europe, concerning "the coexistence of the Convention on Human Rights and Fundamental Freedoms of the Commonwealth of Independent States and the European Convention on Human Rights", accessed April 06, 2017, http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta01/EREC1519.htm.

submitted with a view to the election of judges to the European Court) the European Court held that it was competent regarding some, but not all of the raised questions.

ANNEX III-A

ORGANIZATION OF THE EUROPEAN AND THE INTER-AMERICAN COURTS OF HUMAN RIGHTS

The European and the Inter-American Courts are both control mechanisms of regional human rights conventions, but there are significant differences in their structure. While some of their differences have existed since the creation of the Courts (e.g. the number of judges), other dissimilarities have arisen at a later stage, especially after Protocol No 11 to the ECHR entered into force in 1998.

The structure of the European Court is far more complex than the one of the Inter-American system considering the number of judges and judicial formations. However, while in the Inter-American system there is only one judicial formation composed by seven judges, the litigants still have to submit their cases first to the IACHR, in a similar way to what was provided in the European system before the reforms introduced by Protocol No 11 to the ECHR.

1. LOCATION

The European Court headquarters are located in Strasbourg, France.[249] For its part, the protection mechanism organs of the Inter-American system are located in two different countries: the IACHR headquarters are in Washington D.C., United States of America,[250] and the Inter-American Court headquarters are in San Jose, Costa Rica.[251] Consequently, while in the European system the Human Rights Court is located in what could be seen as the center of the territories under its scope of protection,[252] in the Inter-American system this is not the case.[253]

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[249] Rule 19 of the Rules of the European Court.

[250] Article 16.1 of the Statute of the IACHR.

[251] Article 3 of the Statute of the Inter-American Court.

[252] Strasbourg was chosen as seat of the Council of Europe on the motion of Ernest Bevin as English Minister of Foreign Affairs. He indicated that this was to symbolize the French-German reconciliation. As indicated by the Centre d'Information sur les Institutions Européennes (CIIE) "E. Bevin was

Under certain circumstances both Courts can carry out their functions elsewhere. The European Court may also perform its functions in the territories of the member States of the Council of Europe if it considers it expedient, or it can decide that an investigation or any other function must be carried out by one or more or its members elsewhere.[254] In the Inter-American system the Inter-American Court may also convene at any member of the OAS, not just at those that have accepted its jurisdiction; but in contrast to the European Court, the Inter-American Court may do so only when a majority of the Court considers it desirable and with the prior consent of the State concerned.[255]

2. REQUIREMENTS AND INCOMPATIBILITIES FOR BEING A JUDGE

When reviewing the eligibility criteria of the judges in both systems some similarities and several differences arise. While the Inter-American system has more restrictions than the European system overall, both systems aim to have highly qualified judges capable of dealing with the great responsibility inherent in being a judge of a supranational court set up to protect human rights.

In both systems it is established that the selection of the judges is based on the individual capacity and the high moral character that the judges must have. In the European system the judges must either possess the qualifications required to be appointed to the high judicial office or be jurisconsults of recognized competence.[256] For

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suspected to try to distance the Council of Europe from European centers of activity in order to eliminate it. This suspicion instantaneously disappeared during the first session of the Council in summer 1949 at the Palais Universitaire: the collaboration was a success and Strasbourg proved to be the ideal city for this newly created European organization" (Strasbourg: European Capital Since 1949 . . ., accessed April 24, 2017, http://en.strasbourg-europe.eu/history,127,en.html).

[253] The IACHR and the Inter-American Court are far away from being in the heart of the territories under their scope of protection, particularly the IACHR. Taking into account the dimensions of the American continent and the restrictions of the means of transport, locating a protection organ particularly in the northern hemisphere makes it very difficult for the alleged victims in the southern hemisphere to physically access to these organs.

[254] Rule 19 of the Rules of the European Court.

[255] Article 3.1. of the Statute of the Inter-American Court.

[256] Articles 21.2 and 21.1. of the ECHR.

their part, the judges of the Inter-American Court must always possess the qualifications required for the exercise of the highest judicial functions under the law of the State of which they are nationals or the State that proposes them as candidates.[257] In other words, while in the European System a judge could not have the qualifications for exercising the highest judicial functions in case he or she is a jurisconsult of recognized competence, this is not possible in the Inter-American system where the qualifications for being appointed in the highest judicial functions is a requirement *sine qua non*.

The rules regarding the requirement of experience in the field of human rights are also different in both systems. The Inter-American system explicitly provides that the recognized competence of the judges must be in the field of human rights.[258] The same was established for the commissioners of the IACHR who among other requirements should also have recognized competence in the field of human rights.[259] In contrast, there is no similar provision in the ECHR or in the Rules of the European Court. Nevertheless, in Recommendation 1649(2004) the Parliamentary Assembly of the Council of Europe suggested the Committee of Ministries to invite the Member States to ensure that the proposed candidates have experience in the field of human rights.[260] Additionally, in the Interlaken Declaration, States were called upon to select judges with knowledge of the national legal systems but also of public international law.[261]

The nationality of the judges is another requirement that is also treated in a different way in both systems. In contrast to the European system, where no parameters have been imposed in reference to the nationality of the judges, in the Inter-American system there is a restriction in this regard. The judges of the Inter-American Court must

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257 Article 52.1. of the ACHR and Article 4.1. of the Statute of the Inter-American Court.

258 Article 52.1. of the ACHR.

259 Article 34 of the ACHR, Article 2 of the Statute of the IACHR, Article 1.3. of the Regulations of the IACHR.

260 Recommendation 1649 (2004): Candidates for the European Court of Human Rights, Parliamentary Assembly, Council of Europe, accessed April 24, 2017, http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17193&lang=en.

261 Interlaken Declaration, dated February 19, 2010, accessed May 12, 2017, http://www.echr.coe.int/Documents/2010_Interlaken_FinalDeclaration_ENG.pdf

be nationals of a Member State of the OAS[262] (not necessarily a State that has ratified the jurisdiction of the Inter-American Court or the ACHR), and there should not be two judges of the same nationality in this Court.[263] In the same manner, all commissioners in the IACHR must be nationals of a Member State of the OAS[264] and no two nationals of the same State may be members of this Commission.[265]

As regards the incompatibilities, both systems aim to protect the independence and impartiality that the judges of both Courts and the members of the IACHR must have. Additionally, in the European system the judges are also prevented during their term of office from being involved in political, administrative or professional activities that are incompatible with the demands of a full-time office.[266] This last restriction is not provided by the ACHR, where only the President renders his service on a permanent basis.[267]

As for the time after the term of office of the judges concludes, there are no incompatibilities established in both Systems for the judges. However, for the members of the IACHR there is one restriction: they shall undertake not to represent victims or their relatives or States in precautionary measures, petitions and individual cases before the IACHR for a period of two years, counting from the date of the end of their term as members of the Commission.[268]

Some provisions in the Inter-American system have no equivalent in the European System. First, the Inter-American system includes express reference to banning activities that could affect the dignity or prestige of the office.[269] Second, it is also explicitly stipulated that the judges of the Inter-American Court can be members or high-

[262] Articles 52.1 and 53.2 of the ACHR and Article 4.1 of the Statute of the Inter-American Court.

[263] Article 52.2 of the ACHR and Article 4.2 of the Statute of the Inter-American Court.

[264] Article 36.2 of the ACHR and Article 3.2 of the Statute of the IACHR.

[265] Article 37.2. of the ACHR.

[266] Article 21.3 of the ECHR and Rule 4 of the Rules of the European Court.

[267] Article 16 of the Statute of the Inter-American Court.

[268] Article 4.1 of the Rules of Procedure of the IACHR.

[269] Article 8 of the Statute of the IACHR, Article 4 of the Rules of Procedure of the IACHR, Article 18 of the Statute of the Inter-American Court.

ranking officials of the executive branch of government if this position does not place them under the direct control of the executive branch, or be diplomatic agents who are not Chiefs of Missions to the OAS or to any of its Member States; yet, they cannot be officials of international organizations.[270]

3. NUMBER OF JUDGES AND APPOINTMENT

Important divergences in the European and in the Inter-American systems stand out when comparing the rules regarding the number of judges and the appointment proceeding in both Systems. The main difference lies in the fact that while in the European system each State Party to the ECHR has to be represented by a judge, in the Inter-American system a fixed number of judges was established. Currently the number of judges of the Inter-American Court is much smaller than the number of States that have ratified the jurisdiction of this Court and is less than one quarter of the number of judges of the European Court.

Since the creation of the European Court the ECHR has provided that the number of judges is equal to that of the State Parties,[271] which implies that there should currently be 47 judges and that this number would increase should there be a new State Party. For its part, a similar provision was never adopted in the Inter-American system. The Inter-American Court has been composed since its beginning of seven judges, and the IACHR is also composed of seven members.[272] Therefore the European Court stands out as a much bigger mechanism; the number of judges of the Inter-American Court, even combined with the number of members of the IACHR, is about one quarter of the number of judges on the European Court.

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[270] Article 18.1 of the Statute of the Inter-American Court.

[271] Article 20 of the ECHR.

Article 38 of the original text of the ECHR reads as follows:

> The European Court of Human Rights shall consist of a number of judges equal to that of the Members of the Council of Europe.

Article 20 of the ECHR makes reference to "the High Contracting Parties" instead.

[272] Articles 34 and 52 of the ACHR, Article 4 of the Statute of the Inter-American Court and Article 2 of the Statute of the IACHR.

Concerning the appointment of the judges, the proposals of the States Parties have different rules in both systems. In the European system each State Party nominates a list of three candidates,[273] while in the Inter-American system this is not obligatory. The States Parties to the ACHR may propose up to three candidates (when a slate of three candidates is proposed and at least one must be a national of a State different to the proponent).[274] In the IACHR three candidates may also be proposed but the proponents are the Member States to the OAS, not just the States Parties to the ACHR.[275]

As regards the election of the judges, in the European system the judges are elected by majority of votes in the Parliamentary Assembly of the Council of Europe, whose members come from the national parliaments; thereby lending democratic legitimacy to this process.[276] In the Inter-American system the judges are elected by an absolute majority of the States Parties to the ACHR in the General Assembly of the OAS whose members are State delegates, usually ministers of foreign affairs, and therefore here the democratic legitimacy cannot be invoked.[277] For its part, the members of the IACHR are also elected in the General Assembly but by all Member States of the OAS, not just those that ratified the ACHR (this last case leads to the fact that the submission of a case to the Inter-American Court can be decided by commissioners that were elected by Member States of the OAS that are not State Parties to the ACHR or being a State Party to the ACHR have not ratified the jurisdiction of the Inter-American Court).[278]

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[273] Article 22 of the ECHR.

[274] Article 53.2 of the ACHR and Articles 7 and 9 of the Statute of the Inter-American Court.

[275] Article 36 of the ACHR.

With regard to the appointment of members of the IACHR, they shall be elected in a personal capacity by the General Assembly of the Organization - the supreme organ of the OAS - from a list of candidates proposed by the governments of the Member States, which can submit up to three candidates. When a Member State proposes a slate of three, at least one candidate must be a national of a Member State other than the proposer.

[276] Article 22 of the ECHR.

[277] Article 53.1 of the ACHR.

[278] Article 5 of the Statute of the IACHR.

4. TERMS OF OFFICE

The provisions regarding the term of office of the judges were similar in both Courts when they were established but have become different due to reforms made in the European system. In particular, the non-renewable term of office criterion is a product of a recent reform made by Protocol No 14 to the ECHR which aims, among other things, to avoid that judges are elected for a very short period of time.[279]

The current text of the ECHR establishes that the term of office of the judges on the European Court is nine years calculated from the date of their election and that they may not be reelected.[280] In contrast, the term of office of the judges of the Inter-American Court is shorter, six years; nonetheless the judges in the Inter-American system may be reelected once.[281] Similarly, the members of the IACHR may be also reelected once but their term of office is shorter, four years.[282]

It is noteworthy that before the amendments made by Protocol No 14 to the ECHR the judges on the European Court were also elected for a term of six years that could be renewed for another six years. This reform was made in the European system based on an amendment proposed by the Parliamentary Assembly in its Recommendation 1649 (2004).[283] According to the Explanatory Report to Protocol No 14 to the ECHR, this amendment was taken as a measure to reinforce the independence and impartiality of the judges of the European Court.[284]

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279 Paragraphs 50 and 51 of Explanatory Report to Protocol No 14 to the ECHR, amending the control system of the Convention, accessed January 31, 2013, http://conventions.coe.int/Treaty/EN/Reports/Html/194.htm.

280 Article 23 of the ECHR.

281 Article 54.1 of the ACHR and Article 5.1 of the Statute of the Inter-American Court.

282 Article 37.1 ACHR and Article 2.1 of the Rules of Procedure of the IACHR.

283 Recommendation 1649 (2004), Candidates for the European Court of Human Rights, Parliamentary Assembly, Council of Europe, accessed April 24, 2017, http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17193&lang=en.

284 Paragraph 50 of the Explanatory Report to Protocol No 14 to the ECHR, amending the control system of the Convention, accessed April 24, 2017,https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800d380f.

The rules regarding the start and end of the terms of office are also different in both Courts. For the judges on the European Court the term of office begins on the date of taking up office, which must be no later than three months after the date of election, and ends when the successor has taken the oath or made the solemn declaration.[285] The term of office for judges on the Inter-American Court runs from January 1 of the year following their election to December 31 of the year in which their terms expire.[286]

After termination of their terms of office, the judges in both Courts shall continue dealing with the cases that they have begun to hear and are still pending.[287] In the European Court the judges shall hold office until replaced,[288] while in the Inter-American Court they shall serve until the end of their term which, as mentioned before, extends until the last day of the year in which their terms expire.[289] In the Inter-American Court a substitute judge is appointed to preserve the required quorum (not the "national representation" that is only required by the European system) until the new judge is elected. Moreover, it is provided in the Inter-American system that the judge elected to replace another whose term has not expired shall complete the term of the latter.[290] A similar provision was originally established in the European system until Protocol No 14 to the ECHR entered into force, which considers that the appointment of a judge for a short period is undesirable.[291]

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[285] Rule 2 of the Rules of the European Court.

[286] Article 5 of the Statute of the Inter-American Court.

[287] Article 54.3 of the ACHR, Article 17.1 of the Rules of Proceeding of the Inter-American Court, Article 5.3 of the Statute of the Inter-American Court and Article 23.3 of the ECHR.

[288] Article 23.3 of the ECHR and Rule 2 of the Rules of the European Court.

[289] Article 54.3 of the ACHR, Article 5.2 of the Statute of the Inter-American Court and Article 5.3 of the Statute of the Inter-American Court.

[290] Article 54.2 of the ACHR and Article 5.1 of the Statute of the Inter-American Court.

[291] Paragraph 51 of the Explanatory Report to Protocol No 14 to the ECHR explains following:

> … [I]t will no longer be possible, in the event of a casual vacancy, for a judge to be elected to hold office for the remainder of his or her predecessor's term. In the past this has led to undesirable situations where judges were elected for very short terms of office, a situation perhaps understandable in a system of renewable terms of office, but which is unacceptable in the new system. Under the new Article 23, all judges will be elected for a non-renewable term of nine years. This should make it possible, over time, to obtain a regular renewal of

5. *AD HOC* JUDGES

The appointment of *ad hoc* judges is a very controversial topic the European system while in the Inter-American system this is not the case. Protocol No 14 to the ECHR introduced reforms in this regard in the European Court but the criticism continues.[292] This is because the "national representation" is a rule in the European system, while in the Inter-American system this is not established. In contrast to the European Court, in the Inter-American Court the *ad hoc* judges do not participate in individual cases but only in cases originated in inter-state petitions.[293]

In the European system the States Parties may appoint an *ad hoc* judge in individual cases except when the case is being reviewed by a single judge formation. *Ad hoc* judges are elected when the judge elected in respect of the concerned State Party is unable to sit in the chamber, withdraws, is exempted or there is none. For this purpose the State Parties to the ECHR have to submit in advance a list with the names of three to five persons eligible to serve as *ad hoc* judges. The duty of doing this appointment in advance was established by Protocol No 14 to the ECHR. Before this Protocol the appointing of the *ad hoc* judges was after the proceedings had begun and the content of the complaint was already known.[294] The President of the Chamber chooses one *ad hoc* judge from among the list submitted. If the State Party to the ECHR has not appointed an *ad hoc* judge, the President of the Chamber invites it to appoint a judge from among the other elected judges within 30 days. After this term or its extension the State Party to the ECHR shall be presumed to have waived its right of appointment if it does not appoint a

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> the Court's composition, and may be expected to lead to a situation in which each judge will have a different starting date for his or her term of office.

[292] One of the criticisms is that, even after the latest reforms, the Parliamentary Assembly remains excluded from the process of appointment of the ad hoc judges of the European Court.

[293] Article 55.2 of the ACHR and Article 20 of the Rules of Procedure of the Inter-American Court.

[294] The States Parties to the ECHR have to propose ad hoc judges from both genders (another of the last reforms introduced by Protocol No 14 to the ECHR). The designation as eligible to serve as ad hoc judge of the European Court is for a renewable period of two years. To be eligible the ad hoc judges shall fulfill the qualifications also requested to the other judges of the European Court, may not represent a party or a third party in any capacity in proceedings before this Court, must not be unable to sit in the case and must meet the demands of availability and attendance required.

judge or if fewer than three persons satisfy the conditions established for the *ad hoc* judges.[295]

In the Inter-American Court, the appointment of *ad hoc* judges is ruled in a very different way to the European system. As the Inter-American Court pointed out in its Advisory Opinion OC/20-09, "the national judge of the respondent State must not participate in the hearing of individual cases."[296] However, in the cases originated in inter-state petitions the judge national of any of the States Parties to the ACHR retains its right to hear the case but the other concerned State Party to the ACHR can appoint an *ad hoc* judge. If none of the judges called upon to hear a case is a national of any of the States Parties to the ACHR concerned, each of them may appoint an *ad hoc* judge. If several States Parties to the ACHR have the same interest in the case, they shall be considered as a single party for the purpose of appointing an *ad hoc* judge. In case of doubt, the Inter-American Court decides. The deadline to nominate a judge *ad hoc* is thirty days following the written invitation of the President of the Inter-American Court. After this period if the State Party to the ACHR fails to exercise its right, it shall be deemed that it has waived the exercise of this right.[297]

6. COMPOSITION OF THE COURTS

6.1. Structure of the courts

The structure of the European Court is more complex than the one of the Inter-American Court. The European Court is not only composed by a much larger number of judges, but all of them work on a full-time basis. Moreover, the European Court has more than one judicial formation in itself, while in the Inter-American Court a sole judicial formation was set up.

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[295] Rule 29 of the Rules of the European Court.

[296] Advisory Opinion OC-20 of the Inter-American Court of Human Rights, "Article 55 of the American Convention on Human Rights", September 29, 2009. Series A No. 20, accessed January 31, 2013, http://www.corteidh.or.cr/docs/opiniones/seriea_20_ing.pdf.

[297] Article 55 of the ACHR, Article 10 of the Statute of the Inter-American Court and Article 20 of the Rules of Inter-American Court.

The European Court is organized in single-judge formations, committees of three judges, chambers of seven judges and the Grand Chamber of seventeen judges [298] described as follows:

- The single-judge formation,[299] created by Protocol No 14 to the ECHR, means a single judge sitting, who was appointed by the President of the Court for a period of twelve months in rotation.[300]
- The Committees[301] composed of three judges belonging to the same Section. The number of the Committees is decided by the President of the Court after consulting with the Presidents of Sections.[302]
- A Chamber of seven judges[303] within each section that includes the President of Section and also the judge elected in respect of any State Party concerned, who shall sit as an *ex officio* member when he or she is not part of the Section.[304]

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298 Article 26.1 of the ECHR.

299 The single judge examines the applications in respect of a list of State Parties which was drawn up in advance by the President of the Court. The single judge may not examine any application against the State Party in respect of which he or she has been elected. The President of the Court and the Presidents of the Sections are exempted from sitting as single judges.

300 Articles 26.1 and 26.3 of the ECHR and Rules 27A and 52A.2 of the European Court.

301 The Committees are constituted by a period of twelve months by rotation among the members of each Section, excepting the President of the Section. When one member is unable to sit, another member of the section takes his place. The Committee is chaired by the member having precedence in the Section. There is no provision prohibiting the judges in this formation for examining applications against the State Party in respect of which they have been elected.

302 Article 27.1 of the ECHR and Rule 27 of the Rules of the European Court.

303 Article 27.1 of the ECHR.

304 Rule 26 of the European Court.

The other members are designated by the President of the Section by rotation among its members. The members not designed act as substitute judges.

- The Grand Chamber composed of seventeen judges and at least three substitute judges. It includes the President of the Court, the Vice President of the Court and the five Presidents of Section.[305]

In contrast to the European Court, there is only one judicial formation in the Inter-American Court. The Inter-American Court is composed of seven judges, as already mentioned, and the quorum for the deliberation is five judges.[306] The only judge who renders his service on a permanent basis is the President, and the other judges shall remain at the disposal of the Inter-American Court and shall travel to the seat of this Court or the place where it is holding sessions as often and as long time as may be necessary.[307] For its part, the IACHR also acts as sole instance.[308]

6.2. Election of the Presidents of the Courts

While in the European system the President of the Court is elected for a period of three years, and one or two Vice-Presidents may be elected,[309] in the Inter-American

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[305] Article 26.1 of the ECHR and Rule 24 of the European Court.

If the Vice President of the Court or one of the Presidents of Section is unable to sit, he or she should be replaced by the Vice-President of the relevant Section. The judge elected in respect of the State Party concerned (or the judge ex officio or ad hoc as appropriate) also sits in the Grand Chamber. In case of relinquishment of jurisdiction to the Grand Chamber, the other members of the Grand Chamber are the members of the Chamber that relinquished jurisdiction. In case of referral of the case to the Grand Chamber, it shall not include any judge who ruled on the admissibility of the application or the members of the Chamber that rendered the jurisdiction, except the President of that Chamber and the judge elected in respect of the State Party concerned. The President of the Court draws lots in presence of the Registrar in order to designate the other judges or substitute judges that complete the Grand Chamber, designating them among the remaining judges.

[306] Article 56 of the ACHR and Article 14 of the Rules of Procedure of the Inter-American Court.

[307] Article 16 Statute of the Inter-American Court.

[308] The IACHR has a board of officers composed of a President, a First Vice-President and Second Vice-President (Article 6 of the Rules of Procedure of the IACHR) and an Executive Secretariat. The last one is composed of an Executive Secretary and at least one Assistant Executive Secretary and the staff professional, technical and administrative staff needed to carry out its activities (Article 11 of the Rules of Procedure of the IACHR).

[309] Article 25(a) of the ECHR.

Court the President and one Vice-President are elected for a period of two years.[310] In both systems, the Presidents and Vice-Presidents of the Court may be re-elected.

In contrast to the Inter-American system where no further elections are necessary, in the European system the Plenary of the Court also has to set up the Chambers and elect the Presidents of the Chambers who also may be re-elected.[311]

[310] Article 12.1 of the Statute of the Inter-American Court.

[311] Article 25(b) and (c) of the ECHR.

ABBREVIATIONS

ACHR	:	American Convention on Human Rights, also called Pact of San José,
American Declaration	:	American Declaration of the Rights and Duties of Man
Charter or the OAS	:	Charter of the Organization of American States
Draft Articles	:	The Draft Articles on the Responsibility of the States for Internationally Wrongful Acts
ECHR	:	Convention for the Protection of Human Rights and Fundamental Freedoms also called European Convention on Human Rights
European Commission	:	European Commission on Human Rights
European Court	:	European Court of Human Rights
IACHR	:	Inter-American Commission on Human Rights
ICCPR	:	International Covenant on Civil and Political Rights
Inter-American Court	:	Inter-American Court of Human Rights
OAS	:	Organization of American States
Siracusa Principles	:	Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights
UDHR	:	Universal Declaration of Human Rights
UN Charter	:	United Nations Charter
UN	:	United Nations

BIBLIOGRAPHY

Primary sources:

- American Convention on Human Rights, "Pact of San Jose, Costa Rica" (B-32). Available at http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm.
- American Declaration of the Rights and Duties of Man. Available at https://www.oas.org/dil/1948%20American%20Declaration%20of%20the%20Rights%20and%20Duties%20of%20Man.pdf.
- *Annual Report 2011 of the European Court of Human Rights. Available at* http://www.echr.coe.int/Documents/Annual_report_2011_ENG.pdf
- Annual Report 2015 European Court of Human Rights Annual Report 2015. Available at http://www.echr.coe.int/Documents/Annual_report_2015_ENG.pdf.
- Atlantic Charter. Available at http://web.ics.purdue.edu/~wggray/Teaching/His300/Handouts/Atlantic-Charter.pdf.
- Charter of the Organization of American States. Available at http://www.oas.org/en/sla/dil/inter_american_treaties_A-41_charter_OAS.asp.
- Convention of Belem do Pará: Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women. Available at http://www.oas.org/en/iachr/mandate/Basics/inter-american-convention-violence-women-bel%C3%A9m-do-par%C3%A1.pdf.
- Declaration of the Principles of the Solidarity in America. Available at http://www.oas.org/sap/peacefund/VirtualLibrary/EighthIntConfAmericanStates/Declarations/DeclarationofLima.pdf.
- Draft Articles on the Responsibility of the States for Internationally Wrongful Acts. Available at http://untreaty.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf.
- European Convention for the Protection of Human Rights and Fundamental Freedoms. Available at http://www.echr.coe.int/Documents/Convention_ENG.pdf.

- European Convention for the Protection of Human Rights and Fundamental Freedoms original text. Available at http://www.echr.coe.int/Documents/Collection_Convention_1950_ENG.pdf.
- Explanatory Report to the Protocol No. 9 to the Convention for the Protection of Human Rights and Fundamental Freedoms. Available at https://rm.coe.int/16800cb5dd.
- Explanatory Report to the Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, restructuring the control machinery established thereby. Available at https://rm.coe.int/16800cb5e9.
- Explanatory Report to the Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention. Available at https://rm.coe.int/16800d380f.
- Explanatory Report to the Protocol No. 15 amending the Convention for the Protection of Human Rights and Fundamental Freedoms. Available at https://rm.coe.int/16800d383d.
- Explanatory Report to Protocol No. 16 to the Convention for the Protection of Human Rights and Fundamental Freedoms. Available at https://rm.coe.int/16800d383e.
- Final Act of the Fifth Meeting of Consultation of Ministers of Foreign Affairs, Santiago de Chile. Available at http://www.oas.org/consejo/MEETINGS%20OF%20CONSULTATION/Actas/Acta%205.pdf.
- Gondra Convention. Available at https://www.loc.gov/law/help/us-treaties/bevans/m-ust000002-0413.pdf.
- Guide on Article 15 of the ECHR, Derogation in time of emergency, Council of Europe. Available at http://www.echr.coe.int/Documents/Guide_Art_15_ENG.pdf.
- High Level Conference on the Future of the European Court of Human Rights, Izmir Declaration. Available at http://www.echr.coe.int/Documents/2011_Izmir_FinalDeclaration_ENG.pdf.
- High Level Conference on the Future of the European Court of Human Rights, Interlaken Declaration. Available at

http://www.eda.admin.ch/etc/medialib/downloads/edazen/topics/europa/euroc.Par.0133.File.tmp/final_en.pdf.

- High Level Conference on the Future of the European Court of Human Rights, Brighton Declaration. Available at http://www.echr.coe.int/Documents/2012_Brighton_FinalDeclaration_ENG.pdf
- High-level Conference on the "Implementation of the European Convention on Human Rights, our shared responsibility" Brussels Declaration. *Available at* http://www.echr.coe.int/Documents/Brussels_Declaration_ENG.pdf.
- Inter-American Conference on Problems of War and Peace Resolution XXVII entitled "Free Access to Information". Available at https://babel.hathitrust.org/cgi/pt?id=uc1.$b728713;view=1up;seq=10.
- Inter-American Conference on Problems of War and Peace Resolution XL entitled "International Protection of the Essential Rights of Man". Available at https://babel.hathitrust.org/cgi/pt?id=uc1.$b728713;view=1up;seq=10.
- Inter-American Convention on Forced Disappearance of Persons. Available at http://www.oas.org/en/iachr/mandate/Basics/inter-american-convention-forced-disappearance-persons.pdf.
- Inter-American Specialized Conference on Human Rights: Resolution and Recommendation Concerning American Convention On Human Rights. Available at https://www.jstor.org/stable/20690583?seq=1#page_scan_tab_contents.
- Interim report of the Group of Wise Persons to the Committee of Ministers, 116th Session of the Committee of Ministers (Strasbourg, 18-19 May 2006). Available at https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805d7ff7.
- International Covenant on Civil and Political Rights. Available at http://www.ohchr.org/Documents/ProfessionalInterest/ccpr.pdf.
- Peace Treaty of Versailles. Available at https://www.loc.gov/law/help/us-treaties/bevans/m-ust000002-0043.pdf.
- Political Resolution of the Hague Congress (Congress of Europe: The Hague-May, 1948). Available at

https://www.cvce.eu/content/publication/1997/10/13/15869906-97dd-4c54-ad85-a19f2115728b/publishable_en.pdf.

- Practical Guide on Admissibility Criteria, Council of Europe/European Court of Human Rights. Available at http://www.echr.coe.int/Documents/Admissibility_guide_ENG.pdf.
- Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms. Available at https://rm.coe.int/168006377c.
- Protocol No 2 to the Convention for the Protection of Human Rights and Fundamental Freedoms, conferring upon the European Court of Human Rights competence to give advisory opinions. Available at https://rm.coe.int/168006b65a.
- Protocol No 3 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending Articles 29, 30 and 34 of the Convention. Available at https://rm.coe.int/168006b65b.
- Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto. Available at https://rm.coe.int/168006b65c.
- Protocol No 5 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending Articles 22 and 40 of the Convention. Available at https://rm.coe.int/168006ff5d.
- Protocol No 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty. Available at https://rm.coe.int/168007952b.
- Protocol No 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms. Available at https://rm.coe.int/168007a082.
- Protocol No 8 to the Convention for the Protection of Human Rights and Fundamental Freedoms. Available at https://rm.coe.int/168007a083.
- Protocol No. 9 to the Convention for the Protection of Human Rights and Fundamental Freedoms. Available at https://rm.coe.int/168007bd22.
- Protocol No. 10 to the Convention for the Protection of Human Rights and Fundamental Freedoms. Available at https://rm.coe.int/168007bd28.

- Protocol No 11 to the Convention fort the Protection of Human Rights and Fundamental Freedoms, restructuring the control machinery established thereby. Available at http://www.echr.coe.int/Documents/Library_Collection_P11_ETS155E_ENG.pdf .
- Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms. Available at https://rm.coe.int/1680080622.
- Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances. Available at https://rm.coe.int/1680081563.
- Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention. Available at https://rm.coe.int/1680083711.
- Protocol of Amendment to the Charter of the Organization of American States, "Protocol of Buenos Aires", O.A.S. Available at http://hrlibrary.umn.edu/oasinstr/buenosaires.html.
- Protocol of San Salvador": Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights". Available at http://www.oas.org/juridico/english/treaties/a-52.html.
- Protocol to the American Convention on Human Rights to Abolish the Death Penalty. Available at http://www.oas.org/juridico/english/treaties/a-53.html.
- Report of the Special Working Group to Reflect on the Workings of the Inter-American Commission on Human Rights with a view to Strengthening the Inter-American Human Rights System for consideration by the Permanent Council. Available at http://www.oas.org/en/council/gt/closed/gtdah.asp.
- Research Report 'The new admissibility criterion under Article 35 § 3 (b) of the Convention: case-law principles two years on'. Available at http://www.echr.coe.int/Documents/Research_report_admissibility_criterion_ENG.pdf.
- Resolution XVI Defense of Human Rights. Available at http://www.oas.org/sap/peacefund/VirtualLibrary/EighthIntConfAmericanStates/XVIDefenseHumanRights.pdf.

- Rules of Court, European Court of Human Rights. Available at http://www.echr.coe.int/Documents/Rules_Court_ENG.pdf.
- Rules of Procedure of the Inter-American Commission on Human Rights. Available at http://www.oas.org/en/iachr/mandate/Basics/rulesiachr.asp
- Rules of Procedure of the Inter-American Court of Human Rights. Available at http://www.corteidh.or.cr/sitios/reglamento/nov_2009_ing.pdf.
- Statement of Motives for the Reform of the Rules of Procedure of the Inter-American Court of Human Rights. Available at http://www.corteidh.or.cr/sitios/reglamento/nov_2009_motivos_ing.pdf.
- Statistics of the Inter-American Commission on Human Rights available at http://www.oas.org/en/iachr/multimedia/statistics/statistics.html.
- Statute of the Inter-American Commission on Human Rights. Available at http://www.oas.org/en/iachr/mandate/Basics/statuteiachr.asp.
- Statute of the Inter-American Court on Human Rights. Available at http://www.corteidh.or.cr/index.php/en/about-us/estatuto.
- The Court's Priority Policy, European Court of Human Rights. Available at http://www.echr.coe.int/Documents/Priority_policy_ENG.pdf.
- Treaty of Saint-Germain-en-Laye. Available at http://treaties.fco.gov.uk/docs/pdf/1919/TS0011.pdf.
- UN Commission on Human Rights, The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights. Available at http://www.unhcr.org/refworld/docid/4672bc122.html.
- United Nations Charter. Available at https://treaties.un.org/doc/publication/ctc/uncharter.pdf.
- Universal Declaration of Human Rights. Available at http://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf.

Secondary sources:

- Blackburn, Robert and Jörg Polakiewicz. *Fundamental Rights in Europe The European Convention on Human Rights and its Member States 1950-2000,* New York: Oxford University Press, 2001.

- Buergenthal, Thomas, Dinah L. Shelton, and David P. Stewart. *International Human Rights in a Nutshell,* 4th ed. Saint Paul: West Publishing, 2009.
- Buergenthal, Thomas. "Remembering the Early Years of the Inter-American Court of Human Rights." *Center for Human Rights and Global Justice* Working Paper no. 1 (2005).
- Buergenthal, Thomas. "The Advisory Practice of the Inter-American Human Rights Court." *American Journal of International Law* 79, no. 1 (1985): 1-27.
- Buergenthal, Thomas. "The Evolving International Human Rights System." *American Journal of International Law* 100, no. 4 (2006): 783-807.
- Calcaneo Sanchez, Alfonso. "The Dominican withdrawal from the jurisdiction of the Inter-American Court of Human Rights: A legal and a contextual analysis." Master's thesis, University of Oslo, 2015.
- Cançado Trindade, Antônio Augusto. *The access of individuals to international justice*. Vol. 18. New York: Oxford University Press, 2011.
- Cançado Trindade, Antônio Augusto. "Bases para un Proyecto de Protocolo a la Convención Americana sobre Derechos Humanos." *El sistema interamericano de protección de los derechos humanos en el umbral del siglo XXI-Memoria del seminario (Nov. 1999)* (2003): 67-99.
- Dulitzky, Ariel. "The Inter-American Human Rights System fifty years later: time for changes." *Quebec Journal of International Law* 127 *(Special Edition)* (2011): 127-164.
- Greer, Steven, and Andrew Williams. "Human Rights in the Council of Europe and the EU: Towards 'Individual','Constitutional'or 'Institutional'Justice?." *European Law Journal* 15, no. 4 (2009): 462-481.
- Greer, Steven and Luzius Wildhaber. "Revisiting the Debate about "constitutionalising" the European Court of Human Rights'(2012)." *Human Rights Law Review* 12, no. 4 (2012): 655-687.
- Harris, David. "Regional protection of human rights: the Inter-American achievement." In *The Inter-American system of human rights*, edited by David Harris and Stephen Livingstone, 1-30. Oxford: Clarendon Press, 1998.

- Hennette-Vauchez, Stéphanie. "Constitutional v. International? When Unified Reformatory Rationales Mismatch the Plural Paths of Legitimacy of ECHR Law." *The European Court of Human Rights between Law and Politics* (2011): 144-163. 145.
- Hill, Lisa. "Classical stoicism and the birth of a global ethics: Cosmopolitan duties in a world of local loyalties." *Social Alternatives* 34, no. 1 (2015): 14-18.
- "Inter-American Commission on Human Rights financial crisis", June 3, 2016 UN Nations Human Rights Office of the High Commissioner news. Available at http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20059&LangID=E.
- Leach, Philip. *Taking a Case to the European Court of Human Rights,* 3th ed. Oxford: Oxford University Press, 2011.
- Medina Quiroga, Cecilia. "Modificación de los Reglamentos de la Corte Interamericana de Derechos Humanos y de la Comisión Interamericana de Derechos Humanos al procedimiento de peticiones individuales ante la Corte." *Anuario de Derechos Humanos* 7 (2011): 117-126.
- Nowak, Manfred. *Introduction to the International Human Rights Regime*. Boston: Raoul Wallenberg Institute Human Rights Library, 2003.
- Pasqualucci, Jo M. "The Inter-American Human Rights System: establishing precedents and procedure in human rights law." *The University of Miami Inter-American Law Review* (1994): 297-361.
- Planas, Laura. *The Challenges of The Inter-American Commission on Human Rights*. Washington D.C.: Council on Hemispheric Affairs, 2016. http://www.coha.org/the-challenges-of-the-inter-american-commission-on-human-rights/.
- Ryngaert, Cedric. "Clarifying the Extraterritorial Application of the European Convention on Human Rights." *MERKOURIOUS Utrecht Journal of International and European Law* 28 (2012): 57-60.
- Robertson, Arthur Henry. "The European Court of Human Rights." *Am. J. Comp. L.* 9 (1960): 1-28.

- Shelton, Dinah and Alexandra Huneeus. "Inter-American Court of Human Rights-American Convention on Human Rights-Vienna Convention on the Law of Treaties-Jurisdiction-Estoppel-Internal Law as Justification for Failure to Perform Treaty Obligation." *The American Journal of International Law* 109, no. 4 (10, 2015): 866-872.
- Shelton, Dinah. "Significantly Disadvantaged? Shrinking Access to the European Court of Human Rights." *Human Rights Law Review* 16, no. 2 (2016): 303-322.
- Shelton, Dinah. "The Rules and the Reality of Petition Procedures in the Inter-American Human Rights System." *Notre Dame Journal of International & Comparative Law* 5 (2015): 1.
- Tanner, Lauri R. "Interview with Judge Antônio A. Cançado Trindade, Inter-American Court of Human Rights." *Human Rights Quarterly* 31, no. 4, (2009) 985-1005.
- Ventura Robles, Manuel E. "La Corte Interamericana de Derechos Humanos: La necesidad inmediata de convertirse en un tribunal permanente." In *La Corte Interamericana de Derechos Humanos Un Cuarto de Siglo*: *1979-2004*, 271-302. San José: Corte Interamericana de Derechos Humanos, 2005.
- Villiger, Mark E. "The European Court of Human Rights." In *Proceedings of the Annual Meeting (American Society of International Law)*, pp. 79-82. The American Society of International Law, 2001.