

THE INTER-AMERICAN COURT OF HUMAN RIGHTS

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I. ORIGIN OF THE COURT

The Inter-American Court of Human Rights (Court or the Inter-American Court) was created by the entry into force of the treaty known as the American Convention on Human Rights (Convention).¹ The Court was born as the Americas' community effort to restore justice in a continent plagued by conflict and injustice.² In the 1960's, dictators, torture, and forced disappearances beset Central and South America.³ The Convention, also known as the Pact of San Jose for the Costa Rican city where it was signed, was the response of the Americas to such tumultuous times.⁴

The American Convention on Human Rights was adopted in 1969 at an inter-governmental conference in San Jose, Costa Rica.⁵ The

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1. THE INTER-AMERICAN COURT OF HUMAN RIGHTS, 1997 ANNUAL REPORT 9, OAS/Ser.L/V/III. 39 (Jan. 21, 1998) [hereinafter ANNUAL REPORT]. For a detailed legislative history of the American Convention on Human Rights, see Conferencia Especializada Interamericana Sobre Derechos Humanos, San José, Costa Rica, 7-22 de noviembre 1969, Actas y Documentos, O.A.S. Doc. OEA/Ser. K/XVII/1.2 (1973).

2. David Padilla, *A House for Justice in Costa Rica*, MAGAZINE AMERICAS, Jan. 1996, at 56.

3. *Id.*

4. *Id.*

5. ANNUAL REPORT, *supra* note 1, at 9.

Convention was arranged by the Organization of American States (OAS).⁶ At this convention, OAS expanded the role of the Inter-American Commission on Human Rights (Inter-American Commission or the Commission) and created the Inter-American Court.⁷ Both the Inter-American Commission and the Court were charged with the task of protecting the rights delineated in the Convention.⁸ The Inter-American Commission was structured as an original forum for individuals asserting to be victims of human rights violations, with the alternative of sending unresolved cases to the Inter-American Court.⁹

Although the Pact of San Jose, Costa Rica was adopted in 1969, it did not enter into force until 1978 when it received its eleventh ratification¹⁰ attributable to a hemispheric full-court press led by President Jimmy Carter.¹¹ The Inter-American Court itself was formally established in 1979 when the Statute of the Court was adopted by resolution of the General Assembly of the OAS.¹² At the same time that the Court was established, the seat of the Court was fixed in San Jose, the capital city of Costa Rica, in Central America.¹³

II. ORGANIZATION OF THE COURT

The norms governing the Court's functions are the Convention itself,¹⁴ the Statute of the Court (Statute),¹⁵ and the Rules of Procedure (Rules).¹⁶ The General Assembly of the OAS adopted the Statute of the

6. Thomas Buergenthal, HUMAN RIGHTS IN INTERNATIONAL LAW: LEGAL AND POLICY ISSUES 439 (Theodor Meron ed., 1984).

7. Lynda E. Frost, *The Evolution of the Inter-American Court of Human Rights: Reflections of Present and Past Judges*, 14 HUM. RTS. Q., 171, 172 (1994).

8. *Id.*

9. *Id.*

10. American Convention on Human Rights, Nov. 22, 1969, 9 ILM 673, OEA/Ser. K/XVI/1.1, doc. 65 rev. 1, corr. 1, (1970). [hereinafter *The Convention*].

11. Padilla, *supra* note 2, at 56. Ironically, The United States has not yet ratified the Convention.

12. Scott Davidson, THE INTER-AMERICAN COURT OF HUMAN RIGHTS 1 (1992).

13. *Id.*

14. The Convention, *supra* note 10, arts. 52-73

15. ORGANIZATION OF AMERICAN STATES, HANDBOOK OF EXISTING RULES PERTAINING TO HUMAN RIGHTS IN THE INTER-AMERICAN SYSTEM 27, OEA/Ser. L/V/11.50, Doc. 6 (1980), reprinted in 19 ILM 635 (1980) [hereinafter *The Statute*]. See Thomas Buergenthal, *The Inter-American Court of Human Rights*, 76 AM. J. INT'L L. 231, 232 (1982).

16. THE INTER-AMERICAN COURT OF HUMAN RIGHTS: RULES OF PROCEDURE, OEA/Ser. L/V/III.3 doc. 13, Corr. 1 (1981), reprinted in 20 ILM 1289 (1980) [hereinafter *The Rules*].

Court immediately after the Inter-American Court was established.¹⁷ A year later, in 1980, the Inter-American Court drafted and adopted its Rules of Procedure.¹⁸ The hierarchy of these instruments governing the Court's functions places the Convention first, followed by the Statute of the Court, and finally, the Rules of Procedure.¹⁹

In accordance with the Statute, the Inter-American Court of Human Rights is an autonomous judicial institution which has as its purpose the application and interpretation of the Convention.²⁰ To warrant the appropriate functioning of the Court, the Statute and the Rules provide for the appointment of judges, a President, Vice-President, Permanent Commission, and a Secretariat.²¹

A. *The Judges*

The judges meet in two regular sessions each year, on the dates established by the Court at the previous session.²² However, special sessions may be convoked by the President on his own initiative, or at the request of a majority of the Court's judges.²³ The Court consists of seven judges,²⁴ all nationals of the Member States of the OAS, who are nominated and elected by the states parties to the Convention.²⁵ A nominating state may nominate a judge from another state as long as the nominee is a national of another OAS Member State.²⁶ Two judges from the same state cannot be elected to serve during the same term.²⁷ The judges are elected "[f]rom among jurists of the highest moral authority and of recognized competence in the field of human rights."²⁸ The judges must

17. Frost, *supra* note 7, at 172.

18. *Id.*

19. Buergenthal, *supra* note 15, at 232.

20. ANNUAL REPORT, *supra* note 1, at 9.

21. Davidson, *supra* note 12, at 41.

22. Rules, *supra* note 16, art. 11.

23. *Id.* art. 12.

24. Presently, the judges at the Court are: Hernán Salgado Pesantes (Ecuador); Antônio A. Cançado Trindade (Brazil); Máximo Pacheco Gómez (Chile); Oliver Jackman (Barbados); Alirio Abreu Burelli (Venezuela); Sergio García Ramírez (Mexico), and Carlos Vicente de Roux Rengifo (Colombia).

25. ANNUAL REPORT, *supra* note 1, at 9. Article 8 of the Statute provides that the Secretary General of the OAS shall request the State Parties to the Convention to submit a list of their candidates for the position of judge of the Court. In accordance with article 53(2) of the Convention, each State Party may propose up to three candidates.

26. Convention, *supra* note 10, arts. 52(1) and 53(2).

27. *Id.* art. 52(2).

28. *Id.* art. 52.

also possess the qualifications to exercise the highest judicial functions in their own states.²⁹

The States Parties to the Convention elect the judges for a term of six years through a secret ballot election.³⁰ Shortly before the expiration of the outgoing judges' terms, new judges are elected by absolute majority vote in the OAS General Assembly.³¹ Vacancies caused by death, disability, resignation, or dismissal shall be filled at the following session of the OAS General Assembly.³² A judge, whose term has expired, shall continue to serve with regard to those cases which he or she has begun to hear and which are still pending.³³ Judges elected in this manner are referred to as "elected judges" or as "titular judges"³⁴ to distinguish them from two other types of judges who may sit in the Court. The other judges who may sit on the bench from time to time are "*ad hoc* judges" and "interim judges."³⁵

The Convention provides the circumstances in which an *ad hoc* judge may be appointed.³⁶ If a titular judge is a national of a state party to a case, he or she retains the right to hear that case.³⁷ Any other state party to the case may appoint a person to serve on the Court as an *ad hoc* judge.³⁸ Moreover, if among the judges called to hear a case, none is a national of the state parties to the case, each state may appoint an *ad hoc* judge.³⁹ The appointment of interim judges is envisaged by the Statute when it is necessary to maintain the quorum of five judges⁴⁰ or when a judge is disqualified from hearing a case.⁴¹

The Court's judges take precedence after the President and Vice-President⁴² according to their seniority in office.⁴³ Judges who have the

29. *Id.* art. 52(1).

30. ANNUAL REPORT, *supra* note 1, at 9.

31. *Id.*

32. Statute, *supra* note 15, art. 6(1)(2).

33. Convention, *supra* note 10, art. 54(3).

34. Rules, *supra* note 16, art. 2(q)

35. Davidson, *supra* note 12, at 33.

36. Convention, *supra* note 10, art. 52.

37. Convention, *supra* note 10, art. 55(1); The Statute, *supra* note 15, art. 10(1).

38. Convention, art. 55(2); The Statute, art. 10(2).

39. Convention, art. 55(3); The Statute, art. 10(3).

40. Statute, *supra* note 15, art. 6(3). Interim judges serve until they are replaced by elected judges.

41. *Id.* art. 19(4). Where one or more judges are disqualified from hearing a case, the President may request the states parties in a meeting of the Permanent Council of the OAS to appoint interim judges to replace them.

42. See text *infra* section B, President of the Court.

same seniority in office shall take precedence according to age.⁴⁴ *Ad hoc* and interim judges take precedence after the elected judges, according to age.⁴⁵ However, *ad hoc* or interim judges, whom have previously served as elected judges, have precedence over any other *ad hoc* or interim judges.⁴⁶

The decisions of the Inter-American Court are taken by a majority of the judges as long as the Court is in quorum.⁴⁷ Judges may only vote affirmatively or negatively on any given issue since abstentions are not permitted.⁴⁸ The President presents, point by point, the matters to be voted upon.⁴⁹ Voting takes place in an inverse order of precedence.⁵⁰ In the event of a tie, the President casts a second deciding vote.⁵¹

B. *The President and Vice-President of the Court*

The Inter-American Court elects the President⁵² and Vice-President⁵³ of the Court from its members by an absolute majority of votes.⁵⁴ The President and Vice-President are elected for a two-year term⁵⁵ and may be reelected.⁵⁶ The President has the obligation to "direct the work of the Court, represent it, regulate the disposition of matters brought before the Court, and preside over its sessions."⁵⁷ The President is also the link in communications between the Inter-American Court and the Permanent Council or Secretary General of the OAS.⁵⁸ The President is required to

43. Statute, *supra* note 15, art. 13(1).

44. *Id.* art. 13(2).

45. *Id.* art. 13(3).

46. *Id.*

47. Davidson, *supra* note 12, at 47. Quorum is a majority of the entire body.

48. Rules, *supra* note 16, art. 15(1).

49. *Id.*

50. *Id.* art. 15(2).

51. *Id.* art. 15(4).

52. The Court's current President is Hernán Salgado Pesantes (Ecuador).

53. The Court's current Vice-President is Antônio A. Cançado Trindade (Brazil).

54. Statute, *supra* note 15, art. 12(1).

55. Rules, *supra* note 16, art. 3(1). The terms begin on July 1st of the corresponding year.

56. *Id.* art. 3(2).

57. Statute, *supra* note 15, art. 12.

58. Davidson, *supra* note 12, at 41.

serve on a full-time basis.⁵⁹ The main task of the Vice-President is to exercise the duties of the President when this is absent.⁶⁰

C. *The Permanent Commission*

The Court's President, Vice-President, and a third judge named by the President form the Permanent Commission.⁶¹ This body's function is to assist and advise the President in the execution of its duties.⁶² The Permanent Commission is governed by the Rules of the Court.⁶³ The Court has also the discretion to appoint *ad hoc* commissions to deal with special matters, and the President may appoint commissions *proprio motu* to deal with urgent cases.⁶⁴ As a matter of practice, the President has always favored to ensure that at least one member of the Permanent Commission resides in Costa Rica, and that he or she has knowledge of the working languages of the Court.⁶⁵

D. *The Secretariat*

In order to carry out the Inter-American Court's administrative functions, the Court is authorized to establish a Secretariat.⁶⁶ The head of the Secretariat is the Secretary,⁶⁷ who is also appointed by the Court.⁶⁸ The Secretary is a full-time officer who possesses, along with a command of the working languages of the Court, the legal knowledge and experience necessary to carry out his functions.⁶⁹ The Court elects the Secretary for a renewable five-year term,⁷⁰ but the Secretary may be removed at any time by the vote of no less than four judges by way of secret ballot.⁷¹ Thus, the

59. Statute, *supra* note 15, art. 16(2). However, Burgenthal notes, this provision has not been interpreted to require the President to reside in San Jose nor to require him to desist from other compatible remunerated activities. See Burgenthal, *supra* note 23, at 233.

60. Statute, *supra* note 15, art. 12(3); Rules, *supra* note 16, art. 5(1).

61. Rules, *supra* note 16, art. 6(1).

62. *Id.*

63. *Id.* art. 6(3).

64. *Id.* art. 6(2).

65. Davidson, *supra* note 12, at 44.

66. Convention, *supra* note 10, art. 59.

67. The Court's current Secretary is Manuel Ventura Robles.

68. Convention, *supra* note 10, art. 58(2).

69. Rules, *supra* note 16, art. 7(1).

70. *Id.* art. 7(2).

71. *Id.*

Inter-American Court “[h]as the power to ensure that its chief administrative officer does not have divided loyalties.”⁷²

To assist the Secretary, the position of Assistant Secretary was created.⁷³ The Assistant Secretary’s function is to assist the Secretary and deputize for him in his absence.⁷⁴ The Assistant Secretary⁷⁵ is appointed by the Secretary in consultation with the Secretary General of the OAS.⁷⁶ If the Secretary and the Assistant Secretary are temporarily absent, the President of the Court may appoint an Acting Secretary in their stead.⁷⁷ The Secretariat’s other staff members are appointed by the Secretary General of the OAS in consultation with the Secretary.⁷⁸ However, in practice, the Secretary General of the OAS always makes the appointments recommended by the Secretary of the Court.⁷⁹

III. JURISDICTION OF THE COURT

The Convention set forth the jurisdictions of the Inter-American Court of Human Rights. The Convention confers contentious⁸⁰ (also called adjudicatory jurisdiction) and advisory functions on the Inter-American Court.⁸¹ Both jurisdictions have formal and informal effects on the region’s human rights situation.⁸² Formally, the Court’s contentious decisions, advisory opinions, and provisional measures protect human rights and develop legal principles of international human rights law.⁸³ Informally, the Court’s involvement in a case has brought positive action within the state involved.⁸⁴

72. Buergenthal, *supra* note 15, at 234.

73. Statute, *supra* note 15, art. 14(3).

74. Rules, *supra* note 16, art. 8(1); Statute, *supra* note 15, art. 14(4).

75. Renzo Pomi is the current Deputy Secretary.

76. Rules, *supra* note 16, art. 8(1); The Statute, *supra* note 15, art. 14(4).

77. Rules, *supra* note 16, art. 8(2).

78. Statute, *supra* note 15, art. 14(4).

79. Buergenthal, *supra* note 15, at 234.

80. Convention, *supra* note 10, art. 62.

81. *Id.* art. 64.

82. Jo M. Pasqualucci, *The Inter-American Human Rights System: Establishing Precedents and Procedure in Human Rights Law*, U. MIAMI INTER-AM. L. REV. 297, 348 (1994-1995).

83. *Id.* Governments called before the Court have attended the public hearings and argued their cases. Governments ordered by the Court to pay full reparations have committed to do so. See e.g. Velásquez Rodríguez v. Honduras (Compensatory Damages), Inter-Am. Ct. H.R., (Ser. C) No. 7 (1988).

84. *Id.* at 351. When the Commission sought the opinion of the Court regarding the execution of defendants in Guatemala, the government of Guatemala attended the public hearing on the matter even though it did not consent to the Court’s jurisdiction. At the hearing Guatemala announced the

A. *The Contentious Jurisdiction of the Court*

The contentious function involves the jurisdiction to adjudicate disputes relating to charges that a state party has violated the Convention.⁸⁵ The Court's contentious jurisdiction enables it to adjudicate actual controversies between two or more parties.⁸⁶ The Inter-American Court's judgment in a case is binding on the parties.⁸⁷ In a contentious case the Court may award compensatory damages.⁸⁸

Only the State Parties and the Inter-American Commission have the right to submit a case to the Court.⁸⁹ Any person, group or private entity legally recognized in a Member State may present petitions with the Commission.⁹⁰ The Convention set forth the procedure for the Court to hear a case from the Commission.⁹¹ In cases of extreme gravity, the Court may adopt provisional measures in matters it has under consideration or are being processed by the Commission.⁹² A State Party is not deemed to have accepted the jurisdiction of the Court simply by ratifying the Convention.⁹³ Acceptance of the Court's jurisdiction by a state is optional,⁹⁴ and requires a separate declaration or agreement.⁹⁵ The State Parties may accept the

suspension of the executions. Charles Moyer & David Padilla, *Executions in Guatemala as Decreed by the Courts of Special Jurisdiction in 1982-83: A Case Study*, 6 HUM. RTS. Q., 507, 516, 520 (1984).

85. Convention, *supra* note 10, art. 62.

86. Mary Caroline Parker, *Other Treaties: The Inter-American Court of Human Rights Defines its Advisory Jurisdiction*, 33 AM. U. L. REV., 211, 215 (1983).

87. *Id.* (citing article 62(1) of the Convention).

88. Frost, *supra* note 7, at 174; (citing Article 63(1) of the Convention). Examples of the Inter-American Court ordering compensatory damages are the *Loayza Tamayo v. Peru* (Reparations), Judgment of November 27, 1998, para. 4, Inter-Am. Ct. H.R. (Ser. C) No. 42 (Peruvian Government ordered to pay US\$ 99,190.30 to Maria Loayza Tamayo); and *Castillo Paéz v. Peru* (Reparations), Judgment of November 27, 1998, para. 1; Inter-Am. Ct. H.R. (Ser. C) No. 43 (Peruvian Government ordered to pay US\$ 245,021.80 to the family of Ernesto Rafael Castillo Paéz.)

89. Convention, *supra* note 10, art. 61(1).

90. *Id.* art. 44.

91. Article 61(2) of the Convention indicates that articles 48 through 50 set forth the procedures the Commission must complete before the Inter-American Court may hear a case.

92. Convention, *supra* note 10, art. 63(2).

93. Buergethal, *supra* note 15, at 236.

94. *Id.* (citing article 62(1) of the Convention).

95. *Id.* As of this writing the following State Parties have recognized the Court's contentious jurisdiction: Argentina, Bolivia, Brazil, Colombia, Costa Rica, Chile, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Trinidad & Tobago, Uruguay, and Venezuela.

Court's jurisdiction at any time,⁹⁶ "[u]nconditionally, on condition of reciprocity, for a specific period, or for specific cases."⁹⁷

B. *The Advisory Jurisdiction of the Court*

The Court's advisory function involves the power of the Member States listed in the Charter of the OAS, to request that the Court interpret the Convention or other human rights treaties.⁹⁸ The advisory jurisdiction extends to all OAS Member States, even those which have not ratified the Convention.⁹⁹ The treaty in question does not have to be one adopted within the Inter-American system or a treaty to which only American states may be parties.¹⁰⁰ The Court may interpret any treaty that concerns the protection of human rights in a Member State of the Inter-American system.¹⁰¹ Direct access to the Court's advisory jurisdiction is extended to all OAS organs, not just the Commission.¹⁰²

The advisory jurisdiction of the Court enables it to hear cases that are inaccessible to the Court under the contentious jurisdiction. Parties that otherwise are not eligible to present cases to the Court, may request the Court's advisory opinion.¹⁰³ Also, the procedures required for contentious jurisdiction do not apply for advisory jurisdiction.¹⁰⁴ Moreover, compliance with the Court's ruling does not single out a state as violator of human rights so it is more politically acceptable.¹⁰⁵

96. Convention, *supra* note 10, art. 62(1).

97. *Id.* art. 62(2).

98. *Id.* art. 64.

99. Thomas Buergenthal, *The Advisory Practice of the Inter-American Human Rights Court*, 79 AM. J. INT'L L. 1, 3 (1985).

100. *Id.* at 5.

101. Parker, *supra* note 86, at 227.

102. Manuel D. Vargas, *Individual Access to the Inter-American Court of Human Rights*, 16 N.Y.U. J. INT'L L. & POL., 601, 612 (1984).

103. Parker, *supra* note 86, at 219.

104. *Id.* at 246, n. 40.

105. Parker, *supra* note 86, at 219.