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INTER-AMERICAN INSTITUTE OF HUMAN RIGHTS

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DOCTRINA

CORTE INTERAMERICANA DE DERECHOS HUMANOS

DOCTRINA

SHOULD THE UNITED STATES RATIFY THE AMERICAN CONVENTION ON HUMAN RIGHTS?*

Mark Kirk

Special Assistant for Congresional Affairs to the U.S. Assistant Secretary of State for Inter-American Affairs, Bernard W. Aronson.

Summary

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The end of the Cold War forces us to reexamine the foundations of many international structures. While events in Eastern Europe captured the international spotlight, changes in Latin America rivaled the collapse of the Soviet bloc. Throughout Latin America, democratic governments took power.[1] Despite the Latin debt crisis, trade soared between Latin

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* *International Dispute Resolution Seminar,* Spring 1991, Professor Barry Carter, Georgetown University Law Center

1 The dictatorships are Suriname and Cuba. Suriname did hold a precarious election on May 25th, 1991 intended to replace the military regime that took power during a Christmas 1990 coup. While changes are rumored for Cuba's upcoming Fall 1991 party conference, there is still no strong promise of democratic government.

America and the rest of the World. The best example of this trend was Mexico, where, U.S. -Mexican trade quadrupled during the year 1986-1990.[2] The World Bank's own private sector lending arm, the International Finance Corporation, reported that its Latin American investments grew faster than any other, now occupying over 50% of its total portfolio.[3]

With a reduction in the Communist threat, increased trade and democracy, U.S. policy makers had more time to focus on one of the region's greatest scourges: human rights abuse. With left-wing regimes giving way to freely-elected governments, right-wing regimes found their anti-communist rhetoric unable to ensure continued U.S. support.[4] The opening of Latin America to trade, elections and freer expression, poses an opportunity for advancing human rights. Some have already heeded the call. Cautious observers, like the State Department's human rights bureau, now contain clear and direct language in their annual reports criticizing the record of many countries in the region.[5] Major non-governmental human rights organizations also expanded their

2 Aronson, Speech to the Latin American Studies Association (May 16, 1991).

3 Annual Report of the International Finance Corporation, 1990.

4 Two examples will suffice. First, desite the fact that the government of El Salvador's President Alfredo Cristiani was freely chosen in an internationally supervised election and his government espoused anti-communist, free-market rhetoric, Congress voted to heavily condition 50% of all U.S. Foreign Military Financing for El Salvador, largely in response to the assassination of four Jesuit priests, their housekeeper and her daughter. *See* Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991, Pub. L. No. 101-513, sec. 531, 104 Stat. 1979 (1990). Even the freely-elected, left-wing regime of Guatemalan President Cerezo could not prevent the harsher U.S. response of the U.S. Ambassador's recall and the suspension of all U.S. military assistance based on human rights concerns and the murder of U.S. citizen Michael De Vine.

5 *See* Country Report on Human Rights Practices for 1990, 102d Congress, S. Prt 102-5, February, 1991 (The country report on Guatemala is quite harsh and direct in its criticism. On page 631, the report states, "Due primarily to a lack of will, authorities did not stem growing violence during 1990. Reliable evidence indicates that security forces and civil patrols committed, with almost total impunity, a majority of the major human rights abuses.").

influence and presence.[6] Even the Organization of American States (OAS) and its human rights organ, the Inter-American Court of Human Rights (the Court), expanded activities and influence.[7]

The question this paper will address is this: with so much change in Latin America, should the United States ratify the American Convention on Human Rights or let this "Pact of San Jose" continue to gather dust on the shelves of the Senate Foreign Relations Committee? A recent letter from Assistant Secretary of State Janet Mullins, to the Chairman of the Senate Foreign Relations Committee, Claiborne Pell, ranked the Convention behind 27 other treaties: four treaties needed "urgent approval," 20 treaties had a "high priority" and three treaties were "generally desirable."[8] Mullins categorized the Convention as simply "under review" where it had languished under the Administration of President Reagan.[9] In recent years, the State Department has recommended Senate action on at least one international human rights treaty per year and decided to focus all efforts on the ratification of the U.N. Covenant on Civil and Political Rights for 1991.[10]

6 *See* Human Rights Watch, World Report 1990. On page 110, the report details Americas Watch's expanding reports on Mexico, Venezuela, Argentina and Bolivia, *See also* Amnesty International Report 1990.

7 Einaudi, Cable, May 6, 1991, "Key Issues Cable for the 21st OAS General Assembly, Santiago, Chile, June 3-7." In the cable, Amb. Einaudi stated that the OAS working group on human rights devoted 19 sessions to strengthening OAS human rights work. He went on to show that the Inter-American Commission on Human Rights report was its biggest ever, with over 800 cases now pending before the Commission.

8 Mullins, Letter to Sen. Claiborne Pell, Chairman of the Senate Foreign Relations Committee, May, 1990.

9 *Id.*

10 Memo to the Secretary, June 5, 1991 (The memo stated that five human rights conventions submitted by the Carter Administration were currently pending before the U.S. Senate. These are: 1) the International Covenant on Civil and Political Rights, 2) the International Covenant on Economic, Social and Cultural rights, 3) the International Convention of the Elimination of All Forms of Racial Discrimination, 4) the American Convention on Human Rights and 5) the Covenant on the Elimination of all forms of Discrimination Against Women. The Senate held a single set of hearings on these treaties, November 14, 15, 16 and 19, 1979, and made no further action. A sixth treaty, the Convention on the Rights of the Child, was approved by the U.N. General Assembly in November, 1989, but has not been signed by the U.S. The memo supported submission of the International Covenant on Civil and Political rights to "underscore our

Is this the right decision and can anything be done to help or improve the Convention's chances for U.S. ratification? To answer this question, this paper will first examine the history of the Convention and the Inter-American system that produced it. It will then look at the specific problems the U.S. State Department and Senate identified in the text of the Convention and potential solutions. Next, the paper will examine the developments in the operation of the Convention and the effect these changes may have on chances for ratification. Finally, the paper will examine possible remedies including resubmission, renegotiation and an innovative use of the Convention's grant of advisory jurisdiction to address U.S. concerns prior to U.S. ratification. The paper will conclude by showing that there are significant steps the Inter-American system can take, on its own, to improve the chances of full U.S. ratification and leadership in the cause of human rights in the Western Hemisphere.

History Behind the Convention

While the origins of the Inter-American system stretch back to the time of Simon Bolivar's 1826 "First Congress of American States," its structure was largely created during the last 100 years.[11] The predecessor to the OAS, the Pan American Union, was founded in 1890 with 11 sporadically scheduled Inter-American conferences held between the foundation of the Union and the end of the Second World War.[12] The real outlines of the Inter-American system emerged at the 1948 Inter-American Conference at Bogota where, under the new Chapter VIII of the U.N. Charter, the OAS was created as a U.N. sanctioned "regional arrangement."[13] The Charter contained a number of general human rights provisions. The Inter-American Court's President,

human rights commitments and add significantly to our capacity to promote our concepts of civil and political rights at the international level.").

11 A. Robertson & J. Merrills, *Human Rights in the World*, 160.

12 *Id.* at 162.

13 *Id., See also* Buergenthal, *The Revised OAS Charter and the Protection of Human Rights*, 69 Am. J. Int'l L. 828, (1975) (citing the original Charter of the Organization of American States [hereinafter [1948] OAS Charter] signed at Bogota, Colombia, on April 30, 1948, and entered into force on December 13, 1951, [1951] 2 UST 2394, TIAS No. 2361, 199 UNTS 48, 46 AJIL Supp. 43 (1952).)

Thomas Buergenthal, notes that the most important of these was Article 5(j) declaring "the American States proclaim the fundamental rights of the individual without distinction as to race, nationality, creed or sex."[14] Unfortunately, the Charter did not define these rights nor establish a framework for their enforcement.[15]

The same conference also produced the first prototype Inter-American legal instrument on human rights: the American Declaration on the Rights and Duties of Man.[16] The Declaration stated that "the international protection of the rights of man should be the principal guide of an evolving American law."[17] Following the general mood of most human rights conferences in the late 1940s, this conference did not put teeth behind this commitment. The conference went on record understanding that the Charter's provision 5(j) did not convert the American Declaration into any kind of contractual obligation.[18] The Inter-American Judicial Committee affirmed this interpretation, stating the Declaration lacked the status of "positive substantive law."[19]

Efforts to promote an institutional framework to strengthen human rights floundered for eight years[20] until the 1959 Fifth Meeting of Consultation of Ministers of Foreign Affairs.[21] Ministers at the 1959 meeting created the Inter-American Commission on Human Rights, composed of seven members selected in their personal capacity dedicated to "promote respect for such rights."[22] Since its creation, the

14 Buergenthal, *supra* note 13.

15 *Id.*

16 *Id.* at 829. (citing Res. XXX, *Final Act of the Ninth International Conference of American States, Bogota, Colombia, March 30-May 2, 1948*, at 38, P.A.U. (1948).

17 *Id.*

18 *Id.*

19 *Id.* (citing the Inter-American Juridical Committee, Report to the Inter-American Council of Jurists Concerning Resolution XXXI of the Bogota Conference, September 26, 1949, reprinted in Pan American Union, Human Rights in the American States 163, at 164 (1960)).

20 *Id.* (for a good review of what happened during this "lost decade" see I-ACHR, The Organization of American States and Human Rights: Activities of the Inter-American Commission on Human Rights 1960-1967, at 3-9 (1972)).

21 *Id.*

22 Organization of American States, Annual Report of the Inter-American Commission on Human Rights 1990-1991, 11 (1991).

Commission has held 79 sessions, dedicated to promoting human rights as spelled out in the American Declaration.[23] The Commission was strengthened in 1965 by allowing individuals to petition the Commission and, later, designating it as a "principal organ" of the OAS.[24] The Commission continues a major part of its work through the mandates that predated the 1969 signing of the American Convention on Human Rights ("the Convention").[25] In return for these advances, Ministers restricted the Commission political rights (with less emphasis on economic and cultural rights) and individual cases only where domestic remedies were exhausted.[26] Due to limited resources, the Commission largely monitored the general situation on human rights rather than pursue individual cases.[27]

The 1959 meeting also produced a "conclusion" stating "eleven years after the American Declaration of the Rights and Duties of Man was proclaimed, the climate in the hemisphere is ready for the conclusion of a Convention..."[28] The Inter-American Council of Jurists drafted a convention which was considered along with two other drafts prepared by Chile and Uruguay at the 1965 Second Special Inter-American Conference held in Rio de Janeiro.[29] Ministers resolved in Rio to have the Commission review the different drafts and submit their own proposals.[30] Despite the conclusion of the U.N. Covenants at the December 1966 U.N. General Assembly covering much of the ground expected to be dealt with in the American Convention, the Council of the OAS resolved to circulate a revised draft of the Convention and call a Specialized Conference on Human Rights in San Jose, Costa Rica, for November of 1969.[31] In its final report, the Commission chose to not

23 *Id.*

24 Buergenthal, *supra* note 13, at 831 (citing Res. XXII, *Second Special Inter-American Conference, Rio de Janeiro, Brazil, November 17-30, 1965, Final Act*, OAS Off. Rec., OEA/Ser.C/I.13 (English) at 32-34 (1965)).

25 *Id.*

26 Peddicord, *The American Convention on Human Rights: Potential Defects and Remedies*, 1 Tex. Int'l L.J. 142 (1984).

27 Medina, *the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights: Refections on a Joint Venture*, 12 Human Rights Quarterly 442 (1990).

28 Robertson, *supra* note 11.

29 *Id.*

30 *Id.*

31 *Id.*

emphasize economic and social rights by simply "encouraging" action rather than imposing immediate domestic obligations.[32]

The American Convention on Human Rights

The 1969 American Convention on Human Rights[33] requires States Parties to undertake domestic legislation, where necessary, to give effect to twenty-seven rights and freedoms.[34] Twenty-one of these rights were included in the U.N. Covenant on Civil and Political Rights.[35] The

32 *Id.*

33 American Convention on Human Rights, Nov. 22, 1969, 9 I.L.M. 673 (1970), *see also*, OEA/Ser. K/XVI/1.1, Doc. 65, Rev. 1 Corr. 1 (1970) [hereinafter cited as the American Convention], *reprinted in Human Rights Documents, U.S. House of Representatives, Committee on Foreign Affairs*, 169 (1983), *see also* B. Carter & P. Trimble, International Law Selected Documents 451 (1991). (The Convention was signed on November 22, 1969 and entered into force on July 18, 1978 on the deposit of the eleventh instrument of ratification. As of this writing, the States Parties are as follows: Argentina, Barbados, Bolivia, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Trinidad and Tobago, Uruguay and Venezuela (23). Of these Argentina, Chile, Colombia, Costa Rica, Ecuador, Jamaica, Peru, Uruguay and Venezuela (9) recognize the competence of the Commission to receive interstate communications in accordance with Article 45 of the American Convention. Argentina, Chile, Colombia, Costa Rica, Ecuador, Guatemala, Honduras, Nicaragua, Panama, Peru, Suriname, Trinidad and Tobago, Uruguay, and Venezuela (14) recognize the mandatory jurisdiction of the Inter-American Court of Human Rights under Article 62 of the Convention. OEA/Ser.A/16, No. 36, Treaty Series.)

34 Article II-XXV, the American Convention, Nov. 22, 1969, 9 I.L.M. 673 (1970).

35 Robertson, *supra* note 11, at 166 (Robertson summarized these rights as follows:

1. The right to life
2. Freedom from torture and inhuman treatment.
3. Freedom from slavery and servitude.
4. The right to liberty and security.
5. The right to a fair trail.
6. Freedom from retroactivity of the criminal law.
7. The right to respect for private and family life.

Convention went far beyond specifying rights American signatories were meant to protect. It also redefined new roles for the Commission and created the Inter-American Court of Human Rights.[36]

Under the Convention, the Commission now had seven roles: (1) promoting human rights in all OAS member states; (2) assisting in the drafting of human rights documents; (3) advising members states of the OAS; (4) preparing country reports; (5) mediating disputes over serious human rights problems; (6) handling individual complaints and initiating cases on it own motion and (7) participating and handling cases and advisory opinions before the Court.[37] By virtue of its status in the OAS Charter, the Commission retained its jurisdiction over states

8. Freedom of conscience and religion.
9. Freedom of thought and expression.
10. Freedom of assembly.
11. Freedom of association.
12. Freedom to marry and found a family.
13. Freedom of movement.
14. The right to free elections.
15. The right to an effective remedy if one's rights are violated.
16. The right to recognition as a person before the law.
17. The right to compensation for miscarriage of justice.
18. The right to a name.
19. The rights of the child.
20. The right of nationality.
21. The right to equality before the law.

The five additional American rights not included in the United Nations Covenant are:

22. The right of property.
23. Freedom from exile (though the Covenant provides in Art. 12 that "No one shall be arbitrarily deprived of the right to enter his own country.")
24. Prohibition of the collective expulsion of aliens.
25. The right of reply.
26. The right of asylum.

Some minority rights, included in the U.N. Covenant, and the right to education, included in the European Convention were not included in the American Convention).

36 Articles 34-73, the American Convention, November 22, 1969, 9 I.L.M. 673.

37 Medina, *supra* note 27, at 443.

that had not ratified the Convention and even bolstered this authority by virtue of OAS Charter Article 112 that defined the role of the Commission through the Convention.[38] In addition, the Convention now gave the Commission compulsory jurisdiction to consider petitions of individuals, group or non-governmental organizations alleging violations of the Convention and the authority to require States Parties who had ratified the Convention to cooperate and furnish "all necessary facilities."[39] The right of state petition against another state was limited to cases where both states had recognized the Commission's competence to do so.[40] Thus the drafters hoped to limit the use of the Commission as a political forum that one state may use against another while allowing individual petitions necessary to give practical effects to the international recognition of human rights.[41]

The Convention gave the Commission a new role in relation to the Court it would be creating. Petitions granted within the rules of admissibility (exhaustion of domestic remedies, filing within six months of a final decision, and non-involvement of other international bodies), were then investigated by the Commission, settlement offered and a report issued.[42] The Commission could leave the case there[43] or refer it to the new Inter-American Court of Human Rights.[44]

The new Court was created over the objections of the Mexican government and at the urging of the United States.[45] It has seven judges who are proposed for seven year terms by parties to the Convention but

38 Peddicord, *supra* note 26, at 144.

39 *Id.*, *see also* Robertson, *supra* note 11 (It is interesting to note that this compulsory jurisdiction is one of the outstanding features of the American Convention over the European Convention. It is ironic that in light of the many American objections to the Convention, it was the United States that argued strongly for the obligatory jurisdiction at the 1969 San Jose Conference.).

40 *Id.*, at 145 (In contrast to the European Convention which makes individual petitions optional and state petitions mandatory.).

41 *Id.*

42 *Id.* at 176 (Articles 46-50 of the Convention).

43 At the assistance of many representatives at the Conference who did not want to give the Commission powers to make judgments. *See*, Robertson, *supra* note 11 at 177.

44 Chapter VIII, the American Convention, Nov, 22, 1969, 9 I.L.M. 673 (1970).

45 Robertson, *supra* note 11, at 178 (the U.S. did ask that the jurisdiction of the Court be optional.).

may be of any OAS nationality.[46] The Conference rejected the precedent of allowing individuals to refer a case to the Court if dissatisfied with the Commission and only allowed States parties and the Commission to submit cases.[47] The Court has two types of jurisdiction - contentious and advisory.[48] Its contentious jurisdiction allows the Court to rule against a State Party if it finds a violation and order compensation.[49] In cases of "extreme urgency and gravity," it can order provisional measures even if a case is not before the Court but action is recommended by the Commission.[50] Under Article 62 of the Convention, this jurisdiction is optional.[51]

Unlike U.S. federal courts which only hear "cases" or "controversies," the Inter-American Court of Human Rights also has advisory jurisdiction for use by member states of the OAS and its organs.[52] Article 64(1) extends to the interpretation of "the Convention or... other treaties concerning the protection of human rights in the American states."[53] By virtue of the Court's first advisory decision, the *Other Treaties case* handed down in 1982, the Court ruled that this provision conferred the "power to interpret any treaty as long as it was directly related to the protection of human rights in a Member State of the Inter-

46 *Id.*

47 *Id.*

48 Articles 63 and 64, the American Convention, 9 I.L.M. 673 (1970).

49 *Id.*

50 *Id.*

51 *Id (See e.g.* Memo of the OAS, OEA/2.2/10/91 announcing the May 28, 1991, receipt of the instrument of accession of the government of Trinidad and Tobago which recognized the jurisdiction of the Court "only to such extent that recognition is consistent with the relevant sections of the constitution of the Republic of Trinidad and Tobago; and provided that any judgment of the Court does not infringe, create or abolish any existing rights or duties of any private citizen.").

52 *Id. See also,* Buergenthal, *the Advisory Practice of the Inter-American Human Rights Court,* 79 Am. J. Int'l Law 1 (1985) (Article 51 of the OAS Charter lists the organs of the OAS: 1) the General Assembly, 2) the Meeting of Consultation of Ministers of Foreign Affairs, 3) the Permanent Council of the OAS, 4) the Inter-American Economic and Social Council, 5) the Inter-American Council for Education, Science and Culture, 6) the Inter-American Juridical Committee, 7) the Inter-American Commission on Human rights, 8) the General Secretariat and 9) the Specialized Conferences and Organizations.).

53 Buergenthal, *supra* note 52 at 5.

American system."[54] The Court went on to write "this jurisdiction is intended to assist the American States in fulfilling their international human rights obligation and to assist the different organs of the Inter-American system to carry out the functions assigned to them in this field."[55] Consequently, "any request for an advisory opinion, which has another purpose, would weaken the system established by the Convention and would distort the advisory jurisdiction of the Court."[56] Requests for advisory opinions have not been many, running about one per year.[57]

U.S. Consideration

While the Convention was negotiated with full U.S. participation in 1969, the U.S. did not sign it.[58] It took another ten years until President

54 *Id.* (citing "Other Treaties" Subject to the Consultative Jurisdiction of the Court (Art. 64 American Convention on Human Rights), Advisory Opinion No. OC-1/82 of Sept. 24, 1982 [hereinafter cited as "Other Treaties"], Inter-American Court of Human Rights, ser. A: Judgments and Opinions, No. 1, para. 14 (1982), *reprinted in* 3 T. Buergenthal / R. Norris, Human Rights: the Inter-American System (1982).).

55 *Id.*

56 *Id.*

57 Robertson, *supra* note 11 (of the first eight advisory opinions, five were given in respone to requests by States [three for Costa Rica and one each for Peru and Uruguay] and three were requested by the Inter-American Commission on Human Rights.).

58 Monsama, State Department Questions and Answers on Signing the IA Human Rights Convention, November 26, 1969 (12 of the 19 delegations in San Jose signed the Convention. The State Department Q & A sheet stated:

"The United States was one of seven countries that did not sign the Convention at the conference. (The other countries that did not sign were Argentina, Brazil, Mexico, Peru, Dominican Republic and Trinidad/Tobago.) At the time when the Council of the Organization of American States was preparing the regulations at the Conference, it was contemplated that some delegations might not be in a position to sign the Convention at the closing session of the conference. This contingency was therefore expressly provided in the Regulations adopted by the Council of the OAS. The regulations provide that the Convention shall remain open for signature at the Pan American Union by those who did not sign at the Conference.

Carter announced that "this blank place on the page has been here for a long time, and it's with a great deal of pleasure that I sign on behalf of the United States this Convention..."[59] This action set off a number of criticisms of the Convention and "a little confusion at the White House with respect to this Convention."[60] Carter's advisors initially considered sending the Convention separately to the Senate but then rejected the idea and included it with three other multilateral treaties because "simultaneous or near simultaneous transmission would diminish the prospect of attention being focused exclusively on the Inter-American Convention."[61]

The fact that the U.S. did not sign at the closing session does not mean that the U.S. is not interested in the Convention or has decided not to sign it. It simply means that there was not sufficient time to study the matter before the closing session of the Conference. In view of the comprehensive nature of the Convention, and its significance for the future, the U.S. gave the draft Convention careful study prior to the Conference, with participation of all interested agencies of our government. We must now study the completed text looking toward full understanding of the obligations involved prior to a decision on signature.").

59 1 Department of State Bulletin XXVII, No. 1984, 28 (1977) (remarks delivered June 1, 1977 at the Pan American Union) (The criticism of this action began only two weeks later. In a letter to editor, future New Jersey Congressman Chris Smith, then Executive Director of the New Jersey Right to Life Committee, wrote:

"In the not to distant future, President Carter may be heading for worldwide embarrassment. For on June 1 of this year, he signed the Inter-American Convention on Human Rights. Chapter 2, Article IV of that accord clearly states: 'Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception.'

It seems quite possible that a president or premier of one of our neighbor American states may soon initiate a human rights campaign aimed at the United States. And as incredible as it may seem, we would be the international outlaws and oppressors of human rights.

A prudent President Carter should sound the call for human rights for all human beings including the unborn.")

60 Hansell, Memorandum to Mr. Rovine, Department of State Assistant Legal Advisor, August 22, 1977.

61 Hansell, Memorandum to Mr. Rovine, Department of State Assistant Legal Advisor, October 3, 1977 (Carter's advisors clearly felt that the American Convention would clearly attract the most hostile attention. The Convention was eventually transmitted to the Senate on February 23, 1978

When the President submitted the Convention (including declarations recognizing the competence of the Commission and Court) for Senate ratification, he included 13 reservations.[62] In condensed form, the reservations accomplished the following:

1. The U.S. declared the provisions of Articles 1 through 32 (the heart of the Convention's rights) not self-executing, therefore requiring implementing legislation before creating a cause of action.

2. The U.S. considered paragraphs (4) and (6) of Article 5 [providing for separate confinement and treatment of accused and convicted persons] as goals to be achieved progressively rather than through immediate implementation, and with respect to paragraph (5) [requiring that minors be separated from adults and brought before special tribunals], reserves the right in appropriate cases to subject minors to procedures and penalties applicable to adults.

3. The U.S. understands that subparagraph (2)(e) of Article 8 does not require the provision of court-appointed counsel for petty offenses for which imprisonment will not be imposed or when the defendant is financially able to retain counsel; it further understands that subparagraph (2)(f) does not forbid requiring an indigent defendant to make a showing that the witness is necessary in order for his attendance to be compelled by the court. The U.S. understands that the prohibition on double jeopardy contained in paragraph (4) is applicable only when the judgment of acquittal has been rendered by a court of the same governmental unit, whether the federal government or constituent unit, which is seeking a new trial for the same cause.

4. The U.S. considers the provisions of paragraphs (4) and (5) of Article 17 [prohibiting discrimination against illegitimate children and obligating parties to eliminate discrimination between spouses during marriage or in the event of dissolution] as goals to be achieved progressively rather than through immediate implementation.

5. The U.S. considers that its adherence to the Protocol Relating to the Status of Refugees constitutes compliance with the obligation set forth in paragraph (8) of Article 22 [prohibiting deportation or return of an alien to a country in which his life or freedom would be endangered because of his race, nationality, social status or political opinions].

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along with three other multilateral human rights treaties: the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights and the International Covenant of Economic, Social and Cultural Rights.).

62 Brown, Congressional Research Service memo to the Senate Committee on Foreign Relations November 7, 1979, Annex.

The State Department also recommended the following reservations:

6. U.S. adherence to Article 4 [relating to right to life "from the moment of conception" and including provisions on capital punishment] is subjected to the Constitution and other law of the U.S.

7. The U.S. does not adhere to the third sentence of Article 9 [requiring retroactive application of the benefit of any statutory reductions in the penalty for crimes].

8. [Relating to the freedom of thought and expression as enunciated in Article 13] The U.S. reserves the right to permit prior restraints in strictly defined circumstances where the right to judicial review is immediately available; the U.S. does not adhere to paragraph (5) or Article 13 [making any propaganda for war or advocacy of national, racial or religious hatred constituting incitements to lawless violence as offenses punishable by law].

9. The U.S. does not adhere to paragraph (1) of Article 14 [providing the right of reply via a legally regulated communications medium to inaccurate or offensive statements made via that communications outlet] and understands that paragraph (3) of that Article [requiring all communications outlets to have a responsible person not protected by immunities or special privileges] applies only to non-governmental entities.

Also included for the legislative history was one last reservation:

10. The second sentence of paragraph (7) of Article 7 [providing that the principle that no one is to be detained for debt is not to limit the orders of a competent judicial authority issued in for nonfulfillment of duties of support] applies to the orders of any competent judicial authority, whether or not issued for fulfillment of duties of support.[63]

These reservations, while specifically addressing certain concerns, did not fully cover worries about the effect the Convention might have on U.S. law. The State Department's Legal Advisor, Robert B. Owen, realized that many feared "these treaties could be used to distort the constitutional legislative standards that many feared "these treaties could be used to distort the constitutional legislative standards that shape our federal and our state governments' treatment of individuals within the United States."[64] Owen divided the criticism into three categories: first, individuals would be able to invoke the treaties to change laws outside the normal domestic process, second, the treaties would alter the domestic balance between federal and state governments

63 *Id.*

64 *International Human Rights Treaties, Hearings Before the Committee on Foreign Relations, United States Senate,* 96th Cong., 1st Sess. 29 (1979).

and third, the treaty-making power should not alter the relations between domestic parties.[65]

A treaty cannot violate a specific provision of the U.S. Constitution.[66] Without treaty reservations, no violation of the Constitution is permitted but the U.S. could be in default of international obligations.[67] The Supremacy Clause provides that treaties are not only the supreme law of the land but may be applied by courts without implementing legislation.[68] Some treaty provisions may therefore be self-executing,[69] while others are not, requiring implementing legislation.[70] Self-execution is influenced *inter alia* by the Executive branch's interpretation, but while these views are given great weight, the issue is ultimately one for the courts to decide.[71] In determining whether or not a treaty is self-executing, the courts will first look to the language of the treaty and intent of the parties.[72] Article 2 of the Convention seems to make it clear that it is not self-executing. The Article states:

> "Where the exercise of any of the rights or freedoms referred to in Article I is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms."[73]

Walter Landry, who was the State Department action officer responsible for preparing the U.S. position prior to the San Jose Conference and was a member of the U.S. delegation, testified that the U.S. inserted a carefully worded statement in the record of the Conference making the interpretation of this point clear.[74] The Carter Administration

65 *Id.*

66 Reid v. Covert, 354 U.S. 1 (1957).

67 *International Human Rights Treaties, supra* note 64 at 39.

68 Foster v. Neilson, 27 U.S. (2 Pet.) 253 (1829).

69 *See, e.g.,* Asakura v. City of Seattle, 256 U.S. 332 (1984).

70 Weissbrodt, *United States Ratification of the Human Rights Covenants,* 63 Minn. L. Rev. 1 (1978).

71 *See* Lessee of Pollard's Heirs v. Kibbe, 39 U.S. (14 Pet.) 353 (1840).

72 Foster, *supra* note 68.

73 Article 2, the American Convention, Nov, 22, 1969, 9 I.L.M. 673 (1970).

74 *International Human Rights Treaties, supra* note 64 (citing the Report of the United States Delegation to the Inter-American Specialized Conference on Human Rights, San Jose, Costa Rica, November 9-22, 1969 (Washington: U.S. Department of State, April 22, 1979) at 17.

reservation on this point simply reemphasizes the text of the Convention and the Conference record on this point. It seems clear that on this point, ratification of the Convention would change no substantive U.S. law without further implementing legislation.

Fears also arose concerning the treaty's possible effect changing the domestic balance between state and federal governments. Treaties can be the basis for federal legislation on a matter normally covered by state law.[75] In drafting the Convention, the U.S. delegation was acutely aware of the necessity of limiting the effect of the treaty to national governments in federal states rather than having it apply "to all parts of the federal states without any limitations."[76] Therefore, the first two paragraphs of Article 28, the Federal Clause, were added as the result of a U.S. initiative.[77] The resulting provision read as follows:

1. "Where a State Party is constituted as a federal state, the national government of such State Party shall *implement* [emphasis added] all the provisions of the Convention over whose subject matter is exercises legislative and judicial jurisdiction.

2. With respect to the provisions over whose subject matter the constituent units of the federal state have jurisdiction, the national government shall immediately take suitable measures, *in accordance with its constitution and its law*, [emphasis added] to the end that the competent authorities of the constituent units may adopt appropriate provisions for the fulfillment of this Convention."[78]

Landry wrote "this means, in effect, a federal question would have had to be raised in the courts and federal court remedies would have to be exhausted. As I see it, there would be no remedy through the American Convention where only state jurisdiction is involved and there is no federal question raised."[79] The American Bar Association wrote:

> "The American Convention does not obligate the U.S. Government to exercise jurisdiction over subject matter which it would not exercise authority in the absence of the Convention. The U.S. is merely obligated to take suitable measures to the end that state and local authorities may adopt provisions for the fulfillment of this Convention. Suitable measures could consist of recommendations to the states, for example. The determination of what measures are suitable is a matter for internal decision. The Convention does not require enactment of legislation bringing new subject matter within the federal ambit."[80]

75 Missouri v. Holland, 252 U.S. 416 (1920).

76 *International Human Rights Treaties, supra* note 64 at 241.

77 *Id.*

78 Article 28, the American Convention, 9 I.L.M. 673 (1970).

79 *International Human Rights Treaties, supra* note 64 at 240.

President Carter's reservation simply repeats this conclusion, leaving no doubt that the Convention will not change Federal/State relations.

Finally, some argued that these human rights treaties regulated domestic affairs and therefore went beyond the treaty making power of the federal government.[81] The Supreme Court has said that the "treaty making power of the United States is not limited by any express provision of the Constitution, and, though it does not extend 'so far as to authorize what the Constitution forbids,' it does extend to all proper subjects of negotiation between our government and other nations."[82] While "proper subjects" have not been defined, the *Restatement of Foreign Relations Law* extends this power to any "matter of international concern."[83] In testimony on the Convention, the State Department highlighted prominent treaties that affected U.S. domestic law, from the 1926 Slavery Convention to the Helsinki Accords.[84] Given these treaties, the commitment of the Convention seems well within the configuration of the present day treaty power.

In the end, political concerns may have played a more important role in delaying ratification of the Convention. In his memo to the State Department's Assistant Legal Advisor, Herbert Hansell wrote "he [i.e. Robert Pastor of the National Security Council] understands that the Inter-American Convention would probably not be acted upon by the SFRC [Senate Foreign Relations Committee], and certainly not reported out, prior to Senate debate on the Panama Canal Treaties."[85] The U.S. government's commitment to speedy ratification ended with the Carter Administration. The Reagan Administration subsequently classified the Convention "under study" where the Bush Administration let it remain.[86]

80 *Id.*

81 *Id.* at 30.

82 Asakura v. Seattle, 265 U.S. 341 (1923), *see also* Geofroy v. Riggs, 133 U.S. 258 (1899), Ware v. Hylton, 3 Dall. 199 (1796).

83 *Restatement of Foreign Relations Law*, sec. 40, comment b at 117 (1965).

84 *Id.*

85 Hansell, Memo to Mr. Rovine, Department of State Assistant Legal Advisor, October 3, 1977.

86 Mullins, Letter to Sen. Claiborne Pell, *supra* note 8.

New Developments in the Convention (Without Uncle Sam)

Despite the U.S. decision not to ratify, enough States Parties did ratify the Convention to trigger its entry into force in July of 1978.[87] This meant that the development of the Commission and the creation of the Court would happen without direct official U.S. involvement.[88]

The Commission was confronted during this time with what is perhaps the most contentious issue for North Americans: a petition (the "Baby Boy case") by U.S. individuals challenging laws on abortion.[89] The Commission found that the petitioners charge that U.S. law violated the provision in the American Declaration of the Rights and Duties of Man that "every human being has the right to life..." was not supported by the Declaration or the Conference record.[90] In fact, the Commission found that delegates realized a ban on abortion from the moment of conception would have invalidated laws in 11 OAS member states and therefore rejected it.[91] The petitioners also charged that the Convention's Article 4, protecting the right to life "...by law and, in general, from the moment of conception."[92] The Commission rejected this argument noting that the delegates of the San Jose Conference decided to add

87 OEA/Ser.A/16, No. 36, Treaty Series, *supra* note 33.

88 *See generally* Buergenthal, *Human Rights in the Americas: View from the Inter-American Court*, 2 Conn. J. Int'l. L. 303 (1987) (despite the fact that the U.S. did not sign on to the Convention which created the Court, Buergenthal, who was the I. T. Cohen Professor of Human Rights at the Emory University School of Law, was chosen in his personal capacity as the President of the Inter-American Court of Human Rights. Therefore, while the U.S. has no official input into the process, Americans, and especially Buergenthal, played key roles in its development. Unfortunately, Buergenthal's tenure will finish in December 1991. Due to the failure of the Canadians to win selection of their candidate at the 1991 OAS General Assembly, the Court will have no North American Common Law Jurist for the first time in its history.).

89 Annual Report of the Inter-American Commission on Human Rights 1980-1981, 25, OEA. Ser. L/V/II.54, doc.9 rev. 1(1981) (citing Resolution No. 23/81, Case 2141 (United States) March 6, 1981).

90 *Id.*

91 *Id.* (These states were Argentina, Costa Rica, Brazil, Ecuador, Mexico, Nicaragua, Paraguay, Peru, Uruguay, Venezuela and the U.S. The Commission actually listed the statutes that would have been invalidated.).

92 *Id.*

"from the moment of conception" only if "in general" modified this phrase to accommodate all of the states that did permit it.[93] The Conference went on to reject a motion from Ecuador to remove "in general" from the text of the Convention.[94] Therefore, following this "Baby Boy" case before the Commission, the charge that U.S. ratification of the Convention would change U.S. abortion law is directly refuted. Beyond this interpretation, any effort would also have to surmount the Convention's non-self-execution provision of Article 2, any U.S. reservation to that effect and the federal/state clause of Article 28 to implement a ban on abortion (not to mention contradicting the laws of 11 other OAS member states). Accomplishing all of this would be no less than a legal miracle.

After the Court was actually established, Costa Rica brought it its first contentious jurisdiction case, asking the Court to investigate alleged violations of the Costa Rican government.[95] The request was unique because the Costa Rican government waived investigation by the Commission and the requirement for the exhaustion of all domestic remedies.[96] While possibly a well-intentioned effort to boost the prestige of the Court by giving it an early contentious case, the effort failed when the Court ruled that a state could not waive the Commission's admissibility, investigation and report procedures because these affected the benefits of individuals as well as states.[97]

The Commission then submitted a number of advisory cases to outline the scope of the Court's role. In its first advisory case (the *Other Treaties Case*), Peru requested an opinion on the breath of the Article 64(1) referring to advisory jurisdiction over "other treaties concerning the protection of human rights in the American states."[98] The Court ruled that any human rights treaty to which American States are parties can be the subject of an advisory opinion.[99] Its second advisory case was

93 *Id.*

94 *Id.* at 42.

95 Medina, *supra* note 27 at 449 (citing In the Matter of Viviana Gallardo et al., No. G 101/81. Series A (1984) and Series B (1986).

96 *Id.*

97 *Id., see* Matter of Viviana Gallardo, No. G 101/81, Inter-Am. Ct. H.R. (Decision of Nov. 13, 1981).

98 Robertson, *supra* note 11 at 182, see "Other Treaties" Subject to the Advisory Jurisdiction of the Court, Advisory Opinion No. OC-1/82, Inter-Am. Ct. H.R. Judgments and Opinions (ser. A) No. 1 (1982).

99 *Id.*

far more important for U.S. concerns. In the *Effect of Reservations case*, the Commission asked the Court to clarify the unclear provisions of Article 75 to determine whether reservations to the Convention are subject of acceptance by other parties.[100] The Court answered that they are not, writing "[T]he States [Parties] can be deemed to submit themselves to a legal order within which they, for the common good, assume various obligations, not in relation to other States, but towards all individuals within their jurisdiction."[101] In its third advisory opinion, *Restrictions on the Death Penalty case*, Guatemala argued that since they had not accepted the jurisdiction of the Court in contentious cases, similar questions regarding the Guatemala's special court death sentences and the Convention's provisions restricting the death penalty could not be answered in an advisory case.[102] The Court ruled that advisory jurisdiction was clearly allowed and paved the way for the Court to render other advisory opinions on matters that would have come under contentious jurisdiction had the State Party recognized it.[103]

The Court also rendered advisory opinions on licensing journalists (which it upheld), the laws the Convention dealt with (i.e. those passed by democratic legislatures and not the entire body of law), further refinements on the right of reply and *habeas corpus* (which the Court found not suspendable even under Article 27(1) of the Convention).[104] Then in 1986 and 1987, the Court reached for, but did not fully attain, its

100 *Id.* at 183, *see* The Effect of Reservations on the Entry into force of the American Convention, Advisory Opinion No. OC-2.82, Inter-Am. Ct. H.R. Judgments and Opinions (ser. a) No. 2 (1982).

101 *Id.*

102 *Id.* at 184, *see also* Medina, *supra* note 27 at 451 and Restrictions on the Death Penalty, Advisory Opinion No. OC-3/83, Inter-Am. Ct. H.R. Judgments and Opinions (ser A) No. 3 (1983).

103 *Id.*

104 *Id.* at 186-7, *see also* Judicial Guarantees in States of Emergency, Advisory Opinion No, OC-9/87, Inter-Am. Ct. H.R. Judgments and Opinions (ser. A) No. 9 (1987), Habeas Corpus in Emergency Situations, Advisory Opinion No. OC-8/87, Inter-Am. Ct. H.R. Judgments and Opinions (ser. A) No. 8 (1987), Enforceability of the Right of Reply or Correction, Advisory Opinion No. OC-7/86, Inter-Am. Ct. H.R. Judgments and Opinions (ser. A) No. 7 (1986), the Word "Laws" in Article 30 of the American Convention on Human Rights, Advisory Opinion No. OC-6/86, Inter-Am. Ct. H.R. Judgments and Opinions, (ser. A) No. 6, (1986), Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism, Advisory Opinion No. OC-5/85, Inter-Am. Ct. H.R. Judgments and Opinions (ser. A) No. 5 (1985).

full potential when it ruled against a State Party in a contentious case and against the United States in an advisory opinion.

After years of difficult relations with the Court, the Commission fully embraced its role in cooperation with the Court when it referred three contentious cases to the Court in 1986.[105] The most prominent case involved the disappearance of a student at Honduras's National Autonomous University who was allegedly kidnapped by the National Office of Investigations and G-2 of the Armed Forces, interrogated and tortured.[106] After two years, the unanimous Court found, in the *Velásquez Rodríguez case*, that the government of Honduras had violated the rights of personal liberty, humane treatment and life guaranteed by the Convention.[107] The Court also determined the scope and standard of its review, admissibility and weight of evidence, and the burden and degree of proof.[108] Most importantly, the Court followed up on its monetary awards in these related cases totaling 1,400,000 lempiras ($280,000USD) to account for the two devaluations that occurred between the award and the government's continuing reluctance to pay.[109]

In 1987, the Commission considered the petition of 17 year-old James Terry Roach, who was condemned to die by the South Carolina courts for his involvement in the armed robbery, rape and murder of a fourteen year-old girl and her seventeen year-old boyfriend.[110] This may have triggered the U.S. Supreme Court's own decision to finally consider the validity of juvenile death sentences.[111] In the end, while a plurality of the Supreme Court found that execution of juveniles under 16 years of age violated the Constitution's prohibition against cruel and unusual

105 Medina, *supra* note 27 at 453.

106 Shelton, *Judicial Review of State Action by International Courts*, 12 Fordham Int'l. L. 361, 366 (1989).

107 The Velasquez Rodriguez case, Inter-Am. Ct. H.R., July 29, 1988 (merits).

108 *Id., see also*, Dwyer, *The Inter-American Court of Human Rights: Towards Establishing an Effective Regional Contentious Jurisdiction*, 13 Boston Col. Int'l. & Comp. L. Rev. 127 (1990).

109 Americas Watch, *Inter-American Court of Human Rights Wraps up First Adversarial Case*, September 5, 1990.

110 Weissbrodt, *Execution of Juvenile Offenders by the United States Violated International Human Rights Law*, 3 Am U. J. Int'l. L. & Pol'y, 339, 340 (1988).

111 Thompson v. Oklahoma, 107 S. Ct. 1284 (1987), *vacated*, 56 U.S.L.W. 4892 (U.S. Jun. 29, 1988).

punishment,[112] the Commission found that while there was only an "emerging consensus" against under 18 executions, the differing sentences of each state "results in a pattern of legislative arbitrariness throughout the United States which results in the arbitrary deprivation of life and inequality before the law, contrary to Articles I and II of the American Declaration of the Rights and Duties of Man, respectively.[113] As Weissbrodt noted, this case would have to be reconsidered if the U.S. ratified the Convention.[114] Weissbrodt concluded "[Article 28 of the Convention] acknowledges that a federal system of government is not, itself, contrary to international law.[115] In short, Article 28 would have protected the U.S. states' varied death penalty statutes form a charge of arbitrariness.

Parties to the Convention have gone on to develop the Inter-American law on the death penalty by drafting the Protocol to the American Convention on Human Rights to Abolish the Death Penalty.[116] Approved at the general Assembly meeting June 8, 1990, five states have now signed it.[117] The Inter-American system also produced the Convention to Prevent and Punish Torture (ratified by eight states) and the Additional Protocol to the American Convention on Economic, Social and Cultural Rights (signed by 14 states and ratified by one).[118]

Options for the United States

The policy options regarding the Convention for the United States must include the following: 1) no ratification, 2) ratification, 3) renegotiation, 4) resubmission and 5) use of the Court's advisory jurisdiction to reassure U.S. concerns about the eventual domestic effect of the Convention. While each option may have supporters, this paper will show that the last option poses the least to lose and the most to gain for U.S. policy makers.

112 Thompson v. Oklahoma, 108 s. Ct. 2687 (1988).

113 Case 9647, para. 62, Inter-Am C.H.R. 147, 172, OEA/ser. L./V/II.71, doc. 9 rev. 1 (1987).

114 Weissbrodt, *supra* note 110 at 360.

115 *Id.* at 361.

116 Annual Report of the Inter-American Commission on Human Rights 1990-1991, OEA/Ser.L./V/II.79 rev. 1, doc. 12, 22 February 1991, 554.

117 *Id.*

118 *Id.* at 503.

Continued failure to ratify the Convention will diminish the U.S. role and influence in a growing and important body of law that was originally created with the help of U.S. leadership. If the Convention and its institutions were moribund, it might not matter. As this paper has shown, the Convention is anything but static. U.S. informal influence through the participation of U.S. citizens in their personal capacity will diminish without formal participation. While the U.S. narrowly succeeded in winning the election of Yale Law School Professor W. Michael Reisman as one of four members elected to the Commission at the 1991 General Assembly, the departure of the Court's former President, Thomas Buergenthal, diminishes U.S. leadership.[119] If this trend continues, it will become more and more noticeable that as the region becomes open and democratic, the U.S. will be isolated with a shrinking number of OAS members (and Cuba) outside the Convention.

Ratification poses largely political problems. More than anything else, the limited capacity of the Senate Foreign Relations Committee to handle more than one human rights treaty per year[120] will no doubt delay consideration of the Convention. As shown above, most of the other U.S. political concerns with the Convention have largely been addressed. Abortion,[121] Federalism,[122] self-execution,[123] the treaty-making power[124] and other reservations show that the Convention will pose no unmanageable adjustment in U.S. law or policy. In fact, as the discussion of the *Roach case* showed,[125] ratification allows the Convention's Article 28 to protect U.S. states' death penalty statutes against attack through the Inter-American system. Recently, President Bush has advocated the creation of several new federal death penalties.[126] While the American Convention would not change state law without further legislation (see above), the Convention would block such a federal initiative by the President.[127] Obviously, this could be handled by a U.S. reservation similar to the one recommended in 1978

119 Einaudi, Memo to Congress, June 24, 1991.

120 *Supra* note 8.

121 *Supra* note 89.

122 *Supra* note 64.

123 *Supra* note 74.

124 *Supra* note 83.

125 *Supra* note 114.

126 Washington Post, Aug. 11, 1991 at A1.

127 Article 4, the American Convention, Nov. 22, 1969, 9 I.L.M. 673 (1970).

by the State Department to Article 4.[128] Finally, supervision of U.S. Supreme Court decisions by the Inter-American Court would send shock waves around the U.S. legal community. The solution to that problem is almost too simple to answer. Like ten other States Parties to the Convention,[129] the U.S. should simply ratify the Convention without recognizing the contentious jurisdiction of the Court. This would make the United States a party to the Convention and an influence on its development but not a subject to its judiciary.

There has been no serious consideration of renegotiation of the Convention.[130] Since the U.S. has not withdrawn its signature or submission to the Senate, no "resubmission" is necessary.[131]

Given the delay that will undoubtedly come from only one international human rights treaty being considered by the Senate and the numerous concerns and misconceptions that surround the Convention, policy makers should consider encouraging a petition by U.S. individuals to the Commission for an advisory opinion to be referred to the Court to clarify the effect of the Convention on U.S. law.[132] As shown above, there are substantial grounds for relieving concerns on all fronts.[133] Buergenthal noted that the Commission and Court have the "broadest standing requirement of any international body."[134] He wrote "today, there are lawyers, especially in Washington and New York, who assist petitioners in presenting cases to the Commission, and it is extremely important to use the Commission."[135] A petition by individuals to rectify U.S. concerns with the Convention that would neither implicate the U.S. government or the Senate. Under the well discussed procedures above, the Commission could then receive the petition[136] and refer it on to the advisory jurisdiction of the Court, as

128 Brown, *supra* note 62.

129 *Supra* note 33.

130 Author's interview with Amb. Luigi Einaudi, U.S. Permanent Representative to the OAS, June 21, 1991.

131 *Supra* note 62.

132 This idea was first suggested to the author during an April 15, 1991 interview with Commission staff member Cristina M. Cerna.

133 *Supra* notes 121-125.

134 Buergenthal, *Human Rights in the Americas: View from the Inter-American Court*, 2 Conn. J. Int'l. L. 303, 314 (1987).

135 *Id.*

136 *Supra* note 24.

established by the *Restrictions on the Death Penalty case*,[137] for an opinion. Given the previous record, the resulting option would no doubt alleviate many fears and would be an authoritative interpretation of the Convention by the Inter-American system's highest judicial body. Such an opinion would be a valuable reference for U.S. Senators and staff worried about the effect ratification of the Convention would have on U.S. law.

Conclusion

As this paper has shown, the Inter-American system has an ingenious system in place to address, *sua sponte*, the concerns of non-States Parties through the broad standing provided to the Commission and advisory jurisdiction established through the Convention and the case law of the Inter-American Court. Use of these mechanisms would significantly advance the progress of U.S. ratification without the official involvement of the U.S. executive branch or Congress. Given the expected completion of Senate consideration of the U.N. Covenant on Civil and Political rights next year, there is no time to waste in moving this Inter-American advisory solution forward to favorably influence future U.S. ratification.

137 *Supra* note 102.