March, 2007

Upholding Human Rights in the Hemisphere: Casting Down Impunity Through the Inter-American Court of Human Rights

Morse Tan, *University of Texas at Austin*
Upholding Human Rights in the Hemisphere: Casting Down Impunity Through the Inter-American Court of Human Rights

By Morse H. Tan*

Abstract

This article further fills the lacuna in the scholarly literature regarding compliance theory and the Inter-American Court of Human Rights. It builds upon a previous publication by this same author titled “Member State Compliance with the Judgments of the Inter-American Court of Human Rights”. As with its predecessor, this article explores various prominent theoretical models including the managerial model, fairness and legitimacy, transnational legal process, and self-interest. Harmonizing aspects of these distinctive theoretical models as an analytical base, this article proposes a new, hybrid model which suggests that many of the central tenets of the previous theories reflect reconcilable dimensions of compliance with the Court’s judgments rather than representing an ineluctable, theoretical conflict.

This new hybrid model has been developed in the context of the Inter-American Court of Human Rights’s early jurisprudence on the merits: the hybrid model finds application in the Court’s first decisions in contentious cases, which constitute the critical corpus of precedent upon which its growing caseload, legitimacy and authority have been built. The article’s focus allows its conclusions to be tailored specifically to the Inter-American System to bring greater comprehension of international law compliance in our hemisphere specifically, as well as contributing to the on-going theoretical discussion of compliance theory.
Introduction

Cruel torture, improper incarceration, forced disappearances, and brutal murders in the Western Hemisphere… These are the crimes, the human rights violations, that the Inter-American Court of Human Rights (hereinafter the “IACHR” and the “Court”) has combated. As the highest institution in the Inter-American system of human rights, its jurisdiction extends to every major country in our hemisphere – as far north as the southern border of this country. Thus, the Court serves a critical function in upholding human rights in the Western Hemisphere. In order to diminish impunity, the Court has sought to establish a solid record of compliance with its judgments. Towards this end, the IACHR’s first judgments on the merits have laid the foundation for its increasing influence, caseload and overall impact. These first judgments on the merits constitute critical precedents for fostering a hemispheric culture that respects, rather than tramples upon, human rights.

Compliance with the judgments of the Inter-American Court of Human Rights (IACHR) is exceptionally high, particularly in light of the weak enforcement mechanisms at the Court’s disposal.¹ Professor Douglas Cassel argues the IACHR has actually only

---

¹ The Court has been more successful in achieving compliance in reparations judgments than in orders for States to secure criminal prosecution of perpetrators in the State’s domestic system. (Footnote 4)
had one and one-half defiant responses. Though the compliance theory legal literature has burgeoned, a gap in the scholarly literature exists in analyzing the nature of state compliance specifically in regards to the judgments of the IACHR.

Cassel further discusses the foundational paradox of the Court. The IACHR is at the zenith of its acceptance as well as the exercise of its broad formal powers, yet it contends with a relative paucity of diplomatic support. Though the Court has forged important precedents and gained significant authority and acceptance since its foundation, the nations under its jurisdiction are hesitant to allow the Court this increased power.

Peru was the first state to openly defy the Court through President Fujimori, who fled the country in October 2000. However, Peru never fulfilled this threat to reject
the Court’s jurisdiction and has since formally reaffirmed its commitment to the Court and complied with the Court’s judgments, so the court can count itself the victor. The second instance of noncompliance was with Trinidad and Tobago, which withdrew from the Court’s jurisdiction over capital punishment cases. However, Trinidad and

---


11 See Richard J. Wilson & Jan Perlin, The Inter-American Human Rights System: Activities from Late 2000 Through October 2002, 18 AM. U. INT'L L. REV. 651 (2003); Jurisdiction, Resoluciones y Sentencias, Series C. No. 55 (2000), available at http://corteidh.oae.nu.or.cr/ci/PUBLICAC/SERIE_C/C_55_ESP.HTM (March 7, 2005); see also Interpretation of the Judgment on the Merits: Art. 67 American Convention on Human Rights, Judgment of September 4 (“While Ivcher was struggling to regain his citizenship and his rights in the television station, President Alberto Fujimori, serving his second term, was endeavoring to overcome the limitations of Peru's 1993 Constitution, which prohibits a president from serving more than two consecutive terms. Fujimori's first term began in 1990, three years before the Constitution came into effect. In 1996, the Peruvian Congress enacted a statute that interpreted the term limitation as inapplicable to presidential terms that began prior to the approval of the Constitution. Three of the seven justices (with two abstentions) on Peru's Constitutional Tribunal (Tribunal Constitutional) invalidated the new statute, however, as it 'applied to the specific case of the incumbent President's candidacy for the office of President in the year 2000,' thereby threatening to frustrate Fujimori’s ambitions for a third presidential term. Four months later, the Congress impeached the three justices and then voted in favor of removing them from the Constitutional Tribunal. Pursuant to a petition filed by a number of Peruvian congressional deputies, the Commission issued a report finding that Peru had violated the justices’ rights to a fair trial, as well as the right of all Peruvians to an independent and impartial justice system. The Commission recommended that Peru reinstate the justices, but Peru failed to comply or to reach a friendly settlement after negotiations with the petitioners. The Commission then submitted the case to the Court.”); Bernard H. Oxman & Karen C. Sokol, International Decision: Ivcher Bronstein Human Rights—Law of treaties – Jurisdiction of Inter-American Court of Human Rights—Effect of Attempted Withdrawal of Jurisdiction, 95 AM. J. INT'L L. 178 (2001).

12 Trinidad and Tobago, which had been a State Party, denounced the American Convention on May 26, 1998, effective May 26, 1999. PASQUALUCCI, PRACTICE AND PROCEDURE, supra note 2; see also Richard J. Wilson & Jan Perlin, The Inter-American Human Rights System: Activities from Late 2000 Through October 2002, 18 AM. U. INT'L L. REV. 651 (2003); with Trinidad and Tobago, the IACHR ruled that mandatory death sentences for murder were in violation of the American Convention because it failed to give individual consideration in sentencing. Cerna at 210. In order to continue executions, Trinidad and Tobago withdrew its ratification of the American Convention on May 26, 1998, which became effective one year later. Concepcion at 848-849. Trinidad and Tobago, however, have since rejoined the American Convention, albeit with reservations. Tan at 325.

13 “During 2001 and 2002, the Court decided both the admissibility and merits of a collection of death penalty cases from Trinidad and Tobago (‘Trinidad’). The Court first considered Trinidad's preliminary objections in three separate cases, the Hilaire Case, the Benjamin et al. Case, and the Constantine et al. Case. The cases were later consolidated for disposition on the merits and reparations under the name Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago. All of these cases present complex issues of treaty application and treaty reservations, arising from Trinidad's
Tobago has also re-accepted the Court’s jurisdiction, though with reservations. Thus, the Court has prevailed even in the rare instances of noncompliance.

This article is an attempt to assess the general state of compliance of the IACHR leading up to and through the critical phase when it first declaimed judgments on the merits. Accordingly, this article traces the very important early history of the Court and its first judgments on the merits, focusing on compliance by member States therewith. The beginning phase was the most important period in assessing compliance because it sets the first precedents, establishes the Court’s authority, and serves as a cultural landmark for inculcating a greater ethos of respect for human rights. This article seeks to identify why the IACHR has been successful in compliance to the extent that it has been, and provide theory based clues as to how the Court might achieve greater compliance and influence in the future. It also critically examines the functioning of the Court in the larger context of the Inter-American system of human rights and the countries that come under its umbrella. Finally, it reflects upon these critical cases and history in the light of compliance theory, a necessary component for effectively reducing impunity.

I. Brief History and Structural Analysis

Some historical background and a structural analysis of the Inter-American Human Rights System, including a history of the Court’s practice and procedure, gives context to understanding compliance. More broadly, two bodies enforce human rights for the Inter-American System of Human Rights: the Inter-American Court of Human

______________________________

14 CITE to reservations.
Rights and the Inter-American Commission on Human Rights. The history of these institutions along with a structural analysis lend understanding upon which the remainder of the article is built.

The Inter-American system of human rights was created in response to the international outrage to the atrocities of World War II. The System was intended to prevent such atrocities from occurring ever again. Before WWII, there was little basis for the intervention in the domestic arena for the protection of human rights. Human rights were traditionally under the State’s sovereignty.\(^{16}\) However, after WWII, a major stream of thought and sentiment developed worldwide which held that gross violations of human rights were matters of international concern—to the extent of impinging upon traditional notions of state sovereignty. Eventually, the United Nations drafted the two covenants on human rights, the International Covenant on Civil and Political Rights and the International Covenant on Social, Economic and Cultural Rights. With this international backdrop of increasing respect for human rights, the Inter-American system was created.

The Inter-American system arose from the Organization of American States (OAS). The pertinent OAS documents for the Inter-American system are the OAS Charter and the American Declaration. The relationship between these documents loosely parallels the relationship between the US Constitution and the Bill of Rights.\(^{17}\) As a reaction to the Cuban Revolution in 1959, the OAS resolved to create the Inter-American Commission on Human Rights.\(^{18}\) The Commission had the limited authority to observe human rights compliance in the Americas and make general recommendations to

---

\(^{16}\) Pasqualucci at 302-303.


\(^{18}\) Cerna at 197.
member states. In 1966, after the adoption of the two UN human rights covenants, the OAS recognized the need for a legally binding human rights instrument. Consequently, the American Convention was adopted in 1969, which created the Inter-American Court and redefined the Commission.

According to the American Convention, the Inter-American Commission on Human Rights serves two functions: (1) to hear and decide whether to refer individual petitions to the Court and (2) to visit member states and prepare country reports concerning human rights compliance. The Commission effectively determines the syllabus of the Court. Under the American Convention, the Commission and Member States are the only parties who can refer cases to the Court and no state has ever referred any cases. Consequently, individuals must present their cases to the Commission, who then decides how to proceed. The Commission receives all information the individual can provide and the information, if any, the state is willing to provide. The Commission attempts to negotiate a friendly settlement, but if no settlement can be reached, then the Commission draws up a report and sends it to the state. After all procedures have been exhausted by the Commission, the Commission then determines whether to refer the case to the Court if the state has accepted the Court’s jurisdiction. In practice, the Commission is being viewed in a limited sense as a Court of first instance.

---

19 Cerna at 198.
20 Cerna at 197.
21 Pasqualucci at 306.
22 Pasqualucci at 307.
23 Pasqualucci at 307.
24 Cerna at 198.
The IACHR is the sole judicial organ of the Inter-American human rights system. The IACHR is charged with adjudicating the American Convention on Human Rights, which was entered into force on July 18, 1978. On May 22, 1979, the States Parties to the Convention elected seven judges to serve as the original Inter-American Court of Human Rights. The Court serves as the final arbiter for the American States that have ratified the American Convention. As of January 2003, twenty-four of the thirty-five Member States of the OAS are State Parties to the American Convention. Under the Convention, the IACHR has two primary functions: (1) to decided individual cases and (2) to issue advisory opinions. The Court only has the authority to protect civil and political rights and not social, economic and cultural rights, which circumscribes the constituted functions of the Court.

In order for a case to be heard by the Court, an individual must present the case to the Commission. Non-governmental organizations (NGOs), such as CEJIL for example, may also file on behalf of an individual. The individual or NGO can do this under the American Convention or the American Declaration for parties who have not adopted the Convention. The violation must be attributed to a state for acting or failing to act: thus, a

---

27 Their names and nationalities are as follows: Thomas Buergenthal (United States), Máximo Cisneros Sanchez (Peru), Huntley Eugene Munroe (Jamaica), Cesar Ordonez Quintero (Colombia), Rodolfo Piza Escalante (Costa Rica), Carlos Roberto Reina Idiaquez (Honduras), M. Rafael Urquia (El Salvador).
28 "These states are Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Surinam, Uruguay and Venezuela. Trinidad and Tobago, which had been a State Party, denounced the American Convention on 26 May 1998, effective 26 May 1999." JO M. PASQUALUCCI, PRACTICE AND PROCEDURE OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS (2003).
29 Cerna at 199.
31 Pasqualucci at 314.
state may be held responsible even when the action is not directly imputable to the state if that state fails to act in remediying the violation.\textsuperscript{32} The individual must have exhausted all domestic remedies prior to turning to the Inter-American system of human rights. A manifest denial of justice though may waive the domestic exhaustion requirement.\textsuperscript{33} Notably, the IACHR has amended its Rules of Procedure in 2001 to allow representatives of individuals complete autonomy in the Court proceedings. Previously, the Commission was the individual’s advocate in the Court proceedings. Now, both the individual and the Commission are autonomous, and the role of the Commission in the proceedings has changed substantially.\textsuperscript{34}

Until 1989, the Court had little success at ameliorating the human rights situation for the people in Member States across the Americas. Dictators in the Western Hemisphere perpetrated gross and systematic violations of human rights. State-sponsored forced disappearances, extra-judicial killings, and torture were commonplace. Because the Commission failed to refer contentious cases, the Court’s principal vehicle for contributing to international law during that period was its advisory opinions,\textsuperscript{35} as the Commission referred no contentious cases from 1979 to 1986. States found it convenient to have the Court occupied with nothing more than advisory opinions.

When the Commission began to refer contentious cases to the Court, the Court had the controversial opportunity to hand down judgments of human rights violations. In

\textsuperscript{32} Pasqualucci at 328.
\textsuperscript{33} “A manifest denial of justice occurs: (1) if the state fails to act or provide a remedy for the alleged violations; (2) if the judicial system does not function, and there has been an unwarranted delay in reaching a decision in the national courts; or (3) if the alleged victims have been denied access to the remedies.” Cerna at 200.
\textsuperscript{34} Cerna at 204.
1989, the Court issued its first decisions on individual petitions. The referral of individual petitions can be seen in part as the result of re-democratization. Under the American Convention, the Commission must determine that all domestic remedies were exhausted before referring to the Court. Prior to the establishment of democracies throughout the OAS member states, it was very difficult to determine whether domestic remedies had been exhausted. The remedies available were unclear and the states did not cooperate with providing information to the Commission.

The Court shocked the member states of newly emerging democracies by later deciding contentious cases. Some feared the States would refuse to participate in the proceedings before the Court, which had been a recurring problem for the International Court of Justice at the time. This fear proved largely unfounded. States generally responded to the applications filed against them and participated in the adjudicative process. States still filed preliminary objections to the Court, but if the Court denied these, the States proceeded to present their defenses.

Once a contentious case reaches the Court, the Rules of Procedure establish several phases to the claim’s adjudication. First, the State is allowed to make preliminary objections and the Commission is allowed to respond. The Court then issues its decision on the preliminary objections. After this, the Court hears a presentation of the case by the Commission or participating state. If the case meets all the requirements of Article 34 of the Rules of Procedures, then the Court issues a formal notification to the responding State. The State is given 4 months to answer, but the state may request

36 Cerna at 199.
37 Cerna at 199.
38 Rules of Procedure of the IACHR, article 31.
extensions. After this period, the parties may request further written presentations. The Court then hears the case, listening to witnesses and experts. The Court issues a decision on the merits that cannot be appealed and can issue orders on reparations, but this is generally reserved for a later opinion. The Court will reserve the right to supervise the execution of its judgments.

A. Case Studies

The following eight cases form the corpus of cases during the foundational stage when the IACHR first judged cases on their merits: 1) Velásquez Rodríguez 2) Godínez Cruz 3) Aloeboetoe et al. 4) Caballero Delgado y Santana 5) Suarez Rosero 6) El Amparo Case 7) Gangaram Panday 8) Neira Alegria. These first judgments on the merits represent a watershed in the history of the IACHR and the Inter-American system of human rights, a turning point of major proportions for human rights in the hemisphere.

In 1987, after the string of advisory opinions, the Court finally made several rulings on preliminary objections in three cases: 1) Velásquez Rodríguez 2) Fairén Garbi and Solís Corrales Case and 3) the Godínez Cruz case. Finally in 1988, the IACHR laid down orders on the merits. Specifically, on July 29th, 1988, the Court came down with its first judgment on the merits of a contentious case, Velasquez Rodriguez.


Narrative:

---

40 Rules of Civil Procedure, Article 34(2)
41 Rules of Civil Procedure, Article 67
42 American Convention, supra note 1, Article 63.
The Velasquez Rodriguez case concerns kidnapping, torture and forced disappearance. Based on the petition filed with the Commission, Manfredo Velasquez, a student at the National Autonomous University of Honduras, was forcefully detained without a warrant for his arrest. The ones who detained him were members of the National Office of Investigations (DNI) and G-2 of the Armed Forces of Honduras. He was taken to the cells of Public Security Forces Station No.2. There he was accused of political crimes and was subjected to torture and interrogation. However, the police and security forces denied that he was detained. Subsequently, Velasquez disappeared.44

Sergeant José Isaías Vilorio, who had been summoned to serve as a witness for this case, was assassinated in Honduras.45 Mr. Angel Pavon Salazar, who had already testified before the Court on September 30, 1987 in this case, the Fairén Garbi and Solís Corrales as well as the Godínez Cruz cases, was also assassinated in Honduras.46 Other witnesses who had testified in these same cases have been threatened because of their testimony before the IACHR. The Inter-American Commission on Human Rights had submitted these witnesses to the Court. In response, the President and Secretariat of the Court sent notes to the Agent of the Government of Honduras on November 6 and December 18, 1987. These notes requested the Honduran government to take the necessary steps to protect the lives, property and well-being of those who had been threatened.47

---

46 Id. at ¶ 41.
After denouncing these assassinations as "savage, primitive, inhuman and reprehensible", the Court cited Article 1(1) of the Convention as a basis for calling Honduras to take the necessary measures to protect the lives and safety especially of those who are threatened because of their participation or anticipated participation in proceedings pertaining to the protection of human rights. The IACHR also looked to Article 63(2) and 23 (5) to take the provisional measures to avoid irreparable damage to persons in cases of extreme gravity and urgency. So the Court commanded Honduras to promptly take the measures necessary to protect the threatened witnesses. Furthermore, the Court ordered Honduras to investigate the assassinations and impose punishments under Honduran law.\textsuperscript{48}

\textit{Judgment on the Merits:}

Velasquez Rodriguez was the Court's first judgment on the merits of a contentious case, decided on July 29, 1988.\textsuperscript{49} The Court ruled that Honduras violated the Article 7 right to personal liberty, Article 5 right to humane treatment, Article 4 right to life in conjunction with Article 1(1) in regards to Angel Manfredo Velásquez Rodríguez. All of these rulings were unanimous. The Court also unanimously decided that Honduras is required to pay fair compensation to the victim's next-of-kin.\textsuperscript{50}

\textit{Form & Amount:}

The Court decided 6 votes to one (Judge Rodolfo E. Piza E. dissenting) that if the Commission and Honduras fail to come to an agreement on the form and amount of such

\textsuperscript{48} Annual Report '88 at 25-26; Velásquez Judgment July 29, 1988, ¶ 41(2).
\textsuperscript{50} See Honduras Liability at 367, supra n. 7.
compensation within six months of the date of this judgment, the Court retains
jurisdiction and will settle the form and amount of compensation.\textsuperscript{51} Also, the Court
unanimously decided that the compensation form and amount will be approved by the
Court. Finally, the Court unanimously found it unnecessary to decide on the costs.

The Court later unanimously set compensatory damages at 750,000 lempiras to be
paid to the family of Angel Manfredo Velásquez Rodríguez.\textsuperscript{52} It unanimously decided
that the Court would supervise the indemnification, which was to be paid within ninety
days from the date of notification of the judgment.\textsuperscript{53}

\textit{Commission and Government:}

Both the Commission and government of Honduras came before the Court
concerning compensation. The Court determined that the Government must pay 750,000
lempiras (free from taxes) within ninety days of notification of the judgment.\textsuperscript{54} The
Court permitted payment in 6 equal monthly installments with just the first one within 90
days.\textsuperscript{55} Appropriate interest rates applied. The Court stated that it would supervise the
implementation and the case would be closed only upon full compliance.\textsuperscript{56}

\textit{Execution of Compensatory Damages Judgments:}

\textsuperscript{51} Velásquez Judgment July 29, 1988 at ¶ 191.
\textsuperscript{52} Velásquez Rodríguez Case, Judgment of July 21, 1989, Inter-Am. Ct. H.R. (Ser. C) No. 7 (1989), ¶ 57
\textsuperscript{54} Velásquez Judgment July 21, 1989 at ¶ 57.
\textsuperscript{55} \textit{Id.}
\textsuperscript{56} \textit{Id.} at ¶ 59.
The Court indicated in 1990 that the real amount of the award (purchasing power) needed to be preserved after a request for interpretation of Godínez Cruz & Velásquez Rodríguez.57

The execution of the compensatory damage judgments can be found in the 1991 Annual Report.58 There is a letter of compliance as well.59 The first judgment of the Court on the merits found compliance in the payment of reparations, a landmark case for human rights in the hemisphere.

Godínez Cruz:

Narrative

Saul Godínez Cruz was a schoolteacher whose house was put under surveillance. He disappeared on July 22, 1982 after leaving his house by motorcycle at 6:20 a.m. He was on his way to his work at the Julia Zelaya Pre-Vocational Institute in Monjaras de Choluteca. A man in a military uniform and two persons in civilian clothing put him and his motorcycle in a double-cabin vehicle without license plates.60

Saul Godínez was a leader of a teachers’ group. He had participated in several strikes and was in the midst of planning a new strike when he disappeared.61 Godínez was then (presumably) tortured, executed and clandestinely buried by agents of the Armed Forces of Honduras. This was part of a systematic and selective perpetration of

59 Id. at 34-40.
disappearances, which the government either assisted or tolerated. These disappearances, which numbered approximately 100-150, took place in this manner from 1981 to 1984.\(^{62}\)

**Judgment on the Merits:**

The court unanimously declared that Honduras violated Saul Godínez Cruz by breaking Article 7 (personal liberty), 5 (humane treatment) and 4 (right to life) in conjunction with 1(1).\(^{63}\)

The Court unanimously awarded 650,000 lempiras to the family of Saul Godínez Cruz.\(^{64}\) This must be paid tax-free ninety days from the date of notification as in Velásquez Rodríguez.\(^{65}\) The Court assumed responsibility for supervising the implementation and would close the case upon full compliance.\(^{66}\)

**Compliance with Velásquez Rodríguez and Godínez Cruz:**

The Government of Honduras reaffirmed to the Court its commitment to comply with the compensatory damages judgments. The Court construed this as meaning that the Government would strictly adhere to the payment of the original amounts of the award that the Court issued.\(^{67}\)

After consulting with the other judges involved in the judgments, the President of the Court responded to the Honduran government on November 12, 1990. The President

---


\(^{65}\) Id. at ¶ 52.

\(^{66}\) Id. at ¶ 54.

of the Court asked Honduras to comply with the judgments. Furthermore, the President reminded them of Article 65 of the Convention, which states in pertinent part that the Court will, in its report to the General Assembly of the Organization, “specify...the cases in which a state has not complied with its judgment” and that “the compensatory damages may be executed in the country concerned in accordance with domestic procedure governing the execution of judgments against the state.”

Clarification:

On September 29, 1989, Gilda M.C.M. Russomano and Edmundo Vargas-Carreno, Delegates of the Inter-American Commission on Human Rights in the Velásquez Rodríguez case, asked the President of the Court to clarify and interpret the compensatory damages judgment of July 21, 1989. They made a similar request for the Godínez Cruz case. The Commission based its motion on Article 67 of the American Convention as well as Article 48 of the Rules of Procedure of the Inter-American Court of Human Rights.

The concern that the Commission raises pertains to the effect that inflation and currency devaluation would have on the monetary awards for the children of Manfredo Velásquez Rodríguez. The Commission noted how such inflation and currency devaluation had been historically common in Latin America, putting the issue in

---

69 The American Convention of Human Rights, Article 68 (2).
70 Annual Report of the Inter-American Court of Human Rights (1990), 49.
71 Id. at 53.
72 Id.
context. A telling statistic is that the CPI (Consumer Price Index) rose 721% in Latin America as a whole from 1983 to 1988. This figure comes out to 144% per annum.

For Honduras, CPI figures from 1971-1989 would have made the 562,500 lempiras figure only 147,127 lempiras, roughly a quarter of its original value. The lempira had stayed steady (about 2 lempiras to 1 dollar) vis a vis the dollar over the past fifty years, but when the Commission wrote, the lempira was declining in relation to "strong currencies," like the dollar. Yet even the devaluation of the dollar reduces its purchasing power to a third or a quarter of its value over roughly a score of years.

The Commission suggested that the value of the capital placed in trust be calculated as a fixed purchasing power rate of lempiras that would be grounded by its value in dollars. This approach would still cause the beneficiaries to lose the purchasing power of the dollar, which would be used in this instance as the indicator currency. This approach also has the functional convenience of relative simplicity and clarity for all parties involved.

The Commission makes its case on the basis of paragraph 58, Section VIII of the judgment of the Court, which provided that the beneficiaries will receive interest "under the most favorable conditions permitted by Honduran banking practice."

The Commission also noted the special, precedential legal value such a clarification would have, not only in the Latin American context, but also in the overall

---

74 Id.
75 Id.
76 Id.
77 Id. at ¶ 20.
development of the international humanitarian legal order.\textsuperscript{80} Given that the Velásquez Rodríguez case was the first judgment on the merits by the IACHR, the Commission was right to note its particularly special, precedential value.

In regards to the Court's oversight of compliance, the Commission Agents aptly state: "The Court's specific assumption of the supervision of compliance with its judgment is an eloquent indication of the responsibility the Court assigns to full and exact compliance, and serves to justify the importance of the interpretation we request."\textsuperscript{81} The IACHR seems to take a more proactive role in seeking compliance as compared to U.S. courts, which in the midst of overflowing dockets, often seem loath to supervise judgments, especially for certain types of equitable relief.

On the other hand, given the OAS General Assembly's passiveness in levying sanctions against non-complying member states, the U.S. contempt laws, especially for criminal contempt seem to provide more forceful incentives to comply with courts' judgments. At the same time, indirect (and sometimes tacit) sanctions seem to take place (e.g. against Peru) and the general cultural atmosphere in Latin America seems to be according more importance to human rights as judged upon by the IACHR based on the Convention. The formal ceremony inducting Peru back under the jurisdiction of the Court is indicative of the cultural shift moving in a direction in which non-adherence to the Court's judgments could increasingly lead a Latin American nation to be considered a rogue, pariah state.

\textit{Compliance in the Aftermath of the Clarification:}

\textsuperscript{80} Annual Report of the Inter-American Court of Human Rights, (1990) at 49-50.
\textsuperscript{81} Id. at 50; Cruz Judgment August 17,1990 ¶ 18.
Honduras, through its Ambassador Edgardo Sevilla Idiaquez, expressed surprise at the "broad interpretation" that the Court gave in response to the Commission's request for interpretation and clarification.\(^{82}\) Idiaquez protested the effect of increasing the amount that Honduras would pay to the beneficiaries in Godínez Cruz and Velásquez Rodríguez. Honduras protested that the Court's judgments of July 21, 1989, fixed the amount of compensation in the lempira without tying it to any foreign currency. Idiaquez claimed that these judgments required no clarification.\(^{83}\)

Furthermore, Honduras protested that it had already set its budget for the year and that the country faced an economic crisis.\(^{84}\) These two factors, Idiaquez claims, made it unfeasible for Honduras to provide (in their view), the extra allocation to the judgment's beneficiaries.\(^{85}\) So Honduras reaffirmed its commitment to pay no more than the literal amount specified in the judgments.\(^{86}\)

The Court, in a letter from President Hector Fix Zamudio, rejected the arguments of Honduras and reiterated its orders of payment according to what the Commission had said.\(^{87}\) To the President, non-compliance would damage the Inter-American system of human rights.\(^{88}\)

*Closing of the Cases:*


\(^{83}\) Id. at 92; Rodriguez Judgment August 17, 1990, ¶ 6; Cruz Judgment August 17, 1990, ¶¶ 21(1) & 24(1).

\(^{84}\) Judgment August 17, 1990, ¶ 24(5).

\(^{85}\) Annual Report of the Inter-American Court of Human Rights, (1990) at 93.

\(^{86}\) Id. at 94.

\(^{87}\) Id. at 95-6.

\(^{88}\) Id. at 96.
In its 1996 Report, the court closed both the Velásquez Rodríguez as well as Godínez Cruz cases based on compliance with the Judgments on Compensatory Damages and their Interpretations.\(^89\)

On September 10, 1996, the IACHR unanimously decided to close the Velasquez case.\(^90\) Honduras had made official communications with the Commission that it had made the compensation in accordance with the Court's order.\(^91\) Honduras also submitted a brief directly to the Court on April 12, 1996 in which it indicated that its President had the delivered the requisite checks.\(^92\) Both the Commission and Honduras thus requested the Court to close the case.\(^93\) The petitioners also indicated that they did not want to go forward with further pleadings pertaining to the incidental plea to establish Honduras' compliance with the judgments.\(^94\)

The Godínez Cruz case was closed by the Court in an almost identical process. Again, the petitioners, the Commission and Honduras came to an agreement not to continue with the incidental plea.\(^95\)

**Aloeboetoe, Judgment of December 4, 1991:**

**Narrative:**

The reported events occurred in Atjoni, which is the landing stage of the village of Pokigrorn, District of Sipaliwini, and in Tjongalangapassi in the District of

\(^{90}\)Id. at 210, ¶ 1 of the Decision section.
\(^{91}\)Id. at 209, ¶ 3.
\(^{92}\)Id. at ¶ 4.
\(^{93}\)Id. at 210, ¶ 1 under CONSIDERING:.
\(^{94}\)Id., ¶ 2.
\(^{95}\)Annual Report 1996, at 213-5
Brokopondo.96 Soldiers beat with rifle-butts over 20 male, unarmed maroons (“bushnegroes”), whom they detained under suspicion that they were Jungle Commando members.97 The soldiers wounded some of the maroons with bayonets and knives. Soldiers had them lie face-down while the soldiers stepped on their backs and urinated on them.98

These events transpired in front of roughly 50 persons. Both the witnesses and the sufferers were villagers from Paramaribo, who were passing through Atjoni on their way to their village.99 They all denied involvement in the Jungle Commando, and the Captain of Gujaba village told Commander Leeflang of the Army that the persons in question were civilians. Commander Leeflang ignored this information.100

The soldiers then selected out seven of the maroons (including a 15-year old) while letting the others continue on their way. The soldiers blindfolded and dragged them into a military vehicle and drove them along the Tjongalangapassi road towards Paramaribo.101 A soldier exclaimed that they would celebrate the end of the year with them.102

The soldiers stopped the vehicle after kilometer 30 and ordered the victims to get out. They dragged out the ones who did not get out. The seven men were given a spade, and told to start digging a short distance from the road.103 When asked what they were

---

103 Aloeboetoe Judgment September 12, 1993, ¶ 5.
digging for, one of the soldiers responded that they were going to plant sugar cane; another soldier said again that they would celebrate the end of the year with them.104

Richenel Voola (alias Aside), one of the maroons, then bolted away. The soldiers shot at him and Voola collapsed to the ground. Voola was wounded. The soldiers did not chase after him. Soon thereafter, the soldiers shot the other six maroons to death as they screamed.105

Village men, on January 2, 1988, went to the authorities to demand information about the seven whom the soldiers had abducted. Nobody could tell them: neither the Coordinator of the Interior at Volksmobilisatie, nor the Military Police of Fort Zeeland were able to tell them where the men were.106

The village men then searched on their own, going back into the Tjongalanga area. They found the corpses of the murdered maroons, whose bodies had been partially consumed already by vultures. The next of kin of these six did not receive permission to bury them until January 6th. They also found the seriously wounded Voola (Aside), who had a bullet embedded in the muscle above his right knee. Aside's wound was infested with maggots and an "X" had been carved into his right shoulder blade.107

In critical condition, Aside was brought back to Paramaribo. After negotiating with the authorities for 24 hours, the International Red Cross representative received a permit to evacuate Aside. The Academic Hospital of Paramaribo admitted him on

January 6, 1988. The hospital cared for him for a number of days, but he still died. The
Military Police prevented Aside's relatives from visiting him in the hospital.\footnote{108}

The Commission raised Articles 51 and 61 of the Convention as well as Article 50
of its Regulations in order to allege violations of Articles 1 (Obligation to Respect
Rights), 2 (Domestic Legal Effects), 4 (Right to Life), 5 (Right to Humane Treatment), 7
(Right to Personal Liberty), 25 (Right to Judicial Protection) against Mrs. Daison
Aloeboetoe, Dedemanu Aloeboetoe, Mikuwendje Aloeboetoe, John Amoida, Richenel
Voola (alias Aside), Martin Indisie Banai and Beri Tiopo.\footnote{109} In this case, the President
gave the Government\footnote{110} the prerogative to appoint an \textit{ad hoc} Judge to this case, \textit{viz.}
Professor Antonio A. Cancado Trindade of Brasilia, Brazil.\footnote{111} Appearing for Surinam
was Carlos Vargas-Pizarro (Agent), Ramon de Freitas, Albert Vrede, and Fred M. Reid
while the Inter-American Commission's Delegates were Oliver H. Jackman and David J.
Padilla.\footnote{112}

\footnote{110} The Reports capitalize Government; I will retain this practice.
Judgment on the Merits:

The Court unanimously noted Surinam's admission of responsibility concerning the violation of Articles 1(1, 2), 4(1), 5(1) (2), 7 (1-3) and 25. The Court unanimously set the reparations at $453,102 U.S. dollars or the equivalent in Dutch Florins. Surinam must pay this amount to the victims or their heirs. The IACHR decided not to order the payment of costs.

The Court ordered the creation of two trust funds and the establishment of a Foundation. It also ordered Surinam to reopen and staff the school in Gujaba with teaching and administrative workers on a permanent basis starting in 1994. The medical dispensary there must also be operational in 1994.

The Court will supervise compliance with the reparations before taking steps to close the case.

Compliance with Aloeboetoe:

In its report to the OAS General Assembly, the Court noted that it had not received any official communication from the Surinam Government with respect to compliance with this judgment. The Court thus requested the General Assembly to exhort Surinam to report on the status of compliance with the Court's judgment.

---

114 Aloeboetoe Judgment September 12, 1993, ¶ 116(1).
115 Id. at ¶ 116(7).
116 Id. at ¶ 116(2).
117 Id. at ¶ 116(5).
118 Id. at ¶ 116(6).
120 Id. at 18.
However, members of the Foundation established under the terms of the judgment have reported that they have: 1) Deposited the sum of US$3,853 in Dutch Florins as working capital for the Foundation's operations. 2) Furthermore, they deposited US$134,990 as partial payment of the $453,102 that the Court ordered as reparation to the injured parties. 3) The balance of these reparations would be paid out in seven monthly installments.\textsuperscript{121}

In its 1996 Report, the Court noted again that it had not received any official communications from Surinam on its compliance both with \textit{Aloeboetoe et al.} as well as \textit{Gangaram Panday}.\textsuperscript{122} The Court noted the necessity of receiving official communication in order to be able to decide whether or not to close the case.\textsuperscript{123}

During the XXXIII Regular Session from January 22 to February 3, 1996, the Court reviewed compliance with the Judgment on reparations in the Aloeboetoe Case and with the Judgment on the merits in the Gangaram Panday Case. The President of the Court, Judge Hector Fix-Zamudio required Surinam to inform the Court on the status of the reparations.

\textit{Closing the Case:}

On February 5, 1997, the Court laid down its resolution closing the Aloeboetoe case.\textsuperscript{124} The Commission had informed the Court that Surinam had paid US $453,102.00 in accordance with points 1, 2 and 3 of the Court's September 10, 1993 Sentence.\textsuperscript{125} The State had also complied with point 4 of the Sentence by bringing the stipulated funds for

\textsuperscript{121} \textit{Id.}
\textsuperscript{123} \textit{Id.}
\textsuperscript{124} http://www1.umn.edu/humanrts/iachr/espanol/aloe2-5.html based on my unofficial interpretation to English.
\textsuperscript{125} \textit{Id.}
the functioning of the Foundation. The Foundation, according to its Article 3.k, must send an annual report to the Court concerning the administration and state of the trusts and the economic and financial information concerning the development of the trusts attached.

The Government also repaired and re-opened the school in Gujaba with the teaching staff as well as making functional the dispensary also in Gujaba in conformity with point 5 of the Sentence. Given Surinam's compliance, the Court closed the case but left open the possibility of re-opening it under circumstances that would merit it given the ongoing nature of some of the reparations.

**Gangaram Panday, Judgment of January 21, 1994:**

*Narrative:*

The Court considered the following facts undisputed and proven. Asok Gangaram Panday arrived at Zanderij Airport in Surinam on November 5, 1988. The Military Police detained Gangaram Panday because they thought that his expulsion from Holland called for further investigation. The Military Police detained him in a cell within a shelter for deportees located in the Military Brigade at Zanderij.

---

126 *Id.*  
127 *Id.*  
128 *Id.*  
131 Annual Report 1994, ¶ 43(a) & (b).
Without bringing him before a tribunal, they kept him in detention from the night of Saturday, November 5 until the early hours of Tuesday, November 8, 1988. At that point, Mr. Gangaram Panday's lifeless body was discovered.\textsuperscript{132}

\textit{Judgment on the Merits:}

The Court unanimously declared that Surinam had violated Mr. Asok Gangaram Panday's right to personal liberty as stated by Article 7(2) of the Convention in conjunction with Article 1(1).\textsuperscript{133} At the same time, the judges also unanimously dismissed the charges that Surinam violated Articles 5(1), 5(2), 25(1) and 25(2) against Gangaram Panday.\textsuperscript{134}

The Court split as much as was possible (4 to 3) in finding that Surinam did not violate Gangaram Panday's right to life as found in Article 4(1). The dissenting judges were Sonia Picado-Sotela, Asdrubal Aguiar-Aranguren and Antonio A. Cancado Trindade.\textsuperscript{135}

The Court, however, united unanimously again in setting Surinam's payment amount at U.S.$10,000 or the equivalent sum in Dutch florins within six months of the date of the judgment. The Court decided to supervise the payment of the sum specified and indicated that it would close the case only upon compliance. The Court did not award any costs.\textsuperscript{136}

\textsuperscript{132} \textit{Id.} ¶ 43(c); Gangaram Panday Case, Judgment of January 21, 1994, Inter-Am. Ct. H.R. (Ser. C) No. 16 (1994), ¶ 3(b) [hereinafter Panday Judgment January 21, 1994].

\textsuperscript{133} Panday Judgment January 21, 1994, ¶ 71(1).

\textsuperscript{134} Panday Judgment January 21, 1994, ¶ 71(2); Annual Report 1994 at 39, Section XI.

\textsuperscript{135} Panday Judgment January 21, 1994, ¶ 71(3); Annual Report 1994 at 39, Section XI.

Compliance with Gangaram Panday:

Up to its 1994 Annual Report, the Court received no information from the Government of Surinam regarding compliance with its judgments. Thus, the IACHR requested the General Assembly to urge the State of Surinam to comply with the Court's January 21, 1994 judgment in this case.137

In 1997, the Court laid down a resolution regarding the state of compliance. It stated that Surinam should make every effort to find the beneficiaries of the Court's award.138 Failing the finding of the beneficiaries, the State must deposit the amount in a bank trust.139 If the funds are not claimed by the rightful beneficiaries after 10 years, the money would be returned to the Government and Surinam will be considered to have complied with the sentence.140

The Court also urged the Commission to try to locate the next of kin of Mr. Asok Gangaram Panday so that the Government could fulfill the Sentence placed upon it on January 21st, 1994.141 The Court also required the parties to give updated information concerning compliance in 6 months after this resolution.142

El Amparo, Judgment of January 18, 1995:

Narrative:

137 Id. at 18.
138 http://www1.umn.edu/humanrts/iachr/espanol/gang2-4.html; this is again in Spanish and so (unofficial) translation to English was necessary for the purposes of writing in English.
139 Id.
140 Id.
141 Id.
142 Id.
Judge Oliver Jackman recused himself from this case because of his prior involvement when he served formerly on the Commission. As a result, the case was heard by 5 of the judges.\textsuperscript{143}

The Court ordered the end of the inquiry in regards to the facts when Venezuela did not contest the facts referred to in the complaint.\textsuperscript{144} The Commission put forth the following narrative: 16 fishermen, residents of the village of "El Amparo," were traveling towards "La Colorada" Canal on the Arauca River. Jose Indalecio Guerrero was driving the boat. The trip was part of a (literal) fishing expedition. At around 11:20 a.m., members of the military and police, who were conducting a military operation called "Anguila III", killed 14 of the 16 fishermen there.\textsuperscript{145}

The other two, Wollmer Gregorio Pinilla and Jose Augusto Arias, escaped by leaping into the water and swimming across "La Colorada" Canal. These two then found refuge in the "Buena Vista" farm, which stands about 15 kilometers from the site of the shootings.\textsuperscript{146}

\textsuperscript{143} Annual Report of the Inter-American Court of Human Rights, (1995), 23. Judges Hector Fix-Zamudio presided; Hernan Salgado-Pesantes, Maximo Pacheco-Gomez, Antonio A. Cancado Trindade and Alejandro Montiel-Arguello were the participating judges. For an article challenging the election of Judge Montiel-Arguello in 1992, see Douglas W. Cassel, Jr., Somoza's Revenge: A New Judge for the Inter-American Court of Human Rights, Human Rights Law Journal, Vol. 13, No. 4, (April 1992), p. 137. In this article, Cassel raises aspects of Dr. Montiel's past and how he thinks it fails to meet up to Article 52.1 of the Convention, which requires that judges of the Court be elected "from among jurists of the highest moral authority and of recognized competence in the field of human rights." The issue of the selection of judges is a factor that can tend to aid or damage compliance prospects.


\textsuperscript{145} El Amparo Judgment January 18, 1995, ¶ 10; Annual Report 1995 at 25, ¶ 10. See Also http://noticias.eluniversal.com/1998/10/29/29102AA.shtml, which speaks about the massacre precipitating this case and the aftermath decade in which justice did not happen domestically. After domestic procedures, the case went to the Inter-American Court of Human Rights.

The next day, Gregorio and Augusto then turned themselves in to the Commandant of the Police of "El Ampara", Adan de Jesus Tovar-Araque. He and other police officials immediately offered them protection.\footnote{147}

Commandant Tovar was subjected to pressure by military functionaries and police of San Cristobal, State of Tachira, to turn the two fishermen over to the Army. Although there was an attempt to seize Gregorio and Augusto by force, numerous people standing in front of the police post foiled the attempt.\footnote{148}

The Chief Inspector of the DISIP (Direccion de los Servicios de Inteligencia y Prevencion/Intelligence and Prevention Services Directorate), Celso Jose Rincon-Fuentes, visited Tovar on October 29th in the afternoon. The Chief Inspector told Tovar that they had killed 14 guerrillas and that two had escaped.\footnote{149}

That same afternoon and early the next day, relatives of the fishermen came to Tovar to ask the whereabouts of the fishermen who had left on the 29th. The media had started airing news about an armed confrontation with irregular Colombian combatants.\footnote{150}

\textit{Judgment on the Merits:}

The Court unanimously took note of Venezuela's acknowledgment of responsibility and decided that Venezuela must pay a fair indemnification to the surviving victims and the next-of-kin of the fishermen whom the military and police

\footnote{147 El Amparo Judgment January 18, 1995, ¶ 11.}
\footnote{Id.; Annual Report 1995, ¶ 11.}
\footnote{149 El Amparo Judgment January 18, 1995, ¶ 12; Annual Report 1995, ¶ 12.}
\footnote{150 El Amparo Judgment January 18, 1995, ¶ 12; Annual Report 1995, at 26.}
killed. The Court allowed Venezuela and the Commission to agree on the form and amount of this indemnification within half a year of the notification of the IACHR's judgment. The judges also reserved the right to review and approve the agreement. In the event that Venezuela and the Commission fail to come to an agreement, then the Court would decide the amount of the indemnities, court costs and attorneys' fees. For this contingency, the Court retained the case on its docket.  

Reparation Agreement Failure:

Because the Commission and Venezuela failed to come to an agreement and the Court refused the requests for interpretation while refusing to extend the period set by the January 18, 1995 judgment, the Court decided that it would initiate its own reparation and compensation procedure. Towards that end, the Court granted both the Commission as well as Venezuela the opportunities to submit briefs regarding the reparation and compensation amounts.

Clarification:

The Court on April 16, 1997, did not permit domestic proceedings under the Code of Military Justice to impinge upon the Court's Judgment on Reparations of September 14, 1996.

Reparations:

The Court set the total reparations at US$722,332 payable to the next of kin and the surviving victims. The Court ordered Venezuela to pay within six months.

The amount given can seem more sizable than it is if the amount is not broken down. The breakdown turns out to be as follows (by the amount given to the family of the deceased):

<table>
<thead>
<tr>
<th>NAME</th>
<th>US$ DOLLARS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Julio Pastor Ceballos</td>
<td>$23,953.79</td>
</tr>
<tr>
<td>Moises A. Blanco</td>
<td>$28,303.94</td>
</tr>
<tr>
<td>Jose I. Guerrero</td>
<td>$23,139.44</td>
</tr>
<tr>
<td>Marino E. Vivas</td>
<td>$26,838.00</td>
</tr>
<tr>
<td>Jose G. Torrealba</td>
<td>$28,535.66</td>
</tr>
<tr>
<td>Jose Mariano Torrealba</td>
<td>$23,139.44</td>
</tr>
<tr>
<td>Jose Ramon Puerta</td>
<td>$27,416.52</td>
</tr>
<tr>
<td>Arin Ovadia Maldonado</td>
<td>$23,558.79</td>
</tr>
<tr>
<td>Rigo J. Araujo</td>
<td>$26,145.70</td>
</tr>
<tr>
<td>Pedro I. Mosquera</td>
<td>$27,235.10</td>
</tr>
<tr>
<td>Luis A. Berrio</td>
<td>$25,006.34</td>
</tr>
<tr>
<td>Rafael Magin Moreno</td>
<td>$23,139.44</td>
</tr>
<tr>
<td>Carlos A. Eregua</td>
<td>$28,641.52</td>
</tr>
<tr>
<td>Justo Mercado</td>
<td>$26,145.70</td>
</tr>
</tbody>
</table>

154 El Amporo Reparations, ¶ 64(1); Annual Report 1996, ¶ 64.
155El Amporo Reparations, ¶ 29; Annual Report 1996 at p. 164, ¶ 29. There was talk of planning to use a portion of the funds to form "El Amparo Foundation", which would be used to address similar injustices in the future. See http://noticias.eluniversal.com/1996/09/23/C23IND.shtml
Considering that these men lost their lives, it is outrageous that their families received the paltry sum that they did. Even though the cost of living is lower than the United States, it still seems a rather token sum to give when these men unjustly lost their lives. Juan Mendez expressed this sentiment strongly in reference to this case during our interview.156

Additionally, the Court granted a paltry $4,566.41 to Wolmer Gregorio Pinilla and Jose Augusto Arias, the two survivors.157 This amount was based only off of the two years during which they were unfit to work.158 It seems rather minimalist and almost crass for the Court only to cover two years of work and nothing more.

The Court did further declare that Venezuela must continue investigating the events of the case.159 Furthermore, the Court ordered the State to punish the ones responsible for the massacre.160 The Court apparently leaves the means of the investigation, as well as the type and extent of punishment, for Venezuela to decide.

**Compliance with El Amparo**

Monday, February 27, 2006 still found the El Amparo case open at the IACHR although the case has been closed in Venezuela.161 The most recent compliance-related order issued by the Court in this case was dated November 18, 2002.162 The Court told

---

156 *Supra*, Interview with Juan Mendez.
159 El Amporo Reparations, ¶ 64(4); Annual Report 1996 at 172, ¶ 64.
160 El Amporo Reparations, ¶ 64(4); Annual Report 1996 at 172, ¶ 64.
Venezuela to publicly name the guilty parties.\textsuperscript{163} El Amparo fisherman Wolmer Gregorio Pinillo reportedly fears for his own life and those of his family, and has lodged a complaint to the Ombudsman.\textsuperscript{164}

The Venezuelan government did pay $722,000 to the victims and next of kin according to an October 1, 1997 article.\textsuperscript{165} The case remains open with the IACHR however, because Venezuela still owes US$28,751.44 in interest payments and has not brought the responsible parties to justice.\textsuperscript{166} The government also intended to reform its system so that such a case would not have to go to the Inter-American system of human rights in the future.\textsuperscript{167} So while Venezuela complied by paying the reparations, it still has not complied in interest payments and bringing the responsible parties to justice—much less to effectively reform their system to obviate the need for IACHR adjudication in the future of similar cases.

\textbf{Neira Alegria \textit{Et Al.}}

\textit{Narrative:}

The Court found it proven that Victor Neira-Alegria, Edgar Zenteno-Escobar and William Zenteno-Escobar were being held in the Blue Pavilion of the San Juan Bautista Prison on June 18, 1986.\textsuperscript{168} On that day, the quelling of the uprising began.\textsuperscript{169} These

\begin{footnotes}
\item[163] Annual Report 1996 at 172, ¶ 64.
\item[164] Id.
\item[165] http://noticias.eluniversal.com/1997/10/01/01118AA.shtml
\item[167] http://noticias.eluniversal.com/1997/10/01/01118AA.shtml
\end{footnotes}
The Peruvian Navy demolished the Pavilion. The autopsies of many of the deceased indicated that they had been crushed to death. According to the majority and minority reports of the Congress, the Court found a disproportionately larger use of force than necessary. There was also a lack of interest in rescuing the survivors as a few days later, four inmates appeared alive.

The government also failed to exercise due efforts to identify the dead bodies. The Court concluded that Victor Neira-Alegria, Edgar Zenteno-Escobar and William Zenteno-Escobar lost their lives through the Peruvian Navy's crushing of the Pavilion.

**Important Evidentiary Ruling:**

The Court held that when the control of the investigation is entirely and only within the control of the Government, the burden of proof shifts to the Defendant State. The Court considered that the evidence was or should have been at the disposal of the Government had it acted with due diligence.

The Court also cites its previous rulings in this matter by stating: "in contrast to domestic criminal law, in proceedings to determine human rights violations the State
cannot rely on the defense that the complainant has failed to present evidence when it cannot be obtained without the State's cooperation." and that "The State controls the means to verify acts occurring within its territory. Although the Commission has investigatory powers, it cannot exercise them within a State's jurisdiction unless it has the cooperation of that State."178

Judgment on the Merits:

The Court unanimously found that Peru had violated the right to life recognized by Article 4(1) of Victor Neira-Alegria, Edgar Zenteno-Escobar and William Zenteno-Escobar.179 The other four decisions were unanimous as well.180 The IACHR also found a violation of the right to habeas corpus established in Article 7(6) in connection with Article 27(2)'s prohibition.181

Indemnification:

The Court determined that Peru must fairly compensate the next of kin of the deceased and reimburse their expenditures from their petitions before domestic authorities.182 Peru and the Commission shall come to a mutual agreement concerning the form and extent of the compensation and reimbursement within six months of the date of the notification of this judgment.183 The Court did not close the case to provide for the possibility that Peru and the Commission might fail to come to an agreement.184 The

180 Id. at ¶¶ 91(2) – 91(5).
181 Id. at ¶ 91(2); Annual Report 1995 at 61, Section X.
183 Id. at ¶ 91(4).
184 Id. at ¶ 91(5).
Court would then have the authority to determine the compensation and expenditures. The IACHR also has review and approval power for the agreement.185

Reparations:

The Court declared on September 19, 1995 that the decision on reparations and compensation has fallen to the judges who decided those matters, unless a public hearing has already occurred, in which case the judges that were present at that public hearing will decide the case.186

On September 19, 1996, the Court (5 to 1) set the reparations at US$154,040.74 for the next of kin and surviving victims to be made by the State of Peru within six months from notification of this judgment.187 The Court further ordered Peru to do all that it can to locate and identify the remains of the victims and bring them to the next of kin.188

Compliance with Niera Alegria:

According to the Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, February 25, 2000:

In May the Government paid full compensation, as ordered by the Inter-American Court of Human Rights, to the family of Neira Alegria, who disappeared in 1986. At year's end, the Government still had not paid $245,000 in compensation to the family of Ernesto Rafael Castillo Paez, who disappeared after the police forcibly detained him in 1990, despite the Court's 1997 ruling that the Government had violated Castillo Paez's right to life, liberty, and personal integrity. The Court also had ordered the Government to punish those responsible and to return the victim's remains

185 Id.; Annual Report 1995 at 62.
188 Alegria Judgment September 19, 1996, ¶70(4); Annual Report 1996 at 191, ¶ 70.
to his family; however, the Government had not done either by year's end.\textsuperscript{189}

**Caballero Delgado y Santana, Judgment of December 8, 1995:**

*Narrative:*

Intense army, paramilitary and guerrilla activity occurred in the Municipality of San Alberto (El Cesar), the setting where the events under consideration took place.\textsuperscript{190} There, the Colombian Army and several collaborating citizens detained and caused the disappearance of Isidro Caballero-Delgado and Mara del Carmen Santana.\textsuperscript{191} Given that more than six years have passed since the disappearance of Caballero-Delgado and Santana, the Court concluded that they were dead.\textsuperscript{192}

Captain Forero was discharged from the Colombian Army through the Order of April 26, 1990 in the Court of military discipline.\textsuperscript{193}

The Court did not find sufficient evidence that Santana as well as Caballero-Delgado had been subjected to torture or inhumane treatment during their detention.\textsuperscript{194}

*Judgment on the Merits:*

The Court decided that Colombia violated Articles 7 and 4 (read in conjunction with Article 1(1)) against both Caballero Delgado y Santana (Judge Nieto-Navia dissenting).\textsuperscript{195} However, the Court decided that Colombia had not violated Article 5 (Judge Pacheco-Gomez dissenting).\textsuperscript{196} The Court unanimously decided that Colombia

\textsuperscript{189} http://www.elcomercioperu.com.pe/ecelec/html/documentos/ddhh.html
\textsuperscript{191} Delgado & Santana Judgment December 8, 1995, ¶ 53(b).
\textsuperscript{192} Id.; Annual Report 1995 at 151, ¶ 53.
\textsuperscript{193} Delgado & Santana Judgment December 8, 1995, ¶ 53(e); Annual Report 1995 at 151, ¶ 53.
\textsuperscript{194} Delgado & Santana Judgment December 8, 1995, ¶ 53(f); Annual Report 1995 at 151, ¶ 53.
\textsuperscript{195} Delgado & Santana Judgment December 8, 1995, ¶ 72(1).
\textsuperscript{196} Id. at ¶ 72(2).
did not violate Articles 2 (adopt measure to give effect to the Convention), 8 (fair trial) and 25 (judicial protection of rights), 51(2), and 44 of the American Convention.\textsuperscript{197}

\textit{Continue Judicial Proceedings:}

The Court unanimously decided that Colombia must continue judicial proceedings in accordance with internal law concerning the disappearance and presumed deaths of Santana and Caballero Delgado.\textsuperscript{198}

\textit{Compensation:}

The IACHR decided that Colombia is obligated to pay fair compensation to the victims' relatives and to reimburse the expenses of the continued internal proceedings within Colombia.\textsuperscript{199} The Court left the proceedings open to decide the manner and amount of compensation and reimbursement.\textsuperscript{200} (Judge Nieto-Navia dissenting)

\textit{Compliance with Caballero Delgado y Santana:}

On September 30, 1998, the State of Colombia presented a brief to the Court.\textsuperscript{201} This brief from Colombia declared that it was not possible to create the ordered trust funds for the victims' relatives because of "practical internal order obstacles".\textsuperscript{202} Instead of modifying its reparations Judgment as this State's brief asked, the Court in turn asked that Colombia clarify some of its statements contained in the brief no later than January 15, 1999.\textsuperscript{203}

\textbf{Suarez Rosero, Judgment of November 12, 1997:}

\textit{Facts:}

\textsuperscript{197} Id. at ¶ 72(3).
\textsuperscript{198} Id. at ¶ 72(5).
\textsuperscript{199} Id. at ¶ 72(6).
\textsuperscript{200} Id. at ¶ 72(7).
\textsuperscript{202} Id.
\textsuperscript{203} Id.
Officers of the National Police of Ecuador arrested Rafael Ivan Suarez-Rosero at 2:30 a.m. on June 23, 1992. This arrest took place in the context of the police Operation "Ciclon", which sought to "disband one of the largest international drug-trafficking organizations." Area residents in Quito told the police that the occupants of a "Trooper" were burning what appeared to be drugs.

The arrest of Suarez-Rosero took place without a warrant. The police did not arrest him in flagrante delicto, in other words, “red-handed” or in the very (illegal) act.

Suarez-Rosero gave an initial statement to police officers in the presence of three prosecutors from the Ministry of Public Affairs. However, no defense attorney was there at this questioning.

From June 23rd to July 23rd of 1992, Suarez-Rosero found himself detained incommunicado at the "Quito Number 2" Police Barracks. The cell, poorly ventilated and damp, measured five by three meters. Sixteen other prisoners occupied this cell.

On July 23, 1992, per the order of the Commissioner-General of Police of Pichincha, the Director of the Men’s Social Rehabilitation Center kept Suarez-Rosero incommunicado for five further days. From July 28, 1992 onward, Suarez-Rosero's family, lawyer and members of human rights organizations were allowed to visit him.

---

205 Id.
206 Id.
207 Id. at ¶ 34(b).
208 Id.
209 Id. at ¶ 34(c).
210 Id.
211 Id. at ¶ 34(d).
212 Id.
213 Id.
214 Id. at ¶ 34(f).
215 Id. at ¶ 34(h).
The Third Criminal Court of Pichincha issued an order of preventive detention against Mr. Suarez-Rosero on August 12, 1992.\footnote{Id. at ¶ 34(i).}

After the President of the Superior Court of Justice of Quito ordered investigative proceedings to be instituted on December 9, 1992, Suarez-Rosero filed a writ of habeas corpus on March 29, 1993.\footnote{Id. at ¶¶ 34(m) & 34(n).} On August 25, 1993, the President of the Superior Court requested that the Public Prosecutor have Suarez Rosero’s detention order revoked.\footnote{Id. at ¶ 34(o).} This revocation request was denied on January 26, 1994; the President of the Superior Court denied the habeas corpus request on June 10, 1994.\footnote{Id. at ¶¶ 34(q) & 34(r).}

The gavel fell on September 9, 1996, as Suarez-Rosero was judged an accessory to the crime of illegal trafficking in narcotic and drugs and psychotropic substances.\footnote{Id. at ¶ 34(x).} The sentence came down as two years' imprisonment with the time he remained in preventive detention subtracted from the sentence.\footnote{Id.} Accompanying this prison sentence was a fine coming to two thousand times the minimum living wage.\footnote{Id. at ¶ 34(y).} According to Suarez-Rosero's own testimony, he was never summoned before a competent judicial authority to be informed of the charges leveled against him.\footnote{Id.}

\textit{Judgment on the Merits:}

The IACHR found that Ecuador violated Articles 5, 7, 8 and 25 in relation to 1(1) to the detriment of Rafael Ivan Suarez-Rosero.\footnote{Id. at ¶¶ 110(1) – 110(4).} The Court further found that the
unnumbered article after Article 114 of the Criminal Code of Ecuador violated Article 2 of the Convention in conjunction with 7(5) and 1(1).\textsuperscript{225}

\textit{Investigation:}

The Court decided that Ecuador must order an investigation to determine the persons responsible for the human rights violations referred to in this judgment and to punish them where that is possible.\textsuperscript{226}

\textit{Indemnity:}

The Court decided that Ecuador must pay a fair indemnity to the victim and his relatives and also cover expenses relating to their representations in this proceeding.\textsuperscript{227} The Court ordered the initiation of the Reparations Stage, for which the President has authority from the Court to adopt necessary measures in due course.\textsuperscript{228} All of these decisions were rendered unanimously.\textsuperscript{229}

\textit{Reparations:}

The Court awarded $27,324.77 in American dollars to Suarez-Rosero for lost wages since his detention on June 23rd, 1992 until his release on April 29, 1996.\textsuperscript{230} The Court also deemed it just to give Ms. Ramadan Burbano (Suarez-Rosero's wife) $1,497.00 for her costs and the aid she rendered during the incarceration of her spouse.\textsuperscript{231}

\begin{flushleft}
\textsuperscript{225} \textit{Id.} at ¶ 110(5).
\textsuperscript{226} \textit{Id.} at ¶ 110(6).
\textsuperscript{227} \textit{Id.} at ¶ 110(7).
\textsuperscript{228} \textit{Id.} at ¶ 110(8).
\textsuperscript{229} \textit{Id.} at ¶ 110.
\textsuperscript{230} Suárez Rosero Case, Reparations (art. 63(1) American Convention on Human Rights), Judgment of January 20, 1999, Inter-Am. Ct. H.R. (Ser. C) No. 44 (1999), ¶ 60(a) [hereinafter Rosero Judgment of January 20, 1999]; Though it has been less reliable in its availability, this information should also appear through the Internet at: \url{www.nu.or.cr/ci/PUBLICAC/SERIE_C/C_44_ESP.HTM#(*)} Note that the references to this Spanish language document is based on my unofficial interpretation and communication in English.
\textsuperscript{231} Rosero Judgment of January 20, 1999, ¶ 60(b).
\end{flushleft}
Furthermore, the Court gave $1,500.00 to Suarez-Rosero for the physical abuse he received, and $4,280.00 for the psychological abuse.\textsuperscript{232} Mrs. Ramadan Burbano also received $2,020.00 for psychological abuse.\textsuperscript{233}

The Court also deemed it proper to give moral damages to Suarez-Rosero and his immediate, nuclear family. The breakdown comes out to $20,000 for Suarez-Rosero, $20,000 for his wife Margarita Ramadan Burbano and finally, $10,000 to their child Micaela Suarez Ramadan.\textsuperscript{234}

Although Suarez-Rosero wanted a formal apology, the Court deemed their ruling to constitute a sufficient moral satisfaction for Suarez Rosero and his family.\textsuperscript{235} Therefore, the Court did not require a formal apology.\textsuperscript{236}

The Court also required that Ecuador not require Suarez-Rosero to pay the fine it levied against him.\textsuperscript{237} It also ordered Ecuador to remove Suarez-Rosero's name from the Register of Previous Criminal Convictions as well as the National Council of Narcotics and Psychotropic Drugs.\textsuperscript{238}

Additionally, Ecuador must investigate and prosecute the acts that lead to the violations of the American Convention in this case.\textsuperscript{239} All necessary procedures towards this end must be followed.\textsuperscript{240}

\begin{flushleft}
\textsuperscript{232} Id. at ¶ 60(c).
\textsuperscript{233} Id.
\textsuperscript{234} Id. at ¶ 67.
\textsuperscript{235} Id. at ¶ 72.
\textsuperscript{236} Id.
\textsuperscript{237} Id. at ¶ 76.
\textsuperscript{238} Id.
\textsuperscript{239} Id. at ¶ 80.
\textsuperscript{240} Id. at ¶ 79.
\end{flushleft}
More on the macro level, the Court commanded Ecuador to make internal reforms consistent with the American Convention of human rights.\textsuperscript{241} The Court deemed what Ecuador had proffered before as insufficient.\textsuperscript{242}

The State offered to pay the costs of Mr. Suarez-Rosero and the Court took Ecuador up on its offer.\textsuperscript{243} It ordered the State to pay $2,300 for costs related to domestic legal action and $10,530.45 for the costs in the Inter-American system.\textsuperscript{244} The total comes out to $12,830.45 in costs.

The Court, as usual, declared that it would supervise the carrying out of its sentence.\textsuperscript{245} All of these orders came by unanimous vote of the Court on January 20th, 1999.\textsuperscript{246}

\textit{Interpretation:}

The Court admitted the State's demand for interpretation.\textsuperscript{247} On May 29th, 1999, the Court unanimously went on to reiterate that the State must fully pay Mr. Suarez Rosero, his family, and his attorneys the complete amount indicated in its reparations judgment.\textsuperscript{248} This includes making sure that inflation, insolvency, negligence or the fiduciary agent’s lack of skill do not dilute the awards, especially for the child Micaela.\textsuperscript{249} The Court further clarified that the State could not tax the awards, especially those going to the attorneys.\textsuperscript{250} On November 27, 2003, the Inter-American Court declared that Ecuador had complied with operative paragraphs 1, 2 and 3 of the January 20, 1999

\begin{itemize}
  \item \textsuperscript{241} \textit{Id. at ¶ 87.}
  \item \textsuperscript{242} \textit{Id.}
  \item \textsuperscript{243} \textit{Id. at ¶¶ 89 & 95.}
  \item \textsuperscript{244} \textit{Id. at ¶¶ 90 & 94.}
  \item \textsuperscript{245} \textit{Id. at ¶ 113(5).}
  \item \textsuperscript{246} \textit{Id. at ¶ 113.}
  \item \textsuperscript{247} \textit{Rosero Judgment May 29, 1999, ¶ 21.}
  \item \textsuperscript{248} \textit{Id. at ¶ 45(2).}
  \item \textsuperscript{249} \textit{Id. at ¶ 32.}
  \item \textsuperscript{250} \textit{Id. at ¶ 41.}
\end{itemize}
Judgment. Specifically, the State had not enforced the fine against Mr. Suarez Rosero, his name had been removed from the register of criminal records of the national police and the register of the national council of narcotic drugs and psychotropic substances, the payments ordered in favor of Rafael Iván Suárez Rosero and Margarita Ramadán Burbano had been made, and the payment of the costs and expenses ordered in favor of Alejandro Ponce Villacís and Richard Wilson had also been completed. The Court has not closed the case however and continues to monitor progress towards the setting up of a trust fund in favor of the minor, Micaela Suárez Ramadán, and the investigation and punishment of the persons responsible for the human rights violations.

II. Compliance Theory and the Court

The reputation of the court improved as a result of the quality of its jurisprudence. This is reflected in the status of witnesses who appeared to defend the State’s actions, some of which even included former presidents of the State. Eventually, some states accepted responsibility for the human rights violations before the Court reached a judgment, which left only reparations to be decided. This acceptance


252 Id.


254 For criteria referring cases to the Court, see Claudio Grossman, President’s Inaugural Session Speech at the 95th Regular Meeting of the Inter-American Commission on Human Rights, 42 ST. LOUIS U. L.J. 1115 (1998).


256 “Cases in which States have accepted international responsibility include Barrios Altos (Chumbipuma Aguirre et al v Peru) (Merits), Case 75, Inter-Am. Court C.H.R., para 31 ser.c, doc. 75. (2001); Aloeboetoe et al v Surinam (Merits), Inter-Am. C.H.R., para 22, ser.c, doc. 11(1991); El Amparo v Venezuela (Merits), Inter-Am. C.H.R., para 19, ser c, doc. 19 (1995); Garrido and Baigorria v Argentina (Merits), Inter-Am C.H.R., para 25, ser. c, doc. 26, (1996); Del Caracazo v Venezuela (Merits), Inter-Am C.H.R., para 37, ser c, doc. 58 (1999). La
of the Court’s jurisdiction and judgment by the States indirectly acknowledged that an IACHR judgment condemning a State for human rights violations would be taken seriously, both domestically and internationally.\textsuperscript{257}

States have also consistently complied with Court-ordered reparations. Because the Court had no strongly coercive mechanisms through which to enforce reparations, some were concerned that States would ignore judgments and refuse to make reparations. However, most states have ultimately paid pecuniary compensation ordered by the court,\textsuperscript{258} although many have balked and delayed payment for extensive periods.\textsuperscript{259}

Successful compliance with IACHR orders extends beyond compensation alone, as the Court may also order the State to take actions or to desist from particular acts.\textsuperscript{260}

For example, the Court required Peru to release Maria Elena Loayza Tamayo in \textit{Loayza Tamayo v. Peru}\textsuperscript{261} and Cesti Hurtado in \textit{Cesti Hurtado v. Peru}.\textsuperscript{262} Peru complied with both orders, which marked a new level of state compliance with the Court’s judgments.\textsuperscript{263}

States have also amended, annulled or declared unconstitutional domestic laws and judgments that the Court determined were in violation of the American Convention.\textsuperscript{264}

\begin{flushright}
\textsuperscript{257} Jo M. Pasqualucci, Practice and Procedure of the Inter-American Court of Human Rights (2003).
\textsuperscript{258} Honduras, under the presidency of Carlos Roberto Reina (a former IACHR Judge) eventually paid compensation ordered by the Court. CITE other cases.
\textsuperscript{259} CITE cases of delayed payment, etc.
\textsuperscript{260} CITE Court’s authority to do this in American Convention(?)
\textsuperscript{263} Jo M. Pasqualucci, Practice and Procedure of the Inter-American Court of Human Rights (2003).
\end{flushright}
Such extensive compliance has supported the supranational stature of Inter-American human rights law.

In Velasquez Rodriguez, the Court declared that states have the duty under the American Convention to investigate and prosecute perpetrators of human rights atrocities.265 The Court also confirmed in an advisory opinion that individuals may be held responsible for complying with state laws that violate human rights under the American Convention.266 As stated above, states may also be held responsible if the violation was illegal and states did not take appropriate measures to protect the human rights violated.267 However, States have seldom been willing to fulfill the Court’s orders to investigate, prosecute and punish individuals responsible for the human rights violations.268 In most cases, the State power structure lacks the means or the will (or both) to bring the perpetrators to justice.269 The states are only willing to investigate in the rarest instances, and when they do investigate, the perpetrators serve a short prison sentence if they serve any prison time at all.270

There exists then, a dichotomy of compliance: on one hand, States have been willing to comply with judgments for monetary reparations, but on the other, they have been extremely unwilling to investigate and prosecute those responsible for human rights violations. In spite of the adverse impact on a country, especially for a relatively indigent one, that complies with a monetary judgment against it, it does not require any specific individual or group to assume full responsibility for the human rights violations. If a

265 Pasqualucci at 327.
267 Pasqualucci at 328.
268 CITE cases.
269 CITE cases.
270 Cerna at 203-204.
State complied with a judgment requiring investigation and prosecution, the possibility always exists (and in some cases is very likely) that responsibility will fall on the State itself, or its agents. This result would be politically unacceptable for many State governments and therefore, while complying in every other way with the Court’s decisions, they often stop short of investigatory or punitive action. If the Court can somehow obtain compliance with these orders however, the Inter-American System will have contributed even more substantially to the fall of impunity, and to the specific and general deterrence of human rights violations in this hemisphere.271

This climate of impunity has resulted in numerous domestic amnesty laws, which are significant obstacles to state compliance with Court orders to investigate and punish individuals.272 In several cases, the Commission and the Court have ruled the amnesty laws incompatible with the obligations of the states in the Inter-American System.273 For instance, in cases dealing with victims from Argentina, Uruguay and Peru, the Court ruled the amnesty laws protecting the perpetrators were invalid.274 In response to amnesty law difficulties, however, the Court has made clear that states have a responsibility under the American Convention to protect human rights and punish those who violate them.275 Thus de jure, the state’s duty to protect human rights trump the State amnesty laws; de facto, the narrative has thus far unfolded contrarily to the de jure state of affairs.

272 Cerna at 204 and Pasqualucci at 327.
273 Cerna at 204.
274 Cerna at 204.
275 Pasqualucci at 328.
Overall, compliance with the Court has been successful. States have consistently complied with IACHR judgments and orders for reparations as well as other forms of redress, despite the difficulty with criminal prosecution. As stated above, Peru, and Trinidad and Tobago were the only two instances of outright defiance. Peru never actually withdrew from the Court and Trinidad and Tobago have accepted the Court’s jurisdiction with reservations. Furthermore, additional States beyond the original Member States have ratified the American Convention and accepted the Court’s jurisdiction.

A. Why Do Nations Obey International Law?

Louis Henkin asserts that “almost all nations observe almost all principles of international law and almost all of their obligations almost all of the time,” which finds corroboration in a host of studies. Andrew T. Guzman notes that “international law scholarship has generally assumed that nations tend to comply with international law.”

Tragically, this assumption of compliance may contradict the reality in the realm of international human rights at times. Despite the great increase of human rights instruments since World War II, noncompliance remains more common than one might

---

276 CITE this.
280 Harold Hongju Koh, Why Do Nations Obey International Law? YALE L.J. 2599 (1997). In footnote 2 Koh cites a long string of studies along these lines.
expect. In the IACHR, however, compliance — at least on some levels — has stayed the norm, with noncompliance the exception.

Professor Abram Chayes and Antonia Handler Chayes contend that a “Managerial Model” best accounts for compliance with international law within treaty regimes, such as the one placing countries under the jurisdiction of the IACHR. This contention fits the circumstances of IACHR compliance well because it does not rely much upon the direct threat of sanctions as its motivating force. As the Organization of American States (OAS) General Assembly has never actually administered sanctions upon any member state, no precedent exists that would provide direct sanction motivation for future compliance with IACHR judgments. However, the Managerial Model has been criticized as “assum[ing] a tendency to comply rather than explaining compliance.”

There is some support for a theory which states that the inherent fairness of international rules themselves gives rise to compliance to international institutions such as the IACHR. As the main proponent of this view, New York University Law Professor Thomas Franck points to right process (legitimacy) and distributive justice as the primary considerations motivating compliance with international law. This theory also applies well to the IACHR, especially with respect to judicial legitimacy. Scott Idleman has

---

283 Professor at Harvard Law School and former Legal Adviser to the U.S. State Department.
284 Former undersecretary of the U.S. Air Force.
285 According to David Moore, “none of these approaches, however, offers a comprehensive description of compliance with international law in general or human rights in particular. To name some of the more apparent shortcomings in his view, the Chayes’s managerial model assumes a tendency to comply rather than explaining compliance.” Id.
identified the three factors that most impact legitimacy as (1) unanimity or near unanimity in decisions, (2) professional civility in opinions, and (3) continuity of the law over time. Applying these factors, the IACHR scores highly on the first two, and is only prevented from fulfilling all three by its relative youth. Fairness, legitimacy and considerations such as higher law contribute, at least in part, to IACHR compliance.

Transnational Legal Process is a view of compliance adopted by Harold Koh, who serves as Dean of Yale Law School and formerly worked as Associate Secretary of State. Koh describes this as the “complex process of institutional interaction whereby global norms are not just debated and interpreted, but ultimately internalized by domestic legal systems.” Koh argues that the world stage upon which international law is played out is changing rapidly and fundamentally. He points to the erosion of national sovereignty, the growth and multiplication of international regimes, institutions and non-state actors, a blurring of the distinction between public and private international law, the rapid formation of customary and treaty-based rules, and the increasing interpenetration of international and domestic systems as major signs of this change. As applied to the Inter-American System of Human Rights, transnational legal process is manifested in the

290 In the Velásquez Rodriguez case, of the Court’s eight decisional statements, seven of them were unanimous with only Judge Rodolfo E. Piza E. dissenting on the issue of who should decide the amount of reparations. All seven decisional statements in the Godínez Cruz case were unanimous. In the case of Aloeboetoe et al, both of the Court’s decisional statements were unanimous. Three of the seven decisional statements made by the Court in the case of Caballero-Delgado and Santana were unanimous with only a single dissenter in each of the remaining four. In the Suárez Rosero case, all eight of the Court’s decisional statements were unanimous. Similarly, in the El Amparo case, all four decisional statements were unanimous. In the case of Gangaram Panday, five of the Court’s six decisional statements were unanimous and finally all five decisional statements in the case of Neira Alegria et al. were unanimous. Professional civility is also demonstrated in all eight cases covered by this article because the Court’s language is civil and consistent, and devoid of excessive emotion throughout the judgments, regardless of the outcome of any particular case.
292 Id. at 2604.
293 Id.
formation of the OAS, the Inter-American Commission and the Court itself. Since the member states have an obligation to change their laws to conform with the Court’s judgments and the domestic governments bear responsibility for carrying out the Court’s rulings, one can thereby witness the interpenetration of national and international systems. Transnational legal process applies to the Inter-American System and suggests that the question of why compliance exists relates in part to the method by which compliance occurs.

Self-interest constitutes another motivation for compliance with international law. Scholars such as Jack Goldsmith and Eric Posner have embraced self-interest as the primary factor compelling compliance. In their estimation, the convergence of national self-interest with the tenets of international law has led states to analyze compliance with regard to present and future costs and benefits. Under this analysis, compliance will result whenever the long-term benefits such as reputation, trade and international relations outweigh the short-term costs such as the financial burden of compliance and limitations on the range of governmental power. The power of international public opinion and the value that states place on their international reputations are factors that have debatable value. Jo M. Pasqualucci maintains that these factors carry an unexpectedly large amount of weight and she points to the positive effect that even referral of a case to the Court can have within the state involved. However, the idea that national self-interest could adequately explain compliance ignores two

295 Id. at 340.
297 Id
things: (1) the discrepancy between the timescale most governments work within and that of the international system, and (2) the self-interest of those in power. To postulate that a state government may comply with international law in the present to reap future benefits discounts the fact that those in domestic positions of power rarely remain in power long enough to reap the benefits of compliance, while they can certainly illicitly “benefit” themselves immediately by noncompliance.

Mark W. Janis, the William F. Starr Professor at the University of Connecticut, analyzes the European System and breaks compliance into three categories: (1) judgments (and decisions), (2) legal rules, and (3) the legal system itself. Using these categories, Janis then suggests that the legitimacy of the European Court of Human Rights can be explained by four factors: (1) the caseload in the European Court of Human Rights, (2) the acceptance of what were the two optional clauses of the European Convention, (3) the growth in the number of states joining the Council of Europe and ratifying the Convention, and (4) an increasing recognition of the legitimacy of the system. Applying these factors to the IACHR, we find that the caseload has increased dramatically over the Court’s existence, indicating a growing level of legitimacy; the American Convention of Human Rights has been broadly accepted with only a few reservations; with the exceptions of Mexico and Brazil, the Court’s jurisdiction reaches all of Central and South America; and the system’s legitimacy is increasingly recognized even by countries such as Peru, who had previously challenged the Court’s authority.

301 Morse Tan, Member State Compliance with the Judgments of the Inter-American Court of Human Rights, 33 Int’l J. Legal Information 319, 342 (2005).
By comparison then, the IACHR has fared well and continues to move on a trajectory to widespread acceptance and legitimacy.

Laurence Helfer and Anne-Marie Slaughter provide factors pertaining to what they refer to as supranational adjudication in their rigorous and informative article, “Toward a Theory of Effective Supranational Adjudication”.  Although the immediate application of their theory is to the European Court of Justice, the European Court of Human Rights and the United Nations Human Rights Committee, the authors

304 “In the European Court of Human Rights, individuals can sue states-parties to the European Convention on Human Rights and Fundamental Freedoms [ECHR]. Just about every western and eastern European State (including Russia) is a state-party to the European Convention. As in the Inter-American system, private individuals and corporations cannot be sued. States, however, can be sued for failure to prevent foreseeable gross human rights violations committed by private persons. Furthermore, corporations can - and often do - sue states-parties. Only in dicta has the European Court recognized that shareholders can sue in exceptional circumstances. The European Court provides monetary damages, legal fees and costs awards; however, it does not provide injunctive relief and has not provided punitive damages. Another aspect of the adequacy of these international tribunal systems concerns the time it takes for the case to reach its conclusion. Assuming that the case is found admissible and the tribunal reaches the merits and damages award stage, the proceedings can last anywhere from two to ten years, depending on the case's complexity and the tribunal’s interest in a particular case. The Inter-American system will generally take longer because of its lack of financial and staff resources and each case’s two-stage process of going through both the Commission and Court. On the other hand, in addition to having more money and a larger staff, cases before the European Court do not have to go through a commission. The Inter-American system however, does have friendly dispute resolution mechanisms built into it that expedite the resolution of cases. Unfortunately, the European system no longer appears to have such a strong, friendly dispute resolution mechanism in place, as the old European Commission of Human Rights was dismantled a few years ago.” Francisco Forrest Martin, The International Human Rights & Ethical Aspects of the Forum Non Conveniens Doctrine, 35 U. MIAMI INTER-AM. L. REV. 101 (2003); See The European Court of Human Rights, at http://www.echr.coe.int/ (last visited Feb. 28, 2005); Luis Ignacio Sanchez Rodriguez, The American and European Human Rights’ System, LA CORTE Y EL SISTEMA INTERAMERICANOS DE DERECHOS HUMANOS [The Court and the Inter-American System of Human Rights] (1994), at http://www.echr.coe.int/ (last visited Feb. 18, 2005).
305 “The United Nations Human Rights Committee was established to monitor the implementation of the Covenant and the Protocols to the Covenant in the territory of States parties. It is composed of 18 independent experts who are persons of high moral character and recognized competence in the field of human rights. The Committee convenes three times a year for sessions of three weeks' duration, normally in March at United Nations headquarters in New York and in July and November at the United Nations Office in Geneva.” United Nations Human Rights Committee, at http://www.unhchr.ch/html/menu2/6/a/introhrc.htm (last visited Mar. 6, 2005).
explicitly state how their factors can be applied to other international bodies.306 These factors have yet to be applied as an aggregate to the Inter-American System of Human Rights.307

Helfer and Slaughter divide the factors into three main categories: (1) factors within the control of states party to an agreement establishing a supranational tribunal; (2) factors within the control of the judiciary; and (3) factors often beyond the control of states or judges.308

Within the first category of factors, the authors note four factors in descending order of importance: (1) composition of the tribunal; (2) caseload or functional capacity of the court; (3) independent fact-finding capacity; and (4) formal authority or status as law of the instrument that the tribunal is charged with interpreting and applying.309

Within factors under the control of the judiciary, the authors list the following factors as the most important: (1) awareness of audience; (2) neutrality and demonstrated

306 "The term ‘international tribunal’ is referenced in a number of United States statutes. From these statutory obligations, as interpreted, one can discern a workable definition for international tribunals as: an objective and impartial adjudicative body established by or with the imprimatur of two or more governments with the power to make a binding decision as to law or facts. This definition falls between the two extremes, rejecting a litmus test that excludes many international adjudicative bodies that do not meet certain artificial categories, but is not so broad as to embrace the whole panoply of potential candidate institutions." Roger P. Alford, Federal Courts, International Tribunals, and the Continuum of Deference, 43 VA. J. INT’L L. 675 (2003); “By definition, in a supranational body there is no democratically-legitimate hierarchical superior, as we understand that notion in a national sense. Rather, there are at best indirect political controls exercised by national executives over otherwise autonomous supranational technocratic agents who owe their loyalty to the membership of the supranational body as a whole rather than to any one particular state.” Peter L. Lindseth, Democratic Legitimacy and the Administrative Character of Supranationalism: The Example of the European Community, 99 COLUM. L. REV. 628 (1999).
autonomy from political interests; (3) incrementalism; (4) quality of legal reasoning; (5) judicial cross-fertilization and dialogue; and (5) the form of opinions

The third category subdivides into factors that do not fit into the first two categories. The authors note three major factors: (1) the nature of the violations; (2) autonomous domestic institutions committed to the rule of law and responsive to citizen interest; and (3) the relative cultural and political homogeneity of states subject to a supranational tribunal.

This is a helpful framework through which the IACHR can be analyzed, even though this framework was initially applied to European bodies. While the IACHR has its own particular characteristics, it draws significantly from European bodies. The IACHR, through the American Convention, resembles the European method. The IACHR even receives funding from the European Union and its Member States.

---

313 The American Convention of Human Rights (American Convention), signed in 1969, incorporated the Commission and assigned it specified specific powers under the Convention. It also created the Inter-American Court of Human Rights (Inter-American Court). The American Convention entered into force in 1978. See the American Convention of Human Rights, at http://www.hrcr.org/docs/American_Convention (February 18th, 2005); NIETO NAVIA, INTRODUCCIÓN AL SISTEMA INTERAMERICANO DE PROTECCIÓN A LOS DERECHOS HUMANOS [Introduction to the Inter-American System of Human Rights] (1993); As regards regional human rights systems, “three systems are in existence today, one in Europe, one in the Americas, and the third, in Africa. The European system is the oldest of the three and is generally considered to be the most effective. The institutional structure established by the American Convention is modeled on that of the European Convention. The Inter-American Commission on Human Rights and the Inter-American Court have functions similar to those of their European counterparts.” Thomas Buergenthal, International Human Rights Law and Institutions: Accomplishments and Prospects, 63 WASH L. REV. 1, 15 (1988); For a comparison between the Inter-American Court of Human Rights and the European Court of Human Rights, see Francisco Forrest Martin, The International Human Rights & Ethical Aspects of the Forum Non Conveniens Doctrine, 35 U. MIAMI INTER-AM. L. REV. 101 (2003).
In Velasquez Rodriguez and Godinez Cruz, the Commission uses the case law of the European Court to bolster its appeal to the IACHR.\(^\text{315}\) Granting the absence of case law in the Inter-American system prior to these cases, the appeal to the European Court’s precedents does nonetheless seem to indicate the regard that the Commission has, and that the Commission would expect the IACHR to have, to its predecessor analogue in Europe.

This point takes on greater significance in noting the degree to which the European system of human rights has impacted the Inter-American system, both directly and indirectly. Economically, the European Union actually provides major funding for the IACHR. In early November 1997, the full Court and its secretaries held a working meeting with representatives of the European Court of Human Rights where they discussed matters of common interest to the two Courts.\(^\text{316}\) Specifically, they examined the evolution of the courts’ respective rules and jurisprudence, the effects of the entry into force of Protocol XI, changes in the structure of the European Court of Human Rights and potential improvements in the inter-American human rights system.\(^\text{317}\) Additionally, it adds to the notion of a community of international law. Indeed, the IACHR has even expressly mentioned the continuity between its own jurisprudence and

---

\(^{315}\) Cruz Judgment August 17, 1990 ¶ 26; Annual Report of the Inter-American Court of Human Rights, (1990), at 52. The Commission talks about the "Ringeisen" case as an example of when the European Court ordered Austria to pay in German marks since both the domicile and beneficiaries of the harmed party were located in Germany. (E.C.H.R., Series A, vol. 15 (1972), p. 10.)


\(^{317}\) Id.
that of the European Court of Human Rights: “The case law of this Court is consistent with that of the European Court of Human Rights.”  

Delbruek contends that the relative homogeneity (culturally and politically) of a given region (such as in Europe) are such that it would be difficult to find a universal approach therein that would be applicable to other regions that may not have the same sort of relative homogeneity (or type of homogeneity). International human rights often butt up against state sovereignty issues, a central tension in the Inter-American system. At the same time, when human rights law reflects universal norms applicable across cultures, it greatly bolsters the case for supranational, supra-regional application.

B. Synthesis of the Frameworks and Application

Each of the aforementioned frameworks has portions that help to explain compliance with the IACHR; thus, a synthesis of the frameworks will aid analysis. Drawing heavily especially from the Helfer-Slaughter model, states comply with judgments of the IACHR for three major reasons:

- The States’ influence over the Court and the Court’s decisions;
- Decisions by the Court are perceived as fair and legitimate or in the best interest of the state; and
- Due to several external pressures that are out of the control of the state.

Within the first category fall the Helfer-Slaughter factors under the state’s control:

- Composition of the tribunal;
- Caseload or functional capacity of the court;
- Independent fact-finding capacity; and
- Formal authority or status as law of the instrument that the tribunal is charged with interpreting and applying (the American Convention in this case).

---

Most of these factors remain fixed, at least within the context of a single case: the composition of the court (with the exception of *ad hoc* judges for that case), the established status of the American Convention, etc. The stability of fixed factors can enhance the state’s perceived legitimacy of the decision.

Each of these factors is applicable to analyzing compliance with the Court’s decisions. First, the composition of the Court is a substantial factor in compliance because states have used their influence to undermine the Court’s independence. For example, according to a scholar in this field, recent state nominations to the Court have not been of the same caliber as earlier justices. On the other hand, state control over the composition of the Court has increased the perceived legitimacy of, and resulting compliance with the decisions of the Court. Furthermore, the state may have some control over the composition of the Court in individual decisions through *ad hoc* judges.

According to Jo M. Pasqualucci,320 there are several ways in which a State may limit the power of the system. First, States can cripple the Court by severely limiting the financial resources available. The IACHR needs sufficient funding to adequately protect human rights. The budget of the Inter-American System is determined by the OAS, which has afforded only an extremely constricted budget.321 The financial restriction causes serious delays as the Court cannot afford to hold a sufficient number of yearly sessions in order to hear a sufficient number of cases.322 Consequently, the Court will have a limited effect on human rights in the hemisphere that is proportionate to the

---

320 Associate Professor of Law, University of South Dakota School of Law.
321 Pasqualucci at 356.
322 Pasqualucci at 356.
constrained number of cases it can afford to hear.\textsuperscript{323} The trend, however, in the number of cases that the Court has handled has moved generally in an upward direction.

Rescia and Seitles draw attention to the limited functioning of the Court and Commission as a result of the skeletal budget. Rescia and Seitles call for member states to provide sufficient resources so both bodies may function permanently.\textsuperscript{324} This includes a sufficient budget to compensate judges and commissioners for their time, which is not the case at present.\textsuperscript{325} In addition, the Court and Commission need administrative independence from the OAS General Secretary.\textsuperscript{326}

Financial protections are also built into the agreement between the Republic of Costa Rica and the Court in Articles 7-10. Article 7 forbids taxes on the Court with the exception of charges for public utility services. It also bars the imposition of customs, duties or charges for official use by the Court. It specifically protects the Court’s publications from any such customs, duties, or charges. Article 7 prevents retaliatory charges from being placed on the court. Economic pressure in these forms is thus forbidden by the agreement. In this way, the Court is protected from some illicit attempts at swaying or intimidating it by attacking its figurative pocketbook, however meager it has been. Such a measure increases the Court’s financial independence.\textsuperscript{327}

Additional financial security and independence is provided by Article 8, which permits the Court to operate accounts in any currency and to transfer and convert funds between currencies without any financial controls or moratoria. The advantage this

\textsuperscript{323} Pasqualucci at 357.  
\textsuperscript{324} Rescia at 623.  
\textsuperscript{325} Rescia at 623-624.  
\textsuperscript{326} Rescia at 624.  
Article offers is greatest with respect to monetary reparations. Through Article 8, the Court can avoid any attempts to circumvent the payment of reparations through the imposition of currency conversion charges or other financial controls.

Article 9 provides judicial immunity to the Court, allowing it to work without itself being subject to the domestic courts of any country or to any administrative process. Article 10 safeguards the Court’s lines of communication by authorizing total franking privileges. These privileges provide free postage and diplomatic status for the Court’s correspondence, so that it may be free from threats of censorship and interception. Chapter XI, Article 28 provides that Costa Rica will continue to subsidize the court annually in an amount not less than its initial grant, which is recorded in the Law of the General Budget of the Republic of Costa Rica.328

Second, states can control the Court through the selection of judges and commissioners as the OAS is again responsible for these choices.329 Though the Court has had tremendous jurisprudence in the past, recent nominations have raised questions in the minds of certain scholars as to the quality of justices being elected to the bench.330

In Velasquez Rodriguez, the President of the Court recused himself and the state of Honduras was allowed to appoint an ad hoc judge to the Court.331 In Gangaram Panday, the President again requested the State appoint an ad hoc judge. Interestingly, in this case the ad hoc judge appointed by Surinam dissented in favor of the Commission on the violation of the Right to Life (Article 4(1)), stating the Court should have found the

328 Id. at 26.

329 Pasqualucci at 359-360.
330 Pasqualucci at 359-360.
state violated petitioner’s right to life. An ad hoc judge was also appointed in Neira Alegria, et al. In the case of Caballero-Delgado and Santana the presence of a Columbian national on the Court was very much in keeping with the status quo because, as mentioned, members of the defendant nation were present on the bench in many of the Court’s previous cases. What makes the case of Caballero-Delgado and Santana different is the extensive dissenting opinion authored by Judge Rafael Nieto Navia, the Court’s only Colombian. Since Judge Navia’s dissent hinged on an evidentiary matter, it is more appropriate to address it during our analysis of fact-finding.

Apart from the direct control over the composition of the Court exercised by states in specific instances such as the appointment of ad hoc judges in Velasquez Rodriguez, Godínez Cruz, Gangaram Panday, and Aloeboetoe et al., States also can exercise indirect control over the Court’s decisions. This indirect control is through the influence of judges native to the defendant country, who are sitting on the court when a particular case is heard. These judges are not serving in an ad hoc capacity and are not specially appointed or named to any specific case. In both Velasquez Rodriguez and Godínez Cruz, the presence of Judge Rodolfo E. Piza (along with the ad hoc judge) meant that there were two Honduran judges on the bench during these cases. Since Honduran judges presumably would not disfavor their own country’s government, this gave the Court more credibility with the government of Honduras than it would have enjoyed if no nationals were sitting on the Court at that time.

On the other hand however, it must be considered how much, if any, sway the presence of two Honduran nationals on the Court afforded Honduras. Given the increasing interpenetration of international systems and domestic ones, the erosion of

---

national sovereignty and the blurring of the public-private distinction that Koh discusses in his transnational legal process theory, it is also likely that neither Judge Rodolfo E. Piza nor Judge Rigoberto Espinal Irías considered themselves Hondurans first in discharging their judicial duties in either the Velásquez Rodríguez or the Godínez Cruz cases. This ability to rise above one’s nationality for reasons of impartiality should be a valued characteristic among those who have risen to serve as judges of an international tribunal. Such individuals, if they have a broader view of their responsibilities and can maintain a relatively even-handed approach, would not be particularly constrained or influenced by blind national loyalty or patriotism.

Second of all, the Commission has authority over the caseload of the Court, and States have control over the composition of the Commission. State control over the financial resources of the Court is inextricably bound to the functional capacity of the Court. The Court has so little funding at this point, that it limits the Court’s overall influence on human rights.

Third, the Court relies heavily on State fact-finding for deciding cases. Frequently the victims have little or no access to evidence, so the Court must rely on the State. In Velasquez Rodriguez, the Court emphasized the State’s role in fact-finding: “…[T]he State cannot rely on the defense that the complainant has failed to present evidence when it cannot be obtained without the State’s cooperation…The State controls the means to verify acts occurring within its territory. Although the Commission has investigatory powers, it cannot exercise them fully and freely within a State’s jurisdiction unless it has the cooperation of that State.”333

In Gangaram Panday, the government of Surinam successfully frustrated the fact-finding efforts of the Commission and the Court. The Commission in this case alleged torture and homicide by the State.\textsuperscript{334} All of the evidence required to prove both the occurrence of torture and the cause of death were controlled by the government. Surinam’s doctors performed the autopsy,\textsuperscript{335} although the petitioners were allowed to watch and videotape.\textsuperscript{336} Unfortunately, the quality of the tape was so poor that it could not be used by disinterested doctors to assess torture and the cause of death. Repeatedly throughout the trial, the government neglected to provide evidence and documents ordered by the Court.\textsuperscript{337} Due to the lack of proof, the Court had no choice but to dismiss two of the three claims against the government.\textsuperscript{338} The Court had to infer guilt on the third charge, because the government failed to provide the necessary information requested by the Court.\textsuperscript{339} Such an inference is not unusual in the Court’s decisions because of the often glaring lack of direct evidence. In the Godínez Cruz case for example, the Court stated that

\[ \text{[t]he practice of international and domestic courts shows that direct evidence, whether testimonial or documentary, is not the only type of evidence that may be legitimately considered in reaching a decision. Circumstantial evidence, indicia, and presumptions may be considered, so long as they lead to conclusions consistent with the facts.} \]

In the same case, the court went on to explain that circumstantial evidence is of specific importance in disappearance cases because the primary issue is the victim’s disappearance itself, which typically does not avail a corpse.\textsuperscript{341}

\textsuperscript{334} Gangaram Panday Judgment of January 21, 1994, para. 2.
\textsuperscript{335} Gangaram Panday Judgment of January 21, 1994, para. 5.
\textsuperscript{336} Gangaram Panday Judgment of January 21 1994, para. 3(c).
\textsuperscript{337} Gangaram Panday Judgment of January 21, 1994, paras. 29, 33,
\textsuperscript{338} Gangaram Panday Judgment of January 21, 1994, paras.56, 62, 67
\textsuperscript{339} Gangaram Panday Judgment of January 21, 1994, para. 51.
\textsuperscript{340} Godínez Cruz Case, Judgment of January 20, 1989, para. 136
\textsuperscript{341} Godínez Cruz Case, Judgment of January 20, 1989, para. 137
In the Caballero-Delgado and Santana case the dissenting opinion of Judge Nieto-Navia hinges on what he considers a lack of direct evidence. He notes that the implicated Colombian troops were cleared of any wrong-doing by a domestic criminal judge because of the presence of only weak and circumstantial evidence against them. He goes on to point out that since the IACHR had precious little other evidence at its disposal, it should have come to the same conclusion.342

Neira Alegria presented an interesting case regarding fact finding. In this case, there was substantially more evidence available to the Court.343 The government of Peru had appointed an investigative committee who was able to obtain much information regarding the disproportionate use of force to crush a riot at the prison.344 There were several witnesses to, and survivors of, the riot. However, the military refused to provide enough information to identify the bodies of those killed,345 which is why the IACHR was invoked to assist. The Court found the government clearly had the evidence necessary to identify the vast majority of the bodies and failed to do so.346 In this case, a particular part of the government refused to cooperate with investigations, which is what eliminated the possibility of domestic remedies.

The Court also must rely on the state to protect witnesses. In Velasquez Rodriguez, several witnesses were assassinated before they were able to testify. The Court called upon the state of Honduras to protect witnesses being threatened and investigate and prosecute those responsible for the assassinations.347 In both Neira

342 Caballero Delgado and Santana Case, Judgment of December 8, 1995, dissenting opinion of Judge Nieto-Navia.
343 Neira Alegria Judgment of January 19, 1995, see Sections IV and V.
344 Neira Alegria Judgment of January 19, 1995, para. 43
Alegria and Gangaram Panday, several witnesses refused to testify as to statements made regarding the human rights abuses.\textsuperscript{348} Though it is not explicitly stated, it remains a reasonable inference that these witnesses refused to testify because of threats.

The Court also needs States to provide primary evidence on the exhaustion of domestic remedies. In Velasquez Rodriguez, the Court held the State claiming non-exhaustion has the burden to prove domestic remedies remain to be exhausted and that they are effective.\textsuperscript{349} If the state proves this, then the burden shifts back to the opposing party to show the remedies proposed by the state were exhausted or that the case falls within the exceptions of Article 46(2).\textsuperscript{350} Though this burden shifting framework is established, the state still has substantial control over the evidence required to prove domestic remedies have been exhausted or are ineffective. However, the Court does seem cognizant of the fact that the State will most certainly hesitate, at the very least, to acknowledge domestic remedies have been exhausted and will view the plaintiffs’ necessarily limited evidence in such a light. As mentioned above, the Court in Neira Alegria was given more evidence than other cases regarding the exhaustion of domestic remedies. The breakdown occurred when the government refused or was unable to compel the military to identify the bodies of the victims, though the military had sufficient evidence to do so.

Fourth, the Court is charged with implementing the American Convention.\textsuperscript{351} The American Convention is binding on those that have ratified—though potentially subject to reservations. But the decisions of the Court are only binding on the states that have

\textsuperscript{348} CITE Gangaram Panday, Neira Alegria Judgment of Jan. 19, 1995, para. 43, 51 and 52.
\textsuperscript{349} Velasquez Rodriguez Judgment of July 29, 1988 para. 59.
\textsuperscript{350} Velasquez Rodriguez Judgment of July 29, 1988 para. 60.
\textsuperscript{351} Statute of the Inter-American Court of Human Rights, Chapter I, Article 1.
additionally ratified the jurisdiction of the Court.\textsuperscript{352} Further, the American Convention limits the Court’s authority to adjudicate only civil and political rights, not economic, social and cultural.\textsuperscript{353} The Court can also issue advisory opinions, but these are not binding on the states.\textsuperscript{354}

When addressing individual cases, the following factors will also be influential in analyzing compliance with specific decisions. Several of the factors adumbrated by Koh will influence the state’s ability to influence decisions. First, the increasing interpenetration of international systems and domestic ones will have an affect on state compliance. This interpenetration will exert international pressure on states to comply with IACHR decisions. Though states cannot control the international pressure, they still have the ultimate decision-making capability over whether to ratify the Convention and the Court’s jurisdiction and implementing and enforcing the decisions. States can choose whether to comply with the decision in its entirety as the court intends or, as is more frequently done, comply with court-awarded damages and neglect court-mandated investigation of individuals. Further, the Court will also be asked to enforce and interpret State laws. In the Gangaram Panday case, the Court found by inference that Surinam illegally and arbitrarily detained the victim under Surinam’s Constitution and other applicable laws of the State.\textsuperscript{355}

The erosion of national sovereignty will also limit the state’s ability to control the Court’s decisions. Though state sovereignty remains strong in the Western Hemisphere,

\textsuperscript{352} American Convention on Human Rights, Article 62, ¶ 3.
\textsuperscript{354} Statute of the Inter-American Court of Human Rights, Chapter I, Article 2, ¶ 2.
\textsuperscript{355} Gangaram Panday Judgment January 21, 1994, para. 48.
States have still relinquished some of their national sovereignty and have some obligations under the Convention that they cannot easily alter if they are to remain in compliance with the Convention. Consider Trinidad and Tobago’s withdrawal from the Court without complying with the one year notice period. Trinidad and Tobago withdrew from the Court’s jurisdiction effective immediately, which was in contradiction to the American Convention. The pressure of the OAS community ultimately led to Trinidad and Tobago’s reacceptance of the Court’s jurisdiction, albeit with reservations.

Finally from Koh’s work, the rapid formation of treaty-based rules and customary law will continue to provide constraints through which the State must determine its level of compliance. Most importantly, State interest in complying with the American Convention will limit a State’s ability to disregard the decisions of the Court. However, States still have the authority to determine whether they will ratify and comply with treaties, including their continuing acceptance of the American Convention. Customary law remains less under the control of States. If a customary norm for human rights protection in a specific context lends support for the IACHR’s decision, there would be international pressure on the State to comply, which the State would find difficult at best to control.

Self-interest also plays a substantial role in compliance with individual decisions, because states are more willing to comply with decisions that are in their best interests. As states begin to view human rights protection as in their best interests, compliance will increase. Self-interest also plays a role in the state’s willingness to engage in independent fact-finding. For example, in the Godínez Cruz case, if Honduras viewed human rights compliance as being in its own best interest because it improves its
international status, then compliance with the judgment would follow. Whether this was a motivating factor for Honduras remains to be seen, but would be supported by future attempts to engage along the lines of the managerial model and facilitate discourse among the parties, the treaty organization and the public.

Further, if human rights compliance is seen as in the best interests of the State because it improves international status, then the State may engage in the managerial model and facilitate discourse among the parties, the treaty organization and the public. In Aloeboetoe et al. for example, Surinam not only admitted responsibility with regard to violation of Articles 1(1, 2), 4(1), 5(1) (2), 7 (1-3) and 25 of the American Convention,356 but it also complied fully, albeit over the course of several years, with the Court’s judgment. Looking back to the framework then, this high level of compliance is best explained by self-interest on the part of Surinam. Surinam does not presently occupy a prominent place in world affairs, but a forward-looking government might attempt to change that state of affairs. If maintenance of international status can be a factor motivating compliance, then so too can the elevation or even the firm establishment of international status. Surinam, perhaps realizing that accepting the Court’s jurisdiction lent legitimacy to their regime, and then that compliance with the Aloeboetoe et al. judgment advanced their best interests, may have complied with the decision to improve their international standing. Behind this move can be seen the need to be accepted in the global economy, a significant motivating factor for States.

Finally, if a State is closer in temporal proximity to the human rights violations, it may less likely view compliance as advancing the State’s best interest. Given the threat

they may perceive to their political situation, a State may try to cooperate as little as possible. Such reluctance to cooperate could increase the atmosphere of impunity for perpetrators of human rights violations within States. States would be less willing to engage in fact-finding and cooperate with requests from the Court.

Ironically, the delay in processing cases before the court may actually help to encourage compliance in this respect. The longer the time period between the violations and the decision by the Court, the more likely it would be that those responsible for the violations would not still hold the reins of power. As stated above, in Gangaram Panday, the state was wholly uncooperative in investigating and providing information and evidence to the Court.\footnote{Gangaram Panday Judgment of January 21, 1994, paras. 29, 33,}

In Velasquez Rodriguez, the government provided three military officers as witnesses to establish the military did not commit the offenses alleged. The testimony of Lt. Col. Alexander Hernández, Lt. Marco Tulio Regalado Hernández and Col. Roberto Núñez Montes, Head of the Intelligence Services of Honduras, was taken at a closed hearing, in the presence of both parties on January 20, 1988.\footnote{Velasquez Rodriguez Judgment of July 29, 1988, ¶ 34.}

The Commission, on the other hand, provided not only witness testimony, but documentary evidence as well. Documentation of three unsuccessful writs of habeas corpus brought on behalf of Manfredo Velásquez were produced in addition to two criminal complaints that failed to lead to the identification and punishment of those responsible.\footnote{Velasquez Rodriguez Judgment of July 29, 1988, ¶ 52.} The record of this case indicated to the Court that the lawyers responsible for filing the writs of habeas corpus were intimidated, that those responsible for executing the writs were often barred from investigating the places of detention, and that criminal
complaints against military and police officials were written off without further investigation. Although the Honduran government had the opportunity to present witness testimony or evidence to refute these findings, it did not.

As previously mentioned, in the Neira Alegria case, the military was wholly uncooperative with the State and the Court in identifying the bodies of the victims. Contrary to the State’s apparent intention, this lack of cooperation did not actually result in helping the State before the Court.

The second category that affects state compliance is the fairness and legitimacy of the IACHR’s decisions. Court awareness of the Helfer-Slaughter factors can aid in this regard. The factors under the control of the judiciary include:

- Awareness of audience;
- Neutrality and demonstrated autonomy from political interests;
- Incrementalism;
- Quality of legal reasoning;
- Judicial cross-fertilization and dialogue; and
- The form of opinions.

Courts should consider these factors, which can help encourage compliance. The Court must engage in quality legal reasoning for a decision to be legitimate and respected. In addition to rational and logical application of the relevant law that does not jettison common or moral sense, the Court also faces challenges with regard to the organization and flow of its decisions.

The judgment issued by the Court in the Suárez Rosero case provides an excellent example of well structured jurisprudence. The Court first explains the procedural background to the case, including its jurisdiction and the proceedings before the

---

360 Velasquez Rodriguez Judgment of July 29, 1988, ¶ 78.
Commission. Then the Court continues to apply this organizational framework throughout its decision by clearly delineating the various testimonies and laying out each part of the decision organized in sections and numbered paragraphs. This is indicative of the attention to detail paid by the Court to each of its cases and to making its decisions not simply fair and legitimate, but also accessible to those who must comply.

Additionally, the Court and the Commission must improve coordination in their common goal to protect human rights in the Americas. The Court and the Commission have frequently acted unilaterally to modify internal activities, such as procedural changes, which have often worked to the detriment of the other body. The fact that the headquarters for each body are located in two different places contributes to the lack of coordination between them. The Commission is situated in Washington D.C. and the Court is in San Jose, Costa Rica. One solution may be for the headquarters to both be positioned in San Jose both for coordination as well as geographic reasons in terms of the location of the countries that have fully engaged in the Inter-American system of human rights. On the other hand, the OAS headquarters resides in Washington, D.C.

The two-tiered system that requires the Commission hear cases before referring to the Court is time-consuming and may inhibit state compliance. The delay may limit the responses available to the Court and prevent the Court from effectively protecting human rights. For instance, in cases involving illegally imprisoned individuals, the Court may take too long to hear the case and subsequently order the State to release the detainee—

362 Suárez Rosero Case, Judgment of November 12, 1997, paras. 3-10.
363 Rescia at 622.
364 Rescia at 622.
365 Rescia at 622.
366 Rescia at 622.
367 Pasqualucci at 307.
after the imprisoned person has served out a sentence as long as the delay in the Inter-American system.

Rescia and Seitles also mention the time delay for cases to proceed through the Court, stating: “The delay to resolve the demands of human rights abuses, the duplicity of processes, the loss of evidence, and the anguish of having to relive often horrific events after eight or ten years contradicts the purpose of a system which seeks to emotionally and economically compensate victims.”368

The functionally duplicative aspects of the Commission and the Court significantly add to the delay. Because the Commission is not an international tribunal, the process does not have judicial characteristics. When a case proceeds before the Court, the Court must then make legal decisions without considering the findings of the Commission, which results in duplicating the consideration of evidence, etc.369 Rescia and Seitles suggest a procedural change that allows the Court to accept some of the Commission’s findings undisputed. If the Court would contemplate this route, it would have to safeguard due process, and not shortchange either side from proffering important evidence in Court that it could not or did not before the Commission.

As a more extreme option, they suggest making the Commission the sole finder of fact,370 comparable to the trial court and jury in the US domestic court system. The authors note, however, that such changes must be balanced against the possibility that they may decrease the credibility of the Court under the current procedure of the Commission to consider evidence. Rescia and Seitles state that if the Commission were to respect “due process, the right to a defense, and all the rights of the parties, and the

368 Rescia at 623.
369 Rescia at 625.
370 Rescia at 625.
State Party does not object to its decision, the Commission’s decision would achieve a presumption of validity.”\(^{371}\) Fundamentally, the alleged victim should not be subject to two different international processes, both of which obtain the same information and force the victim to relieve tragic memories. The challenge is to decrease such painful redundancy while not compromising a full, fair judicial process.

Velasquez Rodriguez, as the first decision issued on the merits, carried great weight as all subsequent merit decisions would build upon it. The Court had to ensure that it approached it in an even-handed and fair manner, critical in establishing legitimacy. In Velasquez Rodriguez, the Court was very concerned with carefully following the procedural safeguards established in the Rules of Procedure.\(^{372}\) Further, the Court illustrated an awareness of the audience and the fairness of its decisions by deciding procedural challenges according to the spirit of the rules, some for and some against the government. The Court granted a closed hearing requested by the Government but allowed both parties to be present.\(^{373}\)

The Court in Velasquez Rodriguez also carefully grounded its evidentiary standard in international jurisprudence.\(^{374}\) Though the Court did not establish a hard and fast rule, the Court modeled its approach after the Corfu Channel Case.\(^{375}\) The Court very carefully spells out its method for determining whether the standard is met. Further, the Court carefully distinguished the civil proceedings of the IACHR from domestic criminal proceedings holding individuals responsible for the human rights violations.

\(^{371}\) Rescia at 625.
\(^{372}\) Velasquez Rodriguez Judgment July 28, 1988, Part II.
\(^{373}\) Velasquez Rodriguez Judgment July 28, 1988 at ¶ 33.
This discussion legitimized the Court’s decision to use a different standard of proof than that used in domestic criminal proceedings.

Factors out of the control of the state and the judiciary comprise the final category of factors that influence state compliance with the IACHR decisions:

- Nature of the violations;
- Autonomous domestic institutions committed to the rule of law and responsive to citizen interests; and
- The relative cultural and political homogeneity of states subject to a supranational tribunal

Further, each of the factors from Koh is out of state and judicial control and will have an effect on state compliance. These factors include:

- Erosion of national sovereignty
- Multiplying of international regimes, institutions and non-state actors
- Blurring of public-private distinction
- Rapid formation of customary and treaty-rules
- Increasing interpenetration of international systems and domestic ones

Essentially, each of these factors will combine to create international pressure on the state to comply with human rights norms. Overall, the increasing international attention and pressure to comply with international law and the institutions charged with implementing it is not under the complete control of either the state or the justices. The interconnectedness of the world presents substantial pressure to comply with international norms.

III. Conclusion: Future of the Court

IV. Conclusion: Future of the Court

The major contribution of the IACHR to the fall of impunity in this hemisphere happens to the extent of State compliance with its judgments. Thus, a theoretical
exploration of compliance theory applied to the very first merit judgments of the Court can help chart the path to greater observance of human rights.

States have complied with the judgments of the Inter-American Court of Human Rights for a number of reasons, including: the member States’ role in the composition, fact-finding, and support of the Court, the fairness and legitimacy of decisions by the Court, the self-interest of the State, internalization of the standards enunciated by the Convention, and a greater culture of respect for human rights.

Notwithstanding weak enforcement mechanisms, the Inter-American Court of Human Rights has enjoyed substantial compliance with judgments for reparations. It has also succeeded in modifying domestic law to comply with the Convention. However, the IACHR still has much room for improvement in finding State compliance in prosecuting culpable individuals through domestic systems in more proportionate ways. As such compliance increases, the grip of impunity will weaken.

As the Court waxes in support, authority, caseload and legitimacy, it will continue to play a more substantial role in upholding human rights in the hemisphere, in casting down impunity. Perpetrators of heinous human rights violations—whether of inhumane torture, improper incarceration, horrific homicides, or diabolical “disappearances”—increasingly will find justice knocking on their doors through the Inter-American Court of Human Rights.