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The Inter-American Court of Human Rights: Towards Establishing an Effective Regional Contentious Jurisdiction

“No human problem transcends national boundaries to the degree that violations of human rights do, not only in terms of the causes, but also in the search for solutions.”

I. INTRODUCTION

In July 1988, the Inter-American Court of Human Rights (Court) handed down its first verdict in the Velasquez Rodriguez case. The Velasquez Rodriguez case concerned the disappearance of Honduran student Angel Manfredo Velasquez Rodriguez. The Court found that the Honduran government had violated the American Convention on Human Rights (American Convention) by failing to “respect and ensure” the student’s right to personal liberty, humane treatment, and life.

The Velasquez Rodriguez case was only the second case heard under the Court’s contentious jurisdiction. The Inter-American Court has both advisory and contentious jurisdictions. Unlike its advisory jurisdiction, the Court’s contentious jurisdiction allows the Court to decide...
Commission on Human Rights (Commission) referred this case to the Court's contentious jurisdiction in April 1986 along with the Francisco Fairen Garbi/Yolanda Solis and Saul Godinez Cruz cases which also concern disappearances in Honduras. It is unclear, however, whether the Court's 1988 and future 1989 judgments signal the commencement of a new trend in the protection of human rights in the American region. The disuse of the Court's contentious jurisdiction prior to 1988 may indicate deficiencies within the Inter-American system which counteract the Court's recent progress for human rights in the Velasquez Rodriguez case.

This Comment examines the small number of cases decided under the Court's contentious jurisdiction and assesses the Court's future role in the protection of human rights. The Comment first provides an historical exegesis on the Court's contentious jurisdiction and outlines the procedures applied to contentious cases. Second, the Comment analyzes and proposes suggestions for resolving the general problems plaguing the Court's establishment as a vital human rights organ. Third, the Comment addresses the specific problems within the American Convention which inhibit the Court's contentious jurisdiction from fulfilling its intended role. The Comment analyzes the Court's progress towards invigorating this jurisdiction and proposes amendments to the American Convention. Finally, the Comment evaluates the manner in which the Court's limited enforcement capability discourages utilization of its contentious jurisdiction.

II. THE CREATION OF THE INTER-AMERICAN COURT'S CONTENTIOUS JURISDICTION

The establishment of the Court's contentious jurisdiction was an important achievement in the recognition of human rights in cases which are adversarial in nature and to determine whether a human rights violation has occurred. See infra notes 48–68 and accompanying text.


9 See supra note 6.

10 See infra II.

11 See infra III A.

12 See infra III B.

13 See infra III B(5).
the American region. Rampant human rights violations in the American region triggered widespread concern that domestic governments had failed to legally guarantee basic human rights. This concern incited the drafting of the American Declaration of the Rights and Duties of Man (American Declaration) and the American Convention within the framework of the Organization of American States (OAS) between the years 1948 and 1978. By creating the Court’s contentious jurisdiction, the American Convention offered hope for the legal protection of human rights in the American region.

The American Declaration represents the American states’ first attempt to delineate those human rights which require the utmost

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16 American Convention, supra note 4; American Declaration of the Rights and Duties of Man (American Declaration), adopted 1948, reprinted in Handbook, supra note 4, at 17. Member states of the Organization of American States (OAS) adhere to the American Declaration while those member states which have ratified the American Convention on Human Rights (American Convention) are referred to as states parties. Cerna, The Inter-American Commission of Human Rights, 2 Conn. J. Int’l L. 311, 312-13 (1987).
17 The OAS is a regional agency formed by the United Nations. Handbook, supra note 4, at 3. One of the United Nation’s purposes is to “achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and . . . [to] promot[e] and encourag[e] respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.” U.N. Charter, reprinted in P. Sieghart, The Lawful Rights of ManKind, art. 1(3), app. at 170–71 (1985). The OAS Charter was signed at the Ninth International Conference of American States in 1948. OAS Charter, opened for signature Apr. 30, 1948, 2 U.S.T. 2394, T.I.A.S. No. 2361, reprinted in 1 System, supra note 6, booklet 2, at iii. The OAS Charter and its Protocol have been ratified by the following states: Antigua and Barbuda, Argentina, Bahamas, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, United States of America, Uruguay, Venezuela. Id., booklet 2.2, at 3. This Comment refers to these states as “American states” or “member states” depending on the context. These states are located in the “American region.” The OAS Charter is the constitution of the OAS. Id., booklet 2, at iii. In the OAS Charter’s preamble, the American states were “[c]onfident that the true significance of American solidarity and good neighborliness [could] . . . only mean the consolidation on this continent, within the framework of democratic institutions, of a system of individual liberty and social justice based on respect for the essential rights of man[.]” Id. at 1.
18 Buergenthal, supra note 14, at 161, 164.
governmental respect. The American states adopted the American Declaration at the Ninth International Conference of American States in 1948. The American Declaration includes a comprehensive list of human rights and their corresponding obligations, but its nonbinding nature does not ensure protection of these rights.

A. The Inter-American Commission's Role Under the American Convention

The member states created the Inter-American Commission on Human Rights (Commission) to assist domestic legal recognition of those human rights listed within the American Declaration. The Commission emerged from this background with a rather undefined role and took recourse in broadly interpreting its statute. Prior to the creation of the Court, the Commission pursued the promotion and protection of human rights in the American region. Yet, the nature of the nonbinding American Declaration weakened the authority behind the Commission's initial efforts. As a result, the Inter-American Specialized Conference on Hu-

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19 Handbook, supra note 4, at 5.
20 Id. at 19.
21 Id. The preamble of the American Declaration states, "The affirmation of essential human rights by the American States together with the guarantees given by the internal regimes of the states establish the initial system of protection considered by the American States as being suited to the present social and juridical conditions . . . [.]" Id.
22 The Fifth Meeting of the Consultation of Ministers of Foreign Affairs (Santiago, Chile 1959) created an Inter-American Commission on Human Rights (Commission). Handbook, supra note 4, at 8–9; M. Quiroga, supra note 14, at 37–38.
25 Buergenthal, The Revised OAS Charter and the Protection of Human Rights, 69 Am. J. Int'l L. 828, 833 (1975). Without the benefit of a binding convention, there was an "aura of make-believe attached to the inter-American human rights system, denying it the political authority that flows from constitutional legitimacy." Id.; Buergenthal, Human Rights in the Americas: View from the Inter-American Court, 2 Conn. J. Int'l L. 303, 306–07 (1987). Article 51(e) of the OAS Charter lists the Commission as an organ of the OAS. OAS Charter, supra note 17, at art. 51(e). Under article 112 of the OAS Charter, the Commission's purpose is to promote and protect human rights. Id. at art. 112. See id. at art. 150.
human Rights adopted the American Convention on Human Rights on November 22, 1969.\textsuperscript{27} Besides including many of the human rights within the American Declaration, this binding instrument clarified and legitimized the Commission's promotional role.\textsuperscript{28}

The American Convention outlines the Commission's purpose and role. Under the American Convention, the Commission's purpose is to "promote respect for and defense of human rights."\textsuperscript{29} Accordingly, the American Convention allocates specific powers to the Commission. First, the Commission may receive petitions alleging violations of the American Convention by any state party from any person, group, or legally recognized nongovernmental entity.\textsuperscript{30} The Commission's jurisdiction for inter-state disputes, however, is limited to those states which have recognized its competence.\textsuperscript{31} An individual, group, or nongovernmental entity may petition the Commission on their own behalf or on behalf of another person.\textsuperscript{32} The individual's direct access to the Commission is one of the Commission's great-

\textsuperscript{27} American Convention, supra note 4. The American Convention incorporates the enumeration of civil, political, economic, social, and cultural rights; suspension of guarantees; interpretation and application of the American Convention; organization, function, competence, and procedure of the Commission; and organization, jurisdiction, function, and procedure of the Court. Id. at arts. 3–69. Article 1 of the American Convention obligates the states parties to respect the rights and freedoms listed with the American Convention without discriminating as to "race, color, sex, language, status, birth, or any other social condition." Id. at art. 1. Article 2 of the American Convention requires states parties to adopt domestic legislation to ensure these rights. Id. at art. 2.

\textsuperscript{28} American Convention, supra note 4, at arts. 33–51.

\textsuperscript{29} Id. at art. 41; Statute of the Inter-American Commission on Human Rights (Statute), reprinted in HANDBOOK, supra note 4, art. 1, at 103; Regulations of the Inter-American Commission on Human Rights (Regulations), reprinted in HANDBOOK, supra note 4, art. 1, at 115.

\textsuperscript{30} American Convention, supra note 4, at arts. 41(f), 44. A state party is a member state which has ratified the American Convention. Buergenthal, supra note 23, at 306–07. To date, states parties to the American Convention include the following states: Argentina, Barbados, Bolivia, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Peru, Suriname, Uruguay, and Venezuela (information obtained from the Court).

\textsuperscript{31} American Convention, supra note 4, at art. 45. This is a unique aspect of the American Convention. Buergenthal, The American and European Conventions on Human Rights: Similarities and Differences, 30 AM. U.L. REV. 155, 159 (1980–81); see the Gallardo case, 4 SYSTEM, supra note 6, booklet 25, at para. 22. Only Argentina, Costa Rica, Ecuador, Jamaica, Peru, and Venezuela recognize the interstate jurisdiction of the Commission. HANDBOOK, supra note 4, at 12 n.19.

\textsuperscript{32} Regulations, supra note 29, at art. 26(1). This flexibility facilitates the admissibility of petitions by eliminating the burden of proving direct and individual harm for standing. Cerna, supra note 16, at 316.
est strengths because it depoliticizes the proceedings by not requiring a state to involve itself in the human rights situation of another state.

Second, the Commission’s role includes promotional duties which traditionally have been fulfilled by lengthy, complex investigations in member states. The Commission conducts investigations to report on the state of human rights in member states or to respond to petitions. Because the Commission has maximized its ability to conduct on-site investigations, this power is an effective way for the Commission to isolate problem areas for OAS General Assembly consideration or to ascertain the relevant facts to a dispute. These investigations do, however, require the consent or invitation of the domestic government. In cases not under its immediate consideration, the Commission has endeavored to promote human rights through the informal use of its good offices and mediation.

Third, the Commission’s role includes encouraging parties in the friendly settlement of human rights disputes. Once a dispute is declared admissible for the Commission’s consideration, the petitioners may avail themselves of the Commission’s friendly

33 American Convention, supra note 4, at art. 44; the Gallardo case, 4 System, supra note 6, booklet 25, at para. 22.
36 American Convention, supra note 4, at art. 41(c). These ongoing reports are included in the Commission’s Annual Report and then submitted to the OAS General Assembly for consideration. Id. at art. 41(g). The OAS General Assembly is the “supreme organ” of the OAS. Each member state is entitled to one vote. OAS Charter, supra note 17, at arts. 52, 54.
37 In the Velasquez Rodriguez case, the Court held that these investigations are not mandatory under article 48 of the American Convention. The Velasquez Rodriguez case, Inter-Am. Ct.H.R., June 26, 1987 (preliminary objections), at paras. 49–50; Cerna, supra note 16, at 313–14; Thomas & Thomas, supra note 15, at 338–49.
38 Regulations, supra note 29, at art. 58. The Commission designates a special commission to carry out these on-site investigations. Id. at art. 55. The government of the host state furnishes the Commission with the necessary facilities, transportation, and security to interview, travel, and visit jails, detention and interrogation centers to privately interview inmates and procure documents. Id. at art. 59. See also M. Quiroga, supra note 14, at 132–33.
39 Good offices are the steps taken by the Commission to encourage negotiation. M. Quiroga, supra note 14, at 139. In mediation, the Commission assists in the negotiation of a dispute. Id. at 139–43.
settlement procedure. The Commission commences this procedure by requesting information from the parties and may verify the facts in on-site investigations. The Commission then places itself at the parties' disposal to reach a friendly settlement and/or conduct a hearing. The Commission's conciliatory function offers a more amicable alternative for dispute resolution than the binding judgment of a court. If the parties reach a friendly settlement, the Commission drafts a brief report which is transmitted to the petitioner, the states parties, and the OAS Secretary General for publication. If no settlement is reached, the Commission evaluates the evidence and prepares a report which may contain its recommendations and conclusions on the matter. This report is sent to the parties and may not be published. If the matter remains unsettled, the Commission may have an absolute majority declare that the report is to be published in its Annual Report to the OAS General Assembly or in any other suitable manner. Through these activities, the Commission assists the promotion of human rights in the American region.

B. The Inter-American Court's Role Under the American Convention

In order to increase and surpass the impact of the American Declaration and the Commission's activities, the drafters of the American Convention created the Inter-American Court of Human Rights. Under the American Convention, the Court's pur-
pose is to apply and interpret the American Convention as an "autonomous judicial institution."49 Pursuant to this role, the Court is comprised of an adjudicatory (contentious) and an advisory jurisdiction.50 Unlike the Commission's jurisdiction, the Court's contentious jurisdiction empowers the Court to hear disputes and decree final binding judgments upon consenting parties.51 Hence, through its contentious jurisdiction, the Court is able to enforce the American Convention in individual cases, supplement the Commission's efforts, and deter future human rights violations by the threat of judicial action.52

1. The Court's Contentious Jurisdiction

The Court's contentious jurisdiction equips the Court with the capacity to hear cases, render binding judgments, and adopt provisional and remedial measures.53 First, the parties may use the contentious jurisdiction of the Court for disputes concerning the interpretation or application of the American Convention.54 The Court's contentious jurisdiction, however, only extends to the Commission and to those states parties that separately declare acceptance of this jurisdiction.55 Second, like the Commission, the Court can adopt provisional measures in cases of extreme gravity and urgency.56 This power extends to cases under the Court's consideration or to cases which were not submitted to the Court at the Commission's request.57 Third, the Court has the remedial

49 Statute of the Inter-American Court of Human Rights (Court's Statute), reprinted in HANDBOOK, supra note 4, art. 1, at 143.
50 Id. at art. 2. Ten countries have accepted the Court's contentious jurisdiction: Argentina, Colombia, Costa Rica, Ecuador, Guatemala, Honduras, Peru, Suriname, Uruguay, and Venezuela (information supplied by the Court).
51 American Convention, supra note 4, at art. 63(1).
52 Id.; Buergenthal, supra note 14, at 160.
53 American Convention, supra note 4, at arts. 52, 63.
54 Id. at arts. 62(3), 63(1).
55 Id. at art. 61; Court's Statute, supra note 49, at art. 2(10). The declaration can be made at any time prior to submitting a case to the Court and may be made "unconditionally, on the condition of reciprocity, for a specific period, or for specific cases." American Convention, supra note 4, at art. 62(2). It should be noted that the Court's contentious jurisdiction only extends to state, as opposed to private, violations of human rights within the American Convention.
56 Id. at art. 63(2); Rules of Procedure of the Inter-American Court of Human Rights (Rules), reprinted in HANDBOOK, supra note 4, art. 23(1), at 157.
57 American Convention, supra note 4, at art. 63(2); Rules, supra note 56, at art. 23(2). The European Court of Human Rights was not given this express power although its rules did contain the power to take "interim measures." Buergenthal, supra note 31, at
power to order that compensation be paid to the injured party.\footnote{58} Article 68 of the American Convention mandates that states comply with the Court's judgments.\footnote{59} The Court's judgment is final and unappealable.\footnote{60} A state which does not comply with the Court's judgment is reported to the OAS General Assembly with the Court's recommendations on the matter.\footnote{61} The OAS General Assembly may consider the matter and adopt political measures if necessary.\footnote{62} Thus, the binding nature of the Court's contentious jurisdiction enhances respect for human rights and the American Convention system.

2. The Court's Advisory Jurisdiction

Through its advisory jurisdiction, the Court may execute non-binding opinions to clarify state responsibility according to human rights law.\footnote{63} Member states may request advisory opinions on the Court's interpretation of the American Convention or other treaties and the compatibility of their domestic laws with these treaties.\footnote{64} Furthermore, OAS organs may also request advisory opinions on issues within their spheres of competence concerning the interpretation of these treaties.\footnote{65} Because the ad-

\footnote{162} The ability to take provisional measures is naturally linked to the Court's contentious jurisdiction since the measures become the Court's authoritative pronouncement rather than a mere opinion. Dunshee de Abranches, \textit{The Inter-American Court of Human Rights}, 30 \textit{AM. U.L. REV.} 79, 109 (1981).

\footnote{58} American Convention, supra note 4, at art. 63(1). When compensatory damages are awarded, the country may execute payment according to domestic procedures. \textit{Id.} at art. 68(2).

\footnote{59} \textit{Id.} at art. 68.

\footnote{60} \textit{Id.} at art. 67. From the date of notification of the judgment, however, the parties may have ninety days in which to request an interpretation of the judgment. \textit{Id.}

\footnote{61} \textit{Id.} at art. 65.

\footnote{62} American Convention, supra note 4, at art. 65. Article 23 of the OAS Charter requires that all disputes between American states be submitted to the Charter's "peaceful procedures" before involving the Security Council. OAS \textit{CHARTER}, supra note 17, at arts. 23–24; see Buergenthal, supra note 8, at 466–67. The threat of resort to the General Assembly to encourage compliance with judgments may be inadequate since "[u]sually, no real, fruitful debate takes place on the facts amounting to violations of human rights, on the causes thereof, or on the possible solution thereto. The same holds true with regard to the specifics of the Commission's activities to prepare the report." M. QUIROGA, \textit{supra} note 14, at 155–56.

\footnote{63} American Convention, \textit{supra} note 4, at art. 64.

\footnote{64} \textit{Id.} at art. 64.

\footnote{65} \textit{Id.} Organs such as the Inter-American Commission of Women or the Inter-American Indian Institute may increase the number of advisory requests in the future. M. QUIROGA, \textit{supra} note 14, at 176–77; see also Note, "Other Treaties": The Inter-American Court of Human
visory opinion is nonbinding, this jurisdiction is available to a wider audience than the Court's contentious jurisdiction. The Court need not discriminate between states parties to the American Convention and member states to the American Declaration or require a declaration of consent. Although the American Convention does not explicitly grant individuals the right to request advisory opinions, individuals may ask a member state or an OAS organ to request an opinion on their behalf. By supplementing the case law in ambiguous areas, the Court's advisory opinions enable member states and OAS organs to uphold their human rights obligations more consistently.

C. The Procedures Used for Contentious Cases

To invoke the Court's contentious jurisdiction, a petitioner alleging a state's human rights violation must follow procedures outlined in the American Convention. First, since there is no direct access to the Court, the petitioner must send a petition or communication to the Commission. The Commission, however, enjoys an absolute right to advisory opinions on issues within its sphere of competence. American Convention, supra note 4, at art. 64(1); the Effect of Reservations on the Entry into Force of the American Convention (Arts. 74 and 75), Inter-Am. Ct.H.R., Advisory Opinion OC-2/82 of Sept. 24, 1982, reprinted in 4 System, supra note 6, booklet 25, paras. 14–16, at 87 [hereinafter the Effect of Reservations opinion].

Rights Defines its Advisory Jurisdiction, 33 Am. U.L. Rev. 211, 243–44 (1983). The Court has limited the advisory requests of OAS organs to issues within the organs' "legitimate institutional interest" which is determined by consulting the OAS Charter, constitutive instruments, and particular practices of the organ. The Commission, however, enjoys an absolute right to advisory opinions on issues within its sphere of competence. American Convention, supra note 4, at art. 64(1); the Effect of Reservations on the Entry into Force of the American Convention (Arts. 74 and 75), Inter-Am. Ct.H.R., Advisory Opinion OC-2/82 of Sept. 24, 1982, reprinted in 4 System, supra note 6, booklet 25, paras. 14–16, at 87 [hereinafter the Effect of Reservations opinion].

American Convention, supra note 4, at art. 64.

This may occur during a Commission or domestic proceeding, or after the Commission's proceeding by appeal to the General Assembly to make a request on their behalf. Vargas, Individual Access to the Inter-American Court of Human Rights, 16 N.Y.U. Int'l L. & Pol. 601, 613–15 (1984). Therefore, it has been suggested that governments establish procedures within their domestic legislation to authorize the requests of domestic tribunals. Buerengenthal, Inter-American Court of Human Rights, 76 Am. J. Int'l L. 231, 244 (1982).

For this reason, the European Court of Human Rights has been encouraged to widen the scope of its advisory jurisdiction. Van Dijk & Van Hoof, Theory and Practice of the European Convention on Human Rights 159 (1984).

American Convention, supra note 4, at arts. 48–51.

In order to petition the Commission, the person(s), nongovernmental entity, group, or state party must pursue and exhaust all domestic remedies available. Id. These requirements may be waived if the domestic arena does not offer an effective remedy, the petitioner was denied access to the domestic legal remedies, or there has been unwarranted delay in providing those remedies. American Convention, supra note 4, at art. 46; Regulations, supra note 29, at arts. 31–41. A petition will be declared inadmissible when
mines the admissibility of the petition requiring prior exhaustion of all available domestic remedies. Although this process is generally quite extensive, in serious or urgent cases the Commission may consider a petition admissible if it fulfills all the formal requirements for admissibility. Without indicia of urgency, the average petition is presumed admissible while the Commission requests information from the defendant state. The state has a "reasonable period" or ninety days to transmit this information.

Second, upon the Commission's receipt of the information from the defendant state, the petition's admissibility is reassessed. If there are no longer grounds to allege a violation of the American Convention, the record is closed. If the government does not offer information sufficient to rebut the charge, the petitioner's allegations are presumed true. Thus, at this point, the petition becomes admissible.

Third, the Commission's procedures must be completed. If a friendly settlement has not been reached, the Commission prepares a report which is sent to both parties. From the time the report is sent, the parties are given three months to settle the matter, refer the case to the Court, request that the Commission submit the case to the Court, or do nothing.

It does not conform to the Commission's requirements or establish a violation of the American Convention. American Convention, supra note 4, at art. 47. The petition is also inadmissible if the Commission finds it to be substantially the same as a prior petition studied by the Commission or another international organization. Id.

Id. at art. 48(2); Regulations, supra note 29, at arts. 34(2), 44(2). The formal requirements for admissibility consist of providing information as to the petitioner's name, occupation, nationality, account of the violation, victim, and pursuit of domestic remedies. Regulations, supra note 29, at art. 32.

Id. at art. 48(a); Regulations, supra note 29, at art. 34(3).

Id. at art. 48(1)(a); Regulations, supra note 29, at art. 34(5)-(6).

Id. at art. 48(1)b; Regulations, supra note 29, at art. 35.

American Convention, supra note 4, at art. 48.

American Convention, supra note 4, at art. 48(b); Regulations, supra note 29, at art. 42.

See supra notes 29–47 and accompanying text. As noted supra, during the Commission's proceedings, the Commission can ask the Court to adopt provisional measures, and both the state and the Commission can request advisory opinions from the Court.

See supra notes 45–46 and accompanying text.

American Convention, supra note 4, at art. 51.

Id. at art. 51(1); Regulations, supra note 29, at art. 47(2).
Fourth, the referral procedure within article 51 of the American Convention enhances cooperation between the Court and the Commission.82 The Commission has discretion to refer the case to the Court if the state has accepted the Court’s contentious jurisdiction.83 When a case is referred by the Commission, the Commission’s position is reversed.84 Since it is within the primary control of the Court’s contentious jurisdiction to interpret and apply the Convention, the Court is not bound by the Commission’s decisions.85 As the Commission becomes inundated with petitions, investigations, and promotional activities, the referral procedure allows the Court to assist in the resolution of unsettled contentious cases. More importantly, the referral option allows both organs to coordinate their jurisdictional realms to assist human rights victims.86

Finally, if the Commission or state party refers the case to the Court’s contentious jurisdiction, the case proceeds according to the Court’s Rules of Procedure.87 If a state party decides to refer the case to the Court, the party must file an application with the Court and include any objections to the Commission’s decisions.88

82 American Convention, supra note 4, at art. 51; Buergenthal, supra note 23, at 310; Buergenthal, supra note 14, at 160–61; Dunshee de Abranches, supra note 57, at 100, 124.
83 American Convention, supra note 4, at art. 62.
84 Id. at art. 57. The Commission must appear in all cases before the Court. Court’s Statute, supra note 49, at art. 28.
85 American Convention, supra note 4, at arts. 63–64; Court’s Statute, supra note 49, at art. 1. In this manner, the American Convention impliedly provides a form of judicial review of Commission decisions. Dunshee de Abranches, supra note 57, at 113–14; see the Velasquez Rodriguez case, INTER-AM. CT.H.R., June 26, 1987 (preliminary objections), at para. 29. The primary goal of upholding the Inter-American system’s integrity justifies this approach. The Court in the Schmidt opinion stated that the Commission and the Court conducted “entirely distinct legal proceedings.” Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights), INTER-AM. CT.H.R., Advisory Opinion OC-5/85 of Nov. 13, 1985, reprinted in 4 SYSTEM, supra note 6, booklet 25.2, paras. 17–18, at 1 [hereinafter the Schmidt opinion].
86 The cooperation and coordination of the Commission’s and Court’s roles under the American Convention may be disadvantaged by their respective locations in Washington, D.C., and Costa Rica. On September 15–16, 1986, at Emory University, Atlanta, Georgia, a joint meeting was held to “coordinate the activities of the two bodies.” 2 H.R.I. REPORTER, no. 4, 50 (Nov. 1986). The success of this meeting resulted in an agreement to hold yearly meetings for the same purpose of “maintain[ing] a close institutional relationship.” Id.
87 Rules, supra note 56.
88 Id. at art. 25(1). The Court will notify the Commission if a state party submits an application. Id. at art. 26(1). The Secretary of the Court also notifies all states parties as well as the OAS Secretary General. Id. at art. 26(2). The state party concerned must
Likewise, the Commission must submit an application if it decides to refer the case. The Court’s proceedings involve written and oral stages. Before the written proceeding, the Court receives preliminary objections which the Court considers or joins to any objections on the merits. The President of the Court decides all time limits for the written and oral proceedings. The hearings can be public and the judgments are published. Since any of the procedures governing contentious cases may be applied to advisory opinions, it is the nature of the final judgment as opposed to the nonbinding opinion that distinguishes the contentious case from the advisory opinion.

III. Problems Confronting the Inter-American Court’s Contentious Jurisdiction

As the mainstay of the American Convention system, the American states created the Court’s contentious jurisdiction to protect human rights in individual cases, reinforce the Commission’s role, and deter future violations of human rights. To fulfill these laudable goals, the Court’s contentious jurisdiction must be used. In the ten years of its existence, however, the Court has heard only two cases. This situation may indicate deficiencies within the American Convention’s framework which discourage use of the Court’s contentious jurisdiction. Although the Court has addressed some issues, additional effort may be necessary to further encourage its use. This Section first analyzes the general

designate an agent for service of process and send the necessary communications. \textit{Id.} at art. 26(3).

89 \textit{Id.} at art. 25(2).

90 \textit{Id.} at art. 28.

91 \textit{Id.} at art. 27.

92 \textit{Id.} at arts. 29, 32.


94 Rules, \textit{supra} note 56, at art. 53.

95 American Convention, \textit{supra} note 4, at arts. 51, 63; Buergenthal, \textit{supra} note 14, at 160.

96 Buergenthal, \textit{supra} note 14, at 160.


98 \textit{See supra} note 6; the Gallardo case, 4 \textit{SYSTEM}, \textit{infra} note 153, booklet 25, at 18 (explanation of vote); the Schmidt opinion, \textit{infra} note 180, at 50–51 (separate opinion); \textit{see generally} Buergenthal, \textit{supra} note 15.

99 \textit{See infra} III B.
problems in establishing an effective regional contentious jurisdiction. Second, solutions are proposed to the specific problems within the American Convention which inhibit fruitful use of the Court's contentious jurisdiction. Finally, the Court's contentious jurisdiction's limited enforcement and deterrence capabilities are acknowledged as factors discouraging its utilization.

A. Increasing the Use of the Court's Contentious Jurisdiction: General Problems Within the American Region

In constructing the Court's contentious jurisdiction, the general political milieu in Latin America, during the drafting of the American Convention and today, affects the present use of the Court's contentious jurisdiction. These political factors, which hinder the Court's protection of human rights, may also deter progressive change in the framework of the Court's contentious jurisdiction.

1. Domestic Sovereignty

The requirement of a state's consent to the contentious jurisdiction of the Court can prevent petitioners or the Commission from referring cases to the Court. Initially, the nonbinding nature of the American Declaration in 1948 and the initial disinterest in the Court's formation exemplified the member states' reluctance to support the protection of human rights with a court. Only Costa Rica would agree to the establishment of the

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100 M. QUIROGA, supra note 14, at 21; Cabranes, supra note 14, at 1147, 1159–62, 1177; Note, supra note 65, at 211, 216; see generally M. CRAHAN, supra note 1, at 25–45. Latin American states are those countries which comprise "the part of the American continents south of the U.S. in which Romance languages are spoken." THE RANDOM HOUSE DICTIONARY 508 (1978).

101 Note, supra note 65, at 216–17; see Buergenthal, supra note 14, at 158; Cabranes, supra note 14, at 1150, 1177, 1180. For a general discussion, see M. QUIROGA, supra note 14, ch. II, at 7–65.

102 Cabranes, supra note 14, at 1148–55. After their liberation from Spain and Portugal, Latin American states felt threatened by the Monroe Doctrine of 1823. Id. The Roosevelt corollary to this doctrine exacerbated the Latin American tendency toward nonintervention by posturing the United States as an "international police power" to protect the Western Hemisphere from invasion. Id. at 1149. After World War II, Latin American states considered "hemispheric security" necessary. Id. at 1155. For example, the OAS Charter's article 2(a) states that an essential purpose of the OAS is "[t]o strengthen the peace and security of the continent[,]" OAS CHARTER, supra note 17, at art. 2(a); see also id. at art. 27. The OAS Charter of 1948 essentially codified the doctrines of nonintervention and collective self-defense. Id. Article 2(c) of the OAS Charter further lists another
Court in its country. Because of these noninterventionist sentiments, the American Convention included an optional consent provision for accepting the Court's contentious jurisdiction. The optional consent provision provides for ratification of the American Convention without acceptance of the Court's contentious jurisdiction. By 1988, only ten states had accepted the Court's contentious jurisdiction. In 1986, Judge Buergenthal as President of the Inter-American Court further explained that the primary impediment to consent was the “sheer bureaucratic inertia” within the states' governments. Judge Buergenthal suggested that the OAS Permanent Council representatives act as envoys and remind their respective governments to accept the Court's contentious jurisdiction. As a result, the consent provision limits the Commission's ability to refer cases. In doing so, the consent provision may be a major obstacle to effective contentious jurisdiction and a stronger Inter-American system.

2. The Inter-American Court's Lack of Visibility

Effective use of the Court's contentious jurisdiction is frustrated by the fact that the general public, including American international lawyers and human rights experts, remains unaware of the Court's existence. Thus, if a human rights claim has not
been satisfied by domestic tribunals, legal counsel cannot instruct petitioners about the Court’s alternative forum. Hence, increased use of the Court’s contentious jurisdiction may depend upon educating the public. Strategic and conservative use of the media to call attention to the Court’s existence could invite greater use of its contentious jurisdiction. Likewise, mandatory human rights education for students and public servants (especially the police) may be absolutely essential for effective human rights protection.

More importantly, the Court could encourage governmental cooperation with the Inter-American system by establishing a dialogue with the states parties. For example, the location of the Court in Costa Rica may have had encouraging side effects. The Costa Rican government has requested three out of the nine advisory opinions and referred the Court’s first contentious case. Whether Costa Rica’s use of the Court reflects its respect for human rights or its response to the presence of the Court in Costa Rica is unclear. Since the Court’s presence in a state may generate its use, it may be advantageous for the Court to consider the effect of and response to a proposal to ride circuit in these

number of North Americans who have studied and written about the inter-American human rights system, whereas the number of those who are experts on the European system is substantial.” Id. In 1980, the Court and the Costa Rican government created the Inter-American Institute to combat this problem (general information obtained from the Court).

110 N. SINGH, ENFORCEMENT OF HUMAN RIGHTS IN PEACE AND WAR AND THE FUTURE OF HUMANITY 138 (1986). See Espiell, supra note 24, at 554. Nongovernmental organizations such as Amnesty International have had success in using the press, television, and radio to enlighten the general public. The OAS or the Court should consider the power of publicity and how it could be used to notify the public about the Court without diminishing the Court’s prestige. N. SINGH, supra, at 41, 138.

111 The President of the International Court of Justice credits this approach. N. SINGH, supra note 110, at 137–39; Voglio, supra note 34, at 77.

112 See Voglio, supra note 34, at 71.


114 The Gallardo case, 4 SYSTEM, supra note 6, booklet 25, at para. 12.
The Court could encourage use and acceptance of its contentious jurisdiction by elevating the Court's visibility and eliminating apprehension through the judicious use of public relations efforts.  

3. The Fear of Retaliation

In many Latin American states, the valid fear of retaliation accompanying solicitation of domestic judicial relief extends to the Court's contentious jurisdiction. Fear dissuades the victims of human rights violations and their domestic lawyers from pursuing judicial remedies. For example, in the 1988 Velasquez Rodriguez case, the Court's second contentious case, citizens who testified were threatened or murdered. The Court in the Velasquez Rodriguez case found that lawyers and judges in Honduras had been intimidated, threatened, and tortured. The retaliatory action evidenced during the Velasquez Rodriguez case does not encourage future petitioners to use the Court's contentious jurisdiction for the protection of their human rights.

115 In the United States, the term to "ride circuit" refers to the original manner in which judges heard cases by traveling "from place to place within a circuit, holding court in various locations." BLACK'S LAW DICTIONARY 125 (5th ed. abr. 1983). A circuit is a "[j]udicial division of the United States." Id.

116 The logistics of this proposal may make it an undesirable alternative. Its foreseeable downfalls initially would be governmental consent and financing. Yet, the Commission's observations in loco removed many barriers to this option. See generally Norris, Observations in Loco: Practice and Procedure of the Inter-American Commission on Human Rights, 15 TEX. INT'L L.J. 46 (1980). Likewise, the Court could offer to hold its sessions in different states while encouraging utilization of the American Convention system. Authorization within the American Convention can be found in article 58 which allows the Court to convene in the territory of any member state conditioned upon the state's consent. American Convention, supra note 4, at art. 58. For examples of how the Commission sought governmental consent during its early years, see generally Norris, supra. This option, however, could exacerbate any perceived instability of the Court.

117 For example, in Bogata, Colombia, on August 17, 1989, fifty of fifty-five appeals court judges resigned. Their resignation was in response to the assassination of their colleague, appeals court judge Carlos Ernesto Valencia, and the Government's failure to provide protection. The Washington Post stated that in the last decade, the death toll for Colombian judges was over fifty. Washington Post, Aug. 18, 1989, § A, at 26.

118 Note, supra note 8, at 297; Voglio, supra note 34, at 78.

119 The Velasquez Rodriguez case, INTER-AM. CT.H.R., July 29, 1988 (merits), at paras. 28(d), 39. In the Velasquez Rodriguez case, there were threats against a surgeon and a lawyer who testified at trial. Id. The casualties of this case included the murders of a policeman, who was summoned to appear as a witness, and an Alternate Deputy, who testified. Id. at paras. 28(c), 28(f), 40, 41.

120 Id. at paras. 78, 80, 91, 93.

121 See Voglio, supra note 34, at 75–76.
In the Velasquez Rodriguez case, the threats and murders forced the Court to take provisional measures through its contentious jurisdiction.\textsuperscript{122} In the future, if the same violent reaction is anticipated, the Court could require the government involved to take provisional measures when the case is submitted to the Court rather than wait for a violent reaction or the Commission’s request.\textsuperscript{123} Although the Court cannot prevent future retaliatory action, the Court may mandate creative measures to protect petitioners and witnesses in cases within its contentious jurisdiction.

B. \textit{Increasing the Use of the Court’s Contentious Jurisdiction: Specific Problems Within the American Convention}

Time consuming procedures may discourage use of the Court’s contentious jurisdiction.\textsuperscript{124} The procedural requirements for access to the contentious jurisdiction of the Court also reflect the American states’ noninterventionist sentiments during the drafting of the American Convention.\textsuperscript{125} For a state considering acceptance of the Court’s contentious jurisdiction or a petitioner hoping to secure the Court’s binding judgment, there are five disincentives: first, the lack of individual direct access to the Court’s contentious jurisdiction;\textsuperscript{126} second, the Commission’s lengthy proceedings;\textsuperscript{127} third, the lack of coordination between the Commission and the Court in referring cases;\textsuperscript{128} fourth, the accessibility of the advisory jurisdiction as an efficient alternative

\textsuperscript{122} The provisional measures consisted of asking the Government to guarantee the “safety of the life and property” of two witnesses; prevent further infringements of basic rights; investigate the crimes committed; punish the perpetrators; and inform the Court of those measures as well as of judicial investigations, public statements, police protection, and copies of autopsies/ballistic tests. The Velasquez Rodriguez case, \textit{INTER-AM. CT.H.R.}, July 29, 1988 (merits), at paras. 39–43.

\textsuperscript{123} \textit{Id.} The provisional measures ordered in the Velasquez Rodriguez case were in response to threats against witnesses and requested by the Commission after the referral to the Court. The Court may take provisional measures on its own motion if the case is under its consideration. American Convention, \textit{supra} note 4, at art. 63(2). Provisional measures for future cases could consist of mandatory police protection of all witnesses, a witness relocation and change of identification program, or increased discretion in transmitting the names of witnesses.

\textsuperscript{124} The Gallardo case, \textit{4 SYSTEM}, \textit{supra} note 6, booklet 25, at 18 (Piza Escalante, explanation of vote).

\textsuperscript{125} \textit{See supra} note 100; the Gallardo case, \textit{4 SYSTEM}, \textit{infra} note 153, booklet 25, at 18 (Piza Escalante, explanation of vote).

\textsuperscript{126} \textit{See infra} III B(1).

\textsuperscript{127} \textit{See infra} III B(2).

\textsuperscript{128} \textit{See infra} III B(3).
to the Court's contentious jurisdiction;\textsuperscript{129} fifth, the insufficient enforcement mechanism available to the Court.\textsuperscript{130} Although many of the specific problems have been addressed by the Court, this Section focuses on those areas which could be rectified in order to encourage use of the Court's contentious jurisdiction.

1. The Individual's Indirect Access to the Inter-American Court

Neither an individual, group, legally recognized nongovernmental entity, nor state party can directly petition the Court to hear a contentious case.\textsuperscript{131} The American Convention only provides petitioners with direct access to the Commission's procedures.\textsuperscript{132} Because an individual petitioner must attempt to exhaust all domestic remedies, the American Convention permits the Commission to receive only those petitions filed within six months of a final domestic judgment or the attempted exhaustion of available domestic remedies.\textsuperscript{133} Considering the lack of public awareness of the Inter-American system, the six month provision may be an unreasonable barrier to gaining access to the Court's contentious jurisdiction.\textsuperscript{134} Furthermore, unlike a state which may choose to refer a case, the individual petitioner is barred from personally referring its case to the Court's contentious jurisdiction.\textsuperscript{135} Since the Court's contentious jurisdiction was created to protect the individual's human rights, this anomalous restriction may deter petitioners from considering the Court as a potential forum for their claim.\textsuperscript{136}

Three indirect approaches to the Court's contentious jurisdiction may exist for the perseverant individual petitioner.\textsuperscript{137} First, after the Commission's procedures are completed without a

\textsuperscript{129} See infra III B(4).
\textsuperscript{130} See infra III B(5).
\textsuperscript{131} American Convention, supra note 4, at art. 61.
\textsuperscript{132} Id. at art. 44. The individual's access to the Commission is a unique aspect of the American Convention. The Gallardo case, 4 System, supra note 6, booklet 25, at para. 22; see M. Quiroga, supra note 14, at 170; Vargas, supra note 67, at 606.
\textsuperscript{133} American Convention, supra note 4, at art. 46. Professor Fernando Voglio, former member of the Commission, felt that this rule could prevent access to the Commission because of the climate in domestic courts, fear of retaliation, and lack of public awareness about recourse to the Inter-American system. Voglio, supra note 34, at 75.
\textsuperscript{134} Voglio, supra note 34, at 75.
\textsuperscript{135} American Convention, supra note 4, at art. 61(1).
\textsuperscript{136} Id. at art. 33.
\textsuperscript{137} Vargas, supra note 67, at 605–09.
friendly settlement, the individual petitioner may gain indirect access to the Court by requesting that the Commission refer the case.\textsuperscript{138} Through a referral, the Commission may appoint the individual or the individual's lawyer to assist during the case; examine the witnesses, experts, and those testifying; or speak at the hearing if not heard as a witness.\textsuperscript{139} Second, if the Commission decides not to refer the case, the individual may request that a state party accepting the contentious jurisdiction of the Court refer the case on their behalf.\textsuperscript{140} Third, the individual may ask a state party accepting the Commission's competence for interstate petitions to submit the initial complaint to the Commission.\textsuperscript{141}

These latter options may be theoretical because of the political ramifications of a state's direct intervention into another state's affairs.\textsuperscript{142} Likewise, reliance on the Commission to refer the case may not be a judicious choice.\textsuperscript{143} Because the Commission's proceedings must be completed before a referral is made,\textsuperscript{144} direct access to the Court's contentious jurisdiction and/or a more lenient time limit for approaching the Commission could encourage greater use of the Court's contentious jurisdiction.

2. The Commission's Proceedings: Discretionary Procedures

The Commission's proceedings can severely retard the petitioner's indirect access to the Court's contentious jurisdiction.\textsuperscript{145}

\textsuperscript{138} M. Quiroga, \textit{supra} note 14, at 170; Dunshee de Abranches, \textit{supra} note 57, at 122-23; Vargas, \textit{supra} note 67, at 606.
\textsuperscript{140} Vargas, \textit{supra} note 67, at 606-07. However unlikely, access to the Court's contentious jurisdiction may be facilitated if a state, representing the interests of the individual, waives the Commission's procedures. Because the Court in the Gallardo case did not expressly reject this option, interstate disputes may be able to go directly to the Court's contentious jurisdiction. 1 \textit{System}, \textit{supra} note 6, booklet 25, at v, vi (Introduction); Vargas, \textit{supra} note 67, at 608-09.
\textsuperscript{141} Vargas, \textit{supra} note 67, at 607.
\textsuperscript{142} \textit{Id.} For the same situation in the European system, see \textit{Van Dijk} & \textit{Van Hoof}, \textit{supra} note 68, at 115.
\textsuperscript{143} \textit{See, e.g.}, the Schmidt opinion, 4 \textit{System}, \textit{supra} note 6, booklet 25.2, at 1.
\textsuperscript{144} American Convention, \textit{supra} note 4, at art. 61(2).
\textsuperscript{145} For the Commission's proceedings, see \textit{supra} notes 70-81 and accompanying text. For the individual's indirect access to the Court, see \textit{supra} notes 131-41 and accompanying text. \textit{See generally} the Velasquez Rodriguez case, \textit{Inter-Am. Ct.H.R.}, July 29, 1988 (merits). The drafting of these procedures reflects the states' reluctance to submit to the Court's contentious jurisdiction. The American Convention system was modelled after the Eu-
Every contentious case must complete the Commission’s procedures before being referred to the Court. According to the Commission’s procedures, a timely petition must be filed with the Commission establishing a violation of the American Convention which has not been previously considered by the Commission or any other international organization. The petition’s admissibility is conditioned upon a finding that all domestic remedies were exhausted or unavailable. Unless a case is serious or urgent, the Commission requests information from the defendant state, evaluates the petition’s admissibility, and then offers its assistance for a friendly settlement. Unless a friendly settlement is possible, the Commission’s procedures interposed between domestic courts and the Court’s contentious jurisdiction can preclude attainment of an expedient final judgment. The Court has made progress in remedying some of the procedural restrictions to its contentious jurisdiction. Since the Court, however, cannot unilaterally eliminate all of these handicaps, this Comment proposes additional measures to facilitate resort to the Court’s contentious jurisdiction.

On the one hand, a state embroiled in a contentious dispute may want to formally waive the Commission’s proceedings and request the Court’s assistance in accelerating resolution of the case. In the In re Viviana Gallardo (Gallardo) case, the Court’s first contentious case, the Costa Rican government made such an attempt to secure “speedy judicial process.” The Gallardo Court held that a state could not unilaterally waive the Commission’s proceedings. Rather than merely affording states an avenue to

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146 American Convention, supra note 4, at art. 61(2).
147 Id. at arts. 46–47.
148 Id. at art. 46.
149 Id. at art. 48.
150 The Gallardo case, 4 System, supra note 6, booklet 25, at para. 13. Having accepted the Court’s contentious jurisdiction, the Costa Rican government referred the case to the Court in 1981 and formally waived the Commission’s procedures. Id. at paras. 1, 2, 12, 13. The Commission, however, felt that its procedures should be exhausted before the case could be received by the Court’s contentious jurisdiction. Id. at para. 9. The Court considered the admissibility of the case with its duty to maintain the system’s institutional integrity by respecting the Commission’s purview as well as the individual’s right to be vindicated within its contentious jurisdiction. Id. at paras. 13, 28.
151 Id. at para. 28.
avoid binding judgments, the Court found that the Commission's procedures protected the individual's interest in securing an agreement on mutually acceptable terms.\textsuperscript{152} Therefore, the Court found the state's referral to the Court inadmissible.\textsuperscript{153}

On the other hand, a state hoping to avoid a Court judgment may want to use the Commission's procedural requirements to postpone or escape a referral to the Court's contentious jurisdiction. In 1988, the Honduran government may have employed this tactic in the\textit{Velasquez Rodriguez} case.\textsuperscript{154} Unlike\textit{Gallardo}, the Commission referred the\textit{Velasquez Rodriguez} case to the Court as its second contentious case.\textsuperscript{155} Although the Honduran government had accepted the Court's contentious jurisdiction, it objected to the submission on the ground that many of the Commission's procedures remained unfulfilled.\textsuperscript{156} The Court, however, found that the American Convention only required that the procedures' objectives be satisfied to ensure the parties' procedural rights.\textsuperscript{157}

In addressing the Honduran government's objections, the Court removed the procedural impediments which could have rendered the\textit{Velasquez Rodriguez} case inadmissible.\textsuperscript{158} In response to Honduran claims of procedural errors, the Court found nothing in the American Convention or in the Regulations of the Inter-American Commission on Human Rights (Regulations) requiring the Commission to issue a formal declaration of admis-

\textsuperscript{152}Id. at para. 24.
\textsuperscript{153}Id. at para. 28. The Court referred the case back to the Commission retaining it on the Court's docket for reconsideration after the procedural requirements had been exhausted. \textit{Id.} Judge Piza Escalante, while concurring with the judgment, conveyed his frustration in a separate vote. He considered the petition inadmissible:

\begin{quote}
I do not do so because I consider [the procedures] essential in order to have the best protection of human rights but rather I have come to the conclusion that unfortunately the system of the Convention appears to make it impossible since the American States in drafting it did not wish to accept the establishment of a swift and effective jurisdictional system but rather they hobbled it by interposing the impediment of the Commission, by establishing a veritable obstacle course that is almost insurmountable, on the long and arduous road that the basic rights of the individual are forced to travel.
\end{quote}

\textit{Id.} at 18 (Piza Escalante, explanation of vote). Judge Piza Escalante also noted that the Commission's procedural errors in determining admissibility delayed processing the case for eighteen months. \textit{Id.} at para. 26 (Piza Escalante, separate vote).

\textsuperscript{154}See infra notes 156–64 and accompanying text. The\textit{Velasquez Rodriguez} case, INTER-
\textsuperscript{155}\textit{Id.} (preliminary objections), at para. 1.
\textsuperscript{156}\textit{Id.} at paras. 27, 32.
\textsuperscript{157}\textit{Id.} at para. 33.
sibility. The Court considered the Commission’s on-site investigation and formal hearing procedures to be discretionary. The Court also determined that the petitioner’s burden of exhausting domestic remedies could be expressly or impliedly waived by the state unless the government objects in a timely manner and proves that effective remedies were not exhausted. Thus, the Honduran government could not use these procedures to resist the referral.

More importantly, the Court addressed the Honduran government’s objection that the Commission’s procedures were not completed according to American Convention articles 50 and 51. The Government objected to the Commission’s Resolution 30/83 sent to the Government in October 1983 because the Commission had failed to label it “the report” pursuant to these articles. The Court found the resolution to be “the report” and the state’s right to adequate time to respond to the report unimpaired.

In evaluating the validity of these objections and perhaps considering the five year lapse between contentious cases, the Court expiated those procedures which could have precluded it from hearing the case.

The Velasquez Rodriguez Court refrained from strictly interpreting the procedural requirements while justifying Commission discretion and facilitating access to the Court’s contentious jurisdiction. The Court emphasized the importance of the Com-

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159 Id. at paras. 37–41.
160 Id. at paras. 49, 53, 54. The Commission’s hearing procedures may not be discretionary, however, if the parties request a hearing. Id. Since the Honduran government did not request the hearing, it was barred from objecting. Id. at paras. 53–55; American Convention, supra note 4, at art. 48(1)(d)–(e).
161 The Velasquez Rodriguez case, INTER-AM. CT.H.R., June 26, 1987 (preliminary objections), at para. 88. Since the Government did not make a timely objection, it was precluded from objecting. The Court’s “timely requirement” was inferred from the purpose of the American Convention. The Court noted, “The rule of prior exhaustion must never lead to a halt or delay that would render international action in support of the defenseless victim ineffective.” Id. at para. 93.
162 Id. at para. 77.
163 Id. at para. 67. Article 51 gave the Government three months to decide whether to settle, ignore “the report”, or refer the case to the Court. American Convention, supra note 4, at arts. 50–51.
165 Id. at para. 33. The Court noted in the Velasquez Rodriguez case that strict procedural compliance was not necessary in an international forum as long as the procedures are satisfied according to their purpose and the procedural rights of the parties. Id.; Note, supra note 8, at 294.
mission's procedures and their objectives to seek extra-judicial dispute resolutions and states' compliance with their obligation to cooperate in the resolution of a contentious case.166 Forced to prioritize among countervailing considerations, the Court interpreted the American Convention in favor of the individual while maintaining the framework of the system.167 From this standpoint, the Court absolved the Velasquez Rodriguez case of those procedural impediments able to obstruct an individual’s access to its contentious jurisdiction.

The Court’s view of the Commission’s friendly settlement procedure in the Velasquez Rodriguez case, however, may have further impaired access to the Court’s contentious jurisdiction. According to the Gallardo case, a state willing to use the Court’s contentious jurisdiction for an expedient end to a dispute may be estopped by the individual petitioner’s interest in the friendly settlement procedure.168 Yet, a state willing to participate in this procedure can be estopped by the Commission’s discretionary refusal to offer its conciliatory assistance.169 Since the procedure’s purpose is to encourage a friendly settlement upon consent, the incongruous role this procedure played in these two cases may discourage states from submitting to the Commission’s absolute discretion in addressing contentious cases. Thus, the Court’s position in the Velasquez Rodriguez case may further deter states from accepting the Court’s contentious jurisdiction.

Victims of human rights violations or their petitioners have a natural interest in a speedy recovery especially when involving the right to life.170 In the Velasquez Rodriguez case, the Court’s evaluation of the competing interests in fulfilling the Commission’s procedures may not ensure the individual’s interest in the prompt resolution of a contentious case.171 While balancing the

167 See the Gallardo case, 4 SYSTEM, supra note 6, booklet 25, at para. 16.
168 Id. at paras. 24, 28.
169 The Velasquez Rodriguez case, INTER-AM. CT.H.R., June 26, 1987 (preliminary objections), at paras. 44–45. The Court found the Honduran government’s denial of the forced disappearances of persons by state authorities not to be conducive to a friendly settlement. Id. at para. 46.
170 See infra notes 171–75 and accompanying text.
171 The Velasquez Rodriguez case, INTER-AM. CT.H.R., June 26, 1987 (preliminary objections), at paras. 69–70. The Velasquez Rodriguez case was the result of a petition brought on behalf of Manfredo Velasquez. Id. (merits), at para. 3. A student at the National Autonomous University of Honduras, Rodriguez was “kidnapped” on September
procedures' purpose in encouraging state cooperation and ensuring the procedural rights of the state, the Court condoned the Commission's unauthorized grant to the Government of extensions to submit information. After a government receives the Commission's report, the deadlines in the American Convention's article 51 and the Commission's Regulations reflect the general goal of an expeditious consideration of frequently urgent human rights matters. The Court in the Velásquez Rodríguez case refrained from chastising the Commission for jeopardizing the petitioner's right to obtain the international protection offered by

12, 1981. Id. at para. 147. The petitioner claimed that he "was violently detained without a warrant for his arrest by members of the National Office of Investigations (DNI) and G-2 of the Armed Forces of Honduras," then put in a cell, tortured, and never returned. Id. at paras. 3, 188. The Velásquez Rodríguez case began with a petition to the Commission in October 1981 and ended with a Court judgment in 1988. Id. at paras. 1, 194. On September 17, 1981, and February 6, 1982, Zenaida Velásquez unsuccessfully attempted to procure a writ of habeas corpus from the Honduran courts. The victim's father and sister brought criminal complaints on November 9, 1982, without result. Finally, Zenaida Velásquez joined another party in bringing a criminal action on April 5, 1984, which was dismissed except in regard to the missing General Gustavo Alvarez Martinez. The First Court of Appeals dismissed their case on January 16, 1986, for lack of evidence. Id. at paras. 74–75. In October 1983, the Commission adopted Resolution 30/83 and requested that the Government submit information concerning the case within sixty days or the allegations would be presumed true. Id. (preliminary objections), at paras. 19, 68. The Government requested reconsideration of the resolution since domestic remedies were pending. Id. at paras. 20, 68. Although the American Convention does not expressly provide for this request, the Commission subsequently granted two extensions until mid-April 1985 to procure additional information. Id. at paras. 21, 22, 68–69; Id. (merits), at para. 7. The Honduran government finally offered information to the effect that the criminal complaint had been dismissed. The First Court of Appeals affirmed this decision. Id. (merits), at para. 74. Since the Government's information remained insufficient to overcome the presumption, the Commission denied the third request for reconsideration in April 1986 and decided to submit the case to the Court's contentious jurisdiction. Id. (preliminary objections), at para. 24. The Government objected to the lack of an additional sixty days following the second resolution. Id. at para. 72. The Court did not find these extensions to be violations of the Commission's procedural requirements. Id. at para. 69. Since the extensions were requested by the Government, the Court found them not to impair the procedural interests of the state because the amount of time granted to the Government was already excessive and had seriously impaired the petitioner's right to an expeditious decision. Id. at paras. 68, 70, 72, 74.

172 Id. (preliminary objections), at paras. 69, 70. Although not mentioned by the Court, article 34(6) of the Commission's Regulations does allow the Commission to grant a thirty day extension. Regulations, supra note 29, at art. 34(6). The article further states, however, that "in no case shall extensions be granted for more than 180 days after the date on which the first communication is sent to [the] government of the state concerned." Id.

173 Id. at para. 93. Furthermore, the American Convention's article 25 guarantees the individual "the right to a simple and prompt recourse, or any other effective recourse, before a competent court or tribunal for protection against acts that violate one's fundamental rights . . . ." American Convention, supra note 4, at art. 25.
the Convention within the legally established time frames.” The extensions resulted in postponing the Court’s consideration of the case for 3.5 years after the initial communication. Since article 51 is the only route to the Court’s contentious jurisdiction, the use of extensions can extinguish the petitioner’s hope for a prompt referral.

While the use of extensions may or may not foster state cooperation with the American Convention system, the Commission may not be the appropriate organ to grant them. Cognizant of their detrimental effect on the petitioner’s interests, the Velasquez Rodriguez Court limited its acceptance of extensions to those which are “timely and reasonable.” Considering the Commission’s judgment in the Velasquez Rodriguez case and the ambiguity of a “timely and reasonable” requirement, perhaps the interests in state cooperation and the efficient protection of human rights would best be preserved by amending the American Convention and/or the Commission’s Regulations. By allocating the Commission’s control over extensions or other exercises of procedural discretion to the Court, the Court could evaluate the judiciousness of an extension rather than react to its consequences. By doing so, unnecessary delays in procuring justice could be alleviated.

3. Referrals to the Court’s Contentious Jurisdiction

The Commission’s discretion to refer cases to the Court’s contentious jurisdiction may be detrimental to its use. Once the Com-

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175 Without noting the Commission’s Regulations, the Court found that the Commission gave the government 2.5 extra years to procure the information. Id. at para. 70. The Court delivered its judgment on the preliminary objections on June 26, 1987.

176 Id. at para. 69.

177 In this manner, the Court could ensure the delicate equilibrium of interests protected by the American Convention. Considering the amount of cases it has heard, the Court may have more time available to analyze these matters. In his separate vote, Judge Piza Escalante expressed a similar viewpoint in the Gallardo case:

 Except for the procedure of conciliation, I believe that nothing the Commission might be able to do, within the procedures set forth in the Convention, in the interest of an effective protection of human rights, the Court itself cannot do during the proceedings; and do it even better, since its intervention would add certainty and authority to the proceedings and, at the same time, would reduce considerably the length of the proceedings, contributing to the fulfillment of the ideal of prompt and full justice, the absence of which is one of the most serious and frequent violations of human rights, and source and guardian of almost all of the rest.

The Gallardo case, 4 System, supra note 6, booklet 25, at 18 (Piza Escalante, explanation of vote).
mission's proceedings are completed without reaching a friendly settlement, article 51 allows the state or the Commission to refer the case to the Court's contentious jurisdiction. At this point, the Commission has the discretion to make a referral since the individual cannot and the state may not have the incentive to refer the case. There are two pitfalls with the issue of discretionary referrals: the first is the small number of states which accept the contentious jurisdiction of the Court, and the second is the lack of guidance within the American Convention as to which cases should be referred.

In the 1985 advisory opinion, Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Schmidt), the Court dealt specifically with the issue of when the Commission should refer a case. The Schmidt Court found that there were certain cases for which containment within the Commission's proceedings impaired the American Convention system and the petitioner's interests in adjudicating his case. The Court considered the Schmidt case an example of a case which should have been referred to its contentious jurisdiction. The Schmidt case contained a perplexing legal conflict which had not been considered by the Court and raised issues pertinent to other states. Because of this, the Court found that the Commission had an implied nonlegal obligation within the American Convention to refer the Schmidt case and other similar cases. Hence, the Schmidt advisory opinion may have established the criteria to guide the Commission in referring future cases. Perhaps as a

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178 American Convention, supra note 4, at art. 51.
179 Id.
180 See supra III A; Buergenthal, supra note 14, at 164.
181 Vargas, supra note 67, at 606.
182 The Schmidt opinion, 4 System, supra note 6, booklet 25.2, at 1.
183 Id. at para. 26. Judge Maximo Cisneros wrote a separate opinion expressing his displeasure with the lack of referrals:

I wish to say that the "love" that we have put into our work has not been sufficient to avoid the sense of frustration that I feel in leaving the Court before it has had the opportunity to hear a single case of a violation of human rights, in spite of the sad reality of our America in this field.

Id. at para. 10 (Cisneros, declaration). He noted, in particular, the problem that individuals do not have standing before the Court obligated the Commission to invoke the Court's contentious jurisdiction. Id.

184 Id. at paras. 24–26. The Court found that since the individual petitioner could not refer the case and the Government had no incentive to refer the case, the Commission should have referred the Schmidt case. Id.
185 Id. at para. 25.
186 Id.
187 Id. at paras. 24–26.
result of the Schmidt opinion, the newly elected Commission sent three cases to the Court's contentious jurisdiction in 1986.\textsuperscript{188}

Although the reaction to the Schmidt case may have encouraged referrals to the Court's contentious jurisdiction, there are drawbacks to the Court's opinion. Though the Commission must refer certain cases, it retains the discretion to determine which cases must be referred according to the ambiguous guidelines supplied by the Schmidt case.\textsuperscript{189} There may be various solutions to this problem.

First, since binding judgments are necessary corollaries to the system, it has been suggested that the Commission should simply refer as many cases as possible even if they do not appear to present legal issues.\textsuperscript{190} Second, the Commission could ask the Court to determine if a case should be referred by the Commission through an advisory opinion.\textsuperscript{191} This approach, however, would simply further delay access to the Court's contentious jurisdiction. Third, increased use of the Court's contentious jurisdiction could be achieved with a concrete referral procedure.\textsuperscript{192}

A concrete referral procedure could alleviate unnecessary restrictions to the Court's contentious jurisdiction. There are certain human rights cases which may necessitate mandatory referral provisions within the American Convention.\textsuperscript{193} A concrete refer-

\textsuperscript{188} See supra notes 2, 7.

\textsuperscript{189} See M. QUIROGA, supra note 14, at 324.

\textsuperscript{190} Id. Since the Commission's proceedings do not concern an analysis of the legal issues involved, it may be difficult for the Commission to perceive which case must be referred. Id. In the European human rights system, the Commission has the full discretion to refer a case. VAN DIJK & VAN HOOF, supra note 68, at 116. In that system, there has also been difficulty in deciding which cases should be referred to the Court. Id. The following criteria have been used for references: the case is particularly appropriate for a judicial body, the case raises a fundamental issue of the European Convention's application, the Commission is undecided as to whether a violation has occurred. Id. A crucial difference in the European human rights system is that it has a political organ, the Committee of Ministers, to which the Commission can refer a case. Id. The Court in the Schmidt opinion encouraged the Commission to refer contentious cases by emphasizing that the Commission had no obligation to conclusively find a human rights violation before a referral. The Schmidt opinion, 4 SYSTEM, supra note 6, booklet 25.2, at para. 24.

\textsuperscript{191} See M. QUIROGA, supra note 14, at 329.

\textsuperscript{192} See infra notes 194–200 and accompanying text.

\textsuperscript{193} The Velasquez Rodriguez case, INTER-AM. CT.H.R., June 26, 1987 (preliminary objections), July 29, 1988 (merits). For example, in the Velasquez Rodriguez case, a petition was filed with the Commission on October 7, 1981. Id. (preliminary objections), at para. 15. On October 14 and November 24, 1981, the Commission forwarded the petition to the Honduran government and requested a response on October 14 and November 24, 1981; May 14 and October 6, 1982; and March 23 and August 9, 1983. Id. at paras. 16,
ral provision could minimize the time consuming delays generated by uncooperative governments which have accepted the contentious jurisdiction of the Court. The American Convention could be amended to at least provide the Commission with the power to refer a case the first or second time the government fails to respond to a request for information. A better option could be to include a provision mandating the Commission’s referral when confronted with any violation of article 43, which obligates states to provide information at the Commission’s request. Since the purpose of the Commission’s procedures is to encourage state cooperation, immediate removal of the case to the Court’s contentious jurisdiction does not forfeit this goal when dealing with uncooperative governments. The American Convention system should not allow disrespect of its provisions by a state which has voluntarily agreed to the system. Increased respect for the Inter-American system could encourage its use and reinforce its ability to effectively protect human rights.

In order to establish a concrete referral provision, the Treaty of Rome’s (EEC Treaty) article 177 offers a model. The EEC Treaty’s preliminary reference procedure within article 177 requires domestic courts of final resort to refer cases to the Court of Justice of the European Communities (European Court of Justice). The domestic court must apply the European Court...
of Justice's preliminary ruling if it is applicable. A similar feature within the American Convention could offer the Court's contentious jurisdiction the chance to hear more cases de novo. By doing so, the contentious judgments could increase the clarity and utility of American Convention law while supporting the Commission's role.

4. The Boundaries of the Court's Advisory Jurisdiction

Having accepted the Court's contentious jurisdiction, a state's ability to request an advisory opinion during the Commission's proceedings presents a major threat to the prospects of a referral. If the Court allows a state to evade its binding judgment in this manner, the usefulness of its contentious jurisdiction would dissipate. For a state intent upon securing an efficient resolution of a contentious dispute, however, requesting an advisory opinion may appear to be the more favorable alternative. Among its advantages, an advisory request can procure a prompt non-binding judicial opinion. As an outgrowth of the doctrine of

199 D. WYATT & A. DASHWOOD, supra note 198, at 77-80.
200 Judge Buergenthal also notes this beneficial prospect yet likens the European Economic Community system's provision to the Court's advisory jurisdiction. Buergenthal, supra note 67, at 243 n.64.
201 See the Schmidt opinion, 4 SYSTEM, supra note 6, booklet 25.2, at para. 22; Buergenthal, The Advisory Jurisdiction of the Inter-American Court, in CONTEMPORARY ISSUES IN INTERNATIONAL LAW 127, 134-38 (T. Buergenthal ed. 1984); Buergenthal, The Advisory Practice of the Inter-American Human Rights Court, 79 AM. J. INT'L L. 1, 11-12 (1985); Vargas, supra note 67, at 614; Note, supra note 65, at 234-36.
202 "Other Treaties" Subject to the Advisory Jurisdiction of the Court (Art. 64 American Convention on Human Rights), INTER-AM. CT.H.R., Advisory Opinion OC-1/82 of Sept. 24, 1982, reprinted in 4 SYSTEM, supra note 6, booklet 25, para. 24, at 69 [hereinafter the Other Treaties opinion]. The drafters of the European Convention on Human Rights were aware of this danger and severely restricted access to the advisory jurisdiction of the European Court to the Committee of Ministers which must muster a two thirds majority vote for a request concerning any proceeding unrelated to the European Convention, the content or scope of the rights within the European Convention, or the European Convention Protocols. VAN DIJK & VAN HOOF, supra note 68, at 159; Dunshee de Abranches, supra note 57, at 107. These restrictions were placed on the European Court's advisory jurisdiction to protect against weakening its contentious jurisdiction and discouraging acceptance. Dunshee de Abranches, supra note 57, at 107.

nonintervention, the advisory jurisdiction allows states to inquire about human rights law without being declared a violator. Unlike the political and legal ramifications of accepting the Court's contentious jurisdiction, use of the advisory jurisdiction by member states does not implicate the same concerns. Hence, the international community may perceive a state's compliance with human rights law as voluntary. Significant developments have been made by the Court to combat the potential of the advisory jurisdiction to impinge upon the Court's contentious jurisdiction. This progress, however, may not be able to guarantee effective use of the Court without eradicating the aforementioned burdens on its contentious jurisdiction.

a. Procedural Limitations on the Advisory Jurisdiction: Admissibility

Stimulating the use of the Court's contentious jurisdiction may depend upon restricting access to its advisory jurisdiction. The drafters of the American Convention departed from other regional and international models in the design of the uniquely broad scope of the Court's advisory jurisdiction. The Court was left to formulate its own criteria for admissible requests. In that endeavor, the Court retained its discretion to determine admissibility on a case-by-case basis. In particular, the Court was wary of allowing use of the advisory jurisdiction to impair the system or to avoid the Court's contentious jurisdiction.

The state can request an advisory opinion during the Commission's proceedings as well as at anytime. Furthermore, unlike the Court's contentious jurisdiction, under its advisory jurisdiction, the Court can consider the merits of a case at the same time as the jurisdictional objections to determine whether the case may be a disguised contentious case. The Death Penalty opinion, 4 System, supra note 6, booklet 25.1, at para. 28. A case may be considered a "disguised contentious case" if an advisory opinion is requested during a dispute within the Commission's proceedings and the state has not accepted the contentious jurisdiction. See Buergenthal, The Advisory Practice of the Inter-American Human Rights Court, 79 Am. J. Int'l L. 8–12 (1985).

204 Buergenthal, supra note 14, at 159–60.
205 Dunshee de Abranches, supra note 57, at 89.
206 See Buergenthal, supra note 203, at 147.
207 See infra III B(4)(a)–(b).
208 See supra III A, III B(1)–(3).
209 See infra notes 220–239 and accompanying text.
210 The Other Treaties opinion, 4 System, supra note 6, booklet 25, at paras. 14–18.
211 Id. at paras. 26–27.
212 Id. at paras. 27–28.
tious jurisdiction. Yet, in the 1982 advisory opinion, "Other Treaties" Subject to the Advisory Jurisdiction of the Court (Other Treaties), the Court required "compelling reasons" to accompany its refusal of a request. In this opinion, the Court found a request which would diminish the utility of its contentious jurisdiction to be a compelling reason for its refusal.

Although the "compelling reasons" guideline retained the Court's discretion to refuse requests to protect its contentious jurisdiction, it may have been too vague to adequately control the scope of the advisory jurisdiction. For example, in the 1983 advisory opinion, Restrictions to the Death Penalty (Death Penalty), the Court restated that it would not permit an advisory opinion to weaken its contentious jurisdiction. The Court, however, characterized its advisory jurisdiction as a valid alternative to using its contentious jurisdiction. The Court's adherence to this interpretation resulted in admitting the Commission's request for an advisory opinion. The Commission later used the opinion, however, to support its position in a contentious dispute with a state which had not accepted the Court's contentious jurisdiction. Thus, the Death Penalty opinion implies that the Commission may use the advisory jurisdiction for a similar dispute with a state accepting the contentious jurisdiction of the Court. By facilitating access to its advisory jurisdiction, the Court's alternative forum approach may not encourage referrals to its contentious jurisdiction.

By 1985, the Court seemed to have reconsidered its approach to disguised contentious cases. In the Schmidt opinion, the Court clarified some of the confusion in the admissibility requirements for advisory requests. Although the Costa Rican govern-

213 Id. at para. 24.
214 Id. at para. 31. The International Court of Justice also uses this guideline. Id. at para. 23; Szasz, Enhancing the Advisory Competence of the World Court, in 2 THE FUTURE OF THE INTERNATIONAL COURT OF JUSTICE 499, 505 (L. Gross ed. 1976).
215 The Other Treaties opinion, 4 SYSTEM, supra note 6, booklet 25, at paras. 24–25, 31; Note, supra note 65, at 243.
216 The Death Penalty opinion, 4 SYSTEM, supra note 6, booklet 25.1, at paras. 28, 36.
217 Id. at paras. 43–45; Buergenthal, supra note 203, at 1, 9–12.
218 Id.; M. Quiroga, supra note 14, at 181.
219 Since the Court's contentious jurisdiction was not used between 1981–86, the Death Penalty Court may have been reluctant to further limit the Court's accessibility.
220 Id. at paras. 22–23. An individual petitioner initiated this case by alleging that the Costa Rican government had violated human rights with the American Convention. Id. at para. 19.
ment had accepted the Court’s contentious jurisdiction, the Schmidt case was not referred to the Court. Yet, after successfully completing the Commission’s proceedings, the Government requested an advisory opinion regarding certain legal issues. The Court stated that if the Government had lost in the Commission’s proceedings, a subsequent appeal to the advisory jurisdiction would have been an inadmissible attempt to overturn the Commission’s decision without facing the threat of a binding judgment. While the Court did not explicitly restrict access to the advisory jurisdiction to states which have not accepted its contentious jurisdiction, the Schmidt opinion may have had a comparable effect. By finding the obligation to refer certain cases and eliminating the possibility of certain appeals, the Court reinforced its “compelling reasons” standard with additional admissibility requirements for advisory requests. Although this progress cannot eliminate every factor discouraging invocation of the Court’s contentious jurisdiction, the Schmidt opinion may help remedy any underutilization caused by the misuse of the Court’s advisory jurisdiction.

b. Substantive Limitations on the Scope of Article 64(1)

Like the admissibility requirements for advisory opinions, the accessibility of the Court’s advisory jurisdiction to clarify certain legal issues affects the vitality of its contentious jurisdiction. Articles 64(1) and (2) circumscribe the substantive scope of the Court’s advisory jurisdiction. The Court’s power to give advisory opinions on the interpretation of the American Convention or other treaties is found in article 64(1) while article 64(2) permits advisory opinions on the compatibility of domestic laws with the American Convention and other treaties. The Court has tailored the substantive scope of its advisory jurisdiction in three

222 Id. at para. 20.
223 Id. at para. 11. The Court responded by finding that the Commission had an implied obligation to refer this case. Id. at paras. 24–25.
224 Id. at para. 22. Because Costa Rica had won the Commission’s proceedings, it could not legally gain from the advisory opinion; and therefore, its request was deemed admissible. Id. at para. 23.
225 Id. at paras. 22–23, 25.
226 Id.
227 American Convention, supra note 4, at arts. 64(1)–(2). See generally the Right to Reply opinion, 4 SYSTEM, supra note 6, booklet 25.3, at paras. 9–11.
228 American Convention, supra note 4, at arts. 64(1)–(2).
advisory opinions by interpreting article 64 to prescribe the bounds of its contentious jurisdiction.\(^{229}\)

The Court initially perceived the substantive division in article 64 to be insignificant.\(^{230}\) By 1986, however, the Court decided to differentiate between the substantive scope of articles 64(1) and (2).\(^{231}\) In the 1986 advisory opinion, *Enforceability of the Right to Reply or Correction (Right to Reply)*, the Costa Rican government questioned whether the American Convention was self-executing or whether the states were required to adopt implementing legislation.\(^{232}\) Since the Government did not classify its request in the petition explicitly according to the subsections of article 64, the Court found it admissible under article 64(1) and refused to consider the related issues of domestic law under article 64(2).\(^{233}\) The Court's decision to substantially restrict the legal issues considered under article 64(1) perplexed three out of the seven judges.\(^{234}\) Because the opinion offers no illuminating dicta, the Court's strict interpretation of article 64(1) might reflect mere judicial discretion.

\(^{229}\) The Right to Reply opinion, 4 *System*, * supra* note 6, booklet 25.3, at 17; the Schmidt opinion, 4 *System*, * supra* note 6, booklet 25.2, at 1; the Proposed Amendments opinion, 4 *System*, * supra* note 6, booklet 25.1, at 38.

\(^{230}\) The Proposed Amendments opinion, 4 *System*, * supra* note 6, booklet 25.1, at para. 7. In the 1984 opinion, *Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica (Proposed Amendments)*, the Costa Rican government requested an article 64(2) advisory opinion on the compatibility of a proposed amendment to their constitution with the American Convention. *Id.* The Court admitted the request but found that, by reformulating the question, the same question could be answered under article 64(1). *Id.* at para. 16. Reiterating that a mere procedural distinction existed between articles 64(1) and (2), the Court in the 1985 *Schmidt* opinion found the invocation of both subsections to be an appropriate form of request. The Schmidt opinion, 4 *System*, * supra* note 6, booklet 25.2, at para. 16. Thus, for two years, the Court did not distinguish between articles 64(1) and (2). See *supra* notes 225–226 and accompanying text.

\(^{231}\) See *infra* note 233 and accompanying text.

\(^{232}\) American Convention, * supra* note 4, at arts. 1(1), 2, 14(1); the Right to Reply opinion, 4 *System*, * supra* note 6, booklet 25.3, at paras. 13, 16–17.

\(^{233}\) The Right to Reply opinion, 4 *System*, * supra* note 6, booklet 25.3, at para. 10. Through the Government's reference to article 64(1)'s procedural rules, the Court found it to be an article 64(1) request. *Id.* at para. 18. The Court stated that requests exclusively concerning domestic law or treaties other than the American Convention fall outside the scope of article 64(1). *Id.* at para. 11. Furthermore, composite questions relating to both the interpretations of the American Convention and an inadmissible question which could not be separated would be inadmissible. *Id.* at para. 12.

\(^{234}\) *Id.* at para. 35. Judge Piza Escalante stated that the *Right to Reply* opinion preserved the traditional concept of domestic precedence over international law. *Id.* at paras. 13–14 (Piza Escalante, separate opinion). Judge Piza Escalante does not dissent specifically on this issue. Considering the intended breadth of the Court's advisory jurisdiction, the article 64(1) restriction appeared arbitrary to Judge Piza Escalante since the narrower contentious jurisdiction can address the same domestic legal issues. *Id.* at para. 18.
The decision to constrict the scope of article 64(1) may also reflect the Court's desire to preserve the utility of its contentious jurisdiction. Article 64(1) opinions interpreting the American Convention are particularly useful for disputes within the Commission's proceedings that concern the American Convention's violation. Unlike the member states, the Commission can only request an advisory opinion under article 64(1). If the Commission could procure advisory opinions addressing the related issues of domestic law to buttress its position in a contentious dispute, the opinion could actually determine whether a human rights violation has occurred. This would allow the Commission's jurisdiction to supplant the role of the Court's contentious jurisdiction and frustrate the states' right to consent to this de facto judgment. Because of the Right to Reply opinion, advisory opinions under article 64(1) are limited to a mere restatement of the American Convention. A state seeking to legally justify its position within the Commission's proceedings may find it more advantageous to refer the case. Thus, the Court may have decreased the utility of article 64(1) to encourage referrals to its contentious jurisdiction.

It is equally conceivable that the Court intended to delimit the scope of article 64(1) in the Right to Reply opinion to encourage article 64(2) requests. With article 64(2) opinions, the Court can exert a more direct effect on the domestic laws of American states in keeping with its goal to deter future human rights violations. The actual effect of the Right to Reply opinion, however, must be revealed in future cases.

5. The Role of Publicity as an Enforcement Mechanism

The Court's contentious jurisdiction is an essential component of the American Convention system. The American Convention system needs an effective contentious jurisdiction to protect

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235 American Convention, supra note 4, at art. 64(1).
236 The Death Penalty opinion, 4 SYSTEM, supra note 6, booklet 25.1, at paras. 21, 22, 39.
237 The Right to Reply opinion, 4 SYSTEM, supra note 6, booklet 25.3, at para. c (Piza Escalante, separate opinion).
238 This may be true since out of a total of nine opinions, seven requests have been made under article 64(1), one was made under article 64(2), and one was made under both articles. See generally Voglio, supra note 54, at 71.
239 For example, see the Proposed Amendments opinion, 4 SYSTEM, supra note 6, booklet 25.1, at 58.
240 Dunshee de Abranches, supra note 57, at 124–25.
the interests of human rights victims in specific cases, support the Commission’s efforts, and function as a deterrence mechanism.\textsuperscript{241} The role of the Court’s contentious jurisdiction in vindicating petitioners’ rights is a necessary corollary to the protection of human rights because it offers the opportunity to satisfy claims unequivocally.\textsuperscript{242} Thus, recourse to this arena for dispute resolution must be made accessible and effective.

The ability of the American Convention system to protect human rights depends upon use of the Court’s contentious jurisdiction.\textsuperscript{243} The American Convention envisioned the interdependence of the Commission and the Court.\textsuperscript{244} If the Court’s contentious jurisdiction fails to be invoked frequently in response to human rights violations, the recognition accorded to its advisory opinions necessarily suffers.\textsuperscript{245} This in turn thwarts reliance by the states, the Commission, and other OAS organs upon the Court’s advisory opinions.\textsuperscript{246} Hence, the Inter-American system depends upon a working contentious jurisdiction to enhance the validity of the system.\textsuperscript{247}

The degree of respect states accord the Court’s judgments is an important factor in deterring governmental violations of human rights. The Court’s application of human rights law to resolve contentious cases motivates states to satisfy their human rights obligations.\textsuperscript{248} Yet, in order to generate the respect essential to empower the Court’s judgments, states must be committed to recognizing human rights and view the Court as an impartial, efficient tribunal able to enforce its judgments.\textsuperscript{249} To a certain extent, the impact of the Court’s judgments can only be as substantial as the deterrent power within the sanctions available to

\textsuperscript{241} American Convention, \textit{supra} note 4, at arts. 51, 63; Buergenthal, \textit{supra} note 14, at 160; Buergenthal, \textit{supra} note 67, at 245.

\textsuperscript{242} American Convention, \textit{supra} note 4, at arts. 63(1), 68; N. \textsc{Singh}, \textit{supra} note 110, at 10–11; Dunshee de Abranches, \textit{supra} note 57, at 124.

\textsuperscript{243} Buergenthal, \textit{supra} note 23, at 310; Buergenthal, \textit{supra} note 26, at 833.

\textsuperscript{244} Dunshee de Abranches, \textit{supra} note 57, at 124.

\textsuperscript{245} Buergenthal, \textit{supra} note 14, at 160.

\textsuperscript{246} \textit{Id.}

\textsuperscript{247} Buergenthal, \textit{supra} note 23, at 310; Buergenthal, \textit{supra} note 203, at 147; \textit{Note, supra} note 65, at 245. Judge Buergenthal noted that the advisory jurisdiction could only work in conjunction with the Court’s contentious jurisdiction “to give teeth to the advisory process.” Buergenthal, \textit{supra} note 217, at 26.

\textsuperscript{248} N. \textsc{Singh}, \textit{supra} note 110, at 10–11; Dunshee de Abranches, \textit{supra} note 57, at 124.

\textsuperscript{249} N. \textsc{Singh}, \textit{supra} note 110, at 11–12 (preface); Dunshee de Abranches, \textit{supra} note 57, at 106.
enforce them.\textsuperscript{250} Yet, reluctant to relinquish their sovereignty, the states equipped the Court with power to resort to the OAS General Assembly's political arena to enforce its judgments.\textsuperscript{251} In order to encourage use of the Court's contentious jurisdiction, states must respect the validity of the Court's judgments.

The deterrent power of publicity as an enforcement mechanism may be insufficient to engender governmental respect for the Court's judgments. A theoretical sanction cannot be considered an effective deterrent to domestic indolence.\textsuperscript{252} Since many countries enter into human rights treaties to facilitate trade by ameliorating negative public opinion of their countries, one would assume that the states' fear of exposing their human rights violations would be an adequate deterrent.\textsuperscript{253} Yet, reliance on state representatives in the OAS General Assembly to criticize the violator may be misplaced.\textsuperscript{254} Even with the force of the Court's declaration of illegality, one state may have little incentive to disapprove of another state's domestic human rights policy, especially if one is economically dependent upon that state or equally culpable.\textsuperscript{255} The fact that the onlookers are not "materially" harmed by the human rights violations in another state intensifies the member states' traditional reluctance to intervene.\textsuperscript{256} Furthermore, if a state decides to impose unilateral sanctions in response to another state's human rights violations, the form of retaliation must be transmitted indirectly through trade or aid.\textsuperscript{257} Because these alternatives are costly and do not bear a direct relationship to the extremity of the violation, they exacerbate regional indolence rather than encouraging activism.\textsuperscript{258}

The impotency of publicity as an enforcement mechanism for the Court's judgments may be due to the economic, political, and social characteristics of American states.\textsuperscript{259} Evidenced by the Eu-

\begin{thebibliography}{9}
\bibitem{250}N. Singh, supra note 110, at 52.
\bibitem{251}American Convention, supra note 4, at art. 65.
\bibitem{252}N. Singh, supra note 110, at 52.
\bibitem{253}P. Sieghart, supra note 17, at 93.
\bibitem{255}M. Quiroga, supra note 14, at 173–74; P. Sieghart, supra note 17, at 93–95; Voglio, supra note 54, at 74.
\bibitem{256}Donnelly, supra note 254, at 619; see Cabranes, supra note 14.
\bibitem{257}Donnelly, supra note 254, at 619; see Cabranes, supra note 14.
\bibitem{258}Donnelly, supra note 254, at 619; see Cabranes, supra note 14.
\bibitem{259}Cabranes, supra note 14, at 1176–77.
\end{thebibliography}
European Human Rights system, publicity as a plausible sanction or deterrent to human rights violations can be effective in a regional system based on the profound interdependence of the consenting states.\(^{260}\) Within the framework of an economic and political community, member states would be more inclined to voluntarily consent to the reciprocal benefits the American Convention offers.\(^{261}\) Within such a community, the harmonization of domestic laws can reduce the likelihood of an external imposition of foreign human rights norms upon a protectionist government.\(^{262}\) Mutual governmental concern for citizens working and living in other states is fostered by the free movement of workers in a community of states.\(^{263}\) Thus, the "material interdependence" within an economic community heightens the states' sense of "moral interdependence."\(^{264}\) In this environment, the enforcement machinery of publicity has and can operate as an effective deterrent to human rights violations generating respect for the human rights system and invocation of its organs when necessary.

For the American region, economic and political interdependence does not portend to become a reality in the foreseeable future. Considering the lingering commitment to nonintervention, publicity as a sanction may not be a reliable deterrent or enforcement device.\(^{265}\) Yet, the Court's immediate role in creating and applying human rights norms may guide state policy coordination and cooperation with the Inter-American system.\(^{266}\) Without increasing state cooperation, the Inter-American system may achieve only a limited acceptance of the Court's contentious jurisdiction and a discretionary, inadequate dialogue between governments and American Convention organs.\(^{267}\) At present,


\(^{261}\) Donnelly, *supra* note 254, at 623.

\(^{262}\) *Id.*; see EEC Treaty, *supra* note 197, pt. 1, at arts. 3(h), 8(a).


\(^{264}\) Donnelly, *supra* note 254, at 623.

\(^{265}\) Farer, *supra* note 254, at 401–03.

\(^{266}\) Note, *supra* note 65, at 243; see Donnelly, *supra* note 254, at 616–17.

\(^{267}\) See Buergenthal, *supra* note 14, at 165–64; the Velasquez Rodriguez case, *Inter-Am. Ct.H.R.*, July 29, 1988 (merits), at para. 134. If, however, the Inter-American system ultimately attains merely a semblance of "inter-governmental co-operation, the parochial and perhaps even selfish attitudes of which it would also be the expression, would by no means justify the danger of such a serious blow to universalism." K. Vasak, *supra* note 24, at 455 (Introduction).
human rights remain domestic issues in American states and depend primarily upon the public’s insistence that human rights be given domestic legal recognition.\textsuperscript{268} To achieve permanent protection of those rights, the ability of the citizen to participate in a democratic process is considered to be essential.\textsuperscript{269} In the future, increased state cooperation with the Inter-American system could nurture a firm regional commitment to the protection of human rights.\textsuperscript{270}

Although it cannot solve the abhorrent human rights situations in many American states, use of the Court’s contentious jurisdiction can encourage domestic legal recognition and protection of human rights. Perhaps with time, effective use of its contentious jurisdiction will satiate much of the current need for an Inter-American Court. For the present, however, the problems confronting its increased use must be addressed. As Judge Buergenthal urged in 1986:

\begin{quote}
The opportunity is now, with so many democratic governments represented at this table. Let us grasp this opportunity, if only to make this a better world for our children and for their children. We have so little to lose by giving it a try, and so much to gain if we succeed.\textsuperscript{271}
\end{quote}

\section*{IV. Conclusion}

The future legal recognition of human rights in the American region may depend upon the strength of the Inter-American Court’s contentious jurisdiction. Because human rights violations in many American states cannot be remedied via domestic tribunals, the American Convention created the Court’s contentious jurisdiction to ensure the protection of human rights in the American region. Since its establishment in 1979, however, the Court’s contentious jurisdiction has heard only two cases. Whether finding against the Honduran government in the \textit{Velasquez Rodriguez} case will encourage other governments to subject themselves to the Court’s scrutiny remains to be seen. As evidenced by the

\begin{footnotes}
\textsuperscript{268} Thomas & Thomas, \textit{supra} note 15, at 376; see Donnelly, \textit{supra} note 254, at 616.
\textsuperscript{269} M. Crahan, \textit{supra} note 1, at 41.
\textsuperscript{270} At this point in time, “If one can fairly say that the European Convention on Human Rights embodies the political faith of the people of Western Europe, one must also acknowledge that it embodies only the wistful longings of the peoples of Latin America.” Cabranes, \textit{supra} note 14, at 1177.
\textsuperscript{271} Buergenthal, \textit{supra} note 14, at 164.
\end{footnotes}
Velasquez Rodriguez case, there are real drawbacks to invoking the Inter-American system which can preclude or dissuade petitioners from invoking the Court’s contentious jurisdiction. The Velasquez Rodriguez decision, however, serves to strengthen the Court’s authority in the perception of states parties which invigorates the Inter-American system.

In the delicate area of human rights violations, an expedient judicial process is essential. Increased use of the Court’s contentious jurisdiction depends upon eliminating the obstacles to attaining a Court judgment. General remedial action such as reminding states to accept this jurisdiction, riding circuit, and taking liberal provisional measures may be necessary. Specific efforts to extend the time limit for petitions combined with educating the public about the Inter-American Court would encourage human rights victims to avail themselves of the Court’s protection. Allocating power to the Court to evaluate requests for extensions and a concrete referral provision could expedite the procedure. The contribution the Inter-American Court can make to the lives of Americans has yet to be fully realized. The human rights enumerated in the American Convention should not remain merely ideals of a troubled region. Citizens must demand domestic legal guarantees. The Inter-American Court’s contentious jurisdiction is waiting to reinforce their efforts in the search for solutions.

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