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Introduction/Chapter 1: Rethinking the Impact of the Inter-American Human Rights System

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Introduction

In the growing historiography of international human rights regional institutions remain marginalised. This is regrettable; not least because the richness of regional human rights experiences offers us important insights into the enduring attraction of human rights around the world. A regional perspective on human rights gives us a better sense of their diversity and the contentious political struggles that underpin them than what tends to prevail in the burgeoning literature proclaiming the endtimes (Hopgood, 2014) or twilight of human rights (Posner, 2014). Nowhere can this be better seen than in the Americas, where the Inter-American Human Rights System (IAHRS, or the System) emerged to play a vanguard role in the development of the modern international human rights regime. Since the creation of the Organization of American States (OAS) in 1948, the IAHRS has been a central actor in the promotion and defense of human rights in the Americas. In difficult and politically divisive situations, such as the rise of the dictatorships in South America and the civil wars in Central America, the Inter-American Commission on Human Rights (IACHR) and, subsequently, the Inter-American Court of Human Rights (IACtHR) have handed down decisions that have guided the activities of human rights advocacy groups and informed states' human rights practices throughout the region. Today, the IAHRS continues to shape the regional human rights agenda, as it provides legal, institutional and political tools in efforts to address the region's myriad pressing human rights issues.

A critical assessment of the Inter-American System's impact has become increasingly important. This is not least due to the growing demands on the System. The number of complaints submitted to the IAHRS against states by individuals and organisations across the region have been continually rising over the last two decades. In the last 15 years or so the Commission has admitted more than 15,000 petitions. It has also published an extensive range of

thematic reports on contemporary regional human rights challenges, and conducted numerous country visits. Meanwhile, the Court has handed down rulings in over 170 cases since its first hearings in 1979, with its caseload rising significantly in recent decades. The expansion of the IAHRs has been accompanied by strident criticisms by OAS member states that have challenged its legitimacy and authority. For many, such criticism is at least partly triggered by the System's influence on sensitive human rights matters in the region. Nonetheless, the undeniable political challenges facing the IAHRs, and human rights globally, require a re-evaluation of existing institutions and strategies (Alston, 2017). A regional human rights system, such as the IAHRs, is well placed to respond to the prevailing conditions in its region and to fill in the gaps left behind by shifting global patterns of power. In addition, it is long overdue for scholars of human rights and international law and institutions to pay closer attention to the IAHRs. While scholars are slowly recognising that international human rights standards are conditioned by regional diversity and traditions (Hafner-Burton & Ron, 2013), the limited scholarship on regional human rights systems tends to focus on the European Court of Human Rights. There is therefore a pressing need to bring the IAHRs into scholarly debates on human rights.

This book advances a reconceptualization of how the Inter-American System matters. It is often commented that the IAHRs suffers from a compliance crisis. Governments in the region, in this view, generally refuse to abide by, or simply ignore, the rulings and decisions issued by the Inter-American Commission and the Court. This, it is argued, demonstrates the limited, or indeed, non-existent impact of the IAHRs in ways that undermine its legitimacy and authority. The prevailing view of the IAHRs in the literature therefore depicts it as weak and ineffectual. This volume challenges this perspective on the IAHRs by providing an important corrective to top-down compliance models of international human rights law. The main animating theme of

this book is that to understand the impact of the IAHRs, and the continuing demand for it from across the region of Latin America, in particular, we need to look beyond rule compliance. Through a variety of methodological approaches and empirical examples, the chapters in this book find that the IAHRs is activated by domestic actors and institutions in ways that transcend traditional compliance perspectives and that have the potential to meaningfully alter politics and to provoke positive domestic human rights change (Alter, 2014). Taken together, the contributions to this book reveal the IAHRs to be arguably the most dynamic, and under-studied, component of the international human rights system, and should therefore be of interest to human rights scholarship beyond the Americas.

This chapter introduces the central themes of the book and is divided into three parts. The first part identifies key gaps in existing human rights scholarship, particularly in relation to the IAHRs, and makes the case for the need to go beyond conventional compliance models of international human rights. The second part outlines three core perspectives on the System's impact on human rights and it offers a synthesis of the key findings of the volume. Building on these insights, the final part provides reflections on the future prospects of the System by locating it in its broader global context.

The Inter-American Human Rights System Beyond Compliance

There are long-standing concerns for the yawning gap between the human rights standards enshrined in international legal agreements and the lived experiences of people whose rights have been or are at risk of being violated. To many, this gap between rights 'on paper' and rights in practice constitutes an existential threat to the legitimacy of the international human rights regime. Hopgood (2014), for example, argues that international human rights have failed in practice and that those concerned with progressive social change will need to look elsewhere

for a legitimating normative framework. In the same vein, Posner (2014) argues that international human rights law was from the outset practically designed to fail. It is clearly true that ongoing massive human rights violations throughout the world represent painful reminders that the remarkable expansion of the international human rights regime since the 1970s in particular has not stopped human suffering. The burgeoning empirical human rights scholarship has cast doubt on the effectiveness of international human rights law in reducing violations.

Over most of the past decade, scholars have recognized that patterns of ratification do not map clearly onto states' patterns of human rights activity (Hathaway, 2002; Hafner-Burton & Ron, 2009). Rather, formal state ratification of human rights treaties is often followed by a protracted and contentious process of political struggle about the domestic implementation of human rights norms. The concern with post-ratification effects of human rights treaties has shifted the attention of empirical human rights scholarship to the domestic politics of 'compliance' (Cardenas, 2007; Hillebrecht, 2014; Simmons, 2009; Goodman & Pegram, 2012; Hafner-Burton, 2013). Compliance usually refers to the implementation of treaty rules and decisions – rulings, recommendations - handed down by international human rights institutions (Grugel & Peruzzotti, 2012). Raustiala and Slaughter (2002, p. 539) argue that “most theories of compliance with international law are at bottom theories of behavioural influence of legal rules” and they define compliance as “a state of conformity or identity between an actor's behavior and a specified rule”.

Yet, as the contributions in this book highlight, compliance perspectives on international human rights have substantial limitations in capturing the variety of effects of international human rights (Howse & Teitel, 2010). Analytically, there is an important distinction between 'compliance' and 'effectiveness' that is often glossed over in human rights and international law

scholarship. Effectiveness, rather than a limited focus on rule compliance, generally refers to the degree to which the international human rights institutions work to improve human rights conditions and decrease the likelihood of the repetition of abuses, while also providing satisfactory recourse to the victims. Compliance might be necessary for effectiveness, but it is not sufficient. For example, “high levels of compliance can indicate low, readily met and ineffective standards” or suggest that only compliant states joined the regimes in the first place (Fearon, 1998; Downs et al., 1996). Moreover, institutions with “significant non-compliance can still be effective if they induce changes in behavior” (Raustiala & Slaughter, 2002, p. 539). From this perspective, assessments of institutional effectiveness focus on the capacity of institutions to generate specific policies and the extent to which these are implemented through the passage of legislation, the creation or reform of domestic institutions that prove effective in attaining institutional objectives. Assessing compliance, then, may shed some light on the effectiveness of international human rights institutions, but it cannot tell the full story, and quite possibly, an exclusive focus on compliance risks being misleading.

The IAHRs demonstrates the inherent limitations of compliance models to understand the impact of international human rights. Compliance rates with both the Commission and the Court are generally low (González-Salzberg, 2010; Basch et al., 2010). And yet, the demand for the regional human rights system has never been higher, as its caseload continues to increase year by year. This may indicate that despite the low levels of compliance the System matters, particularly to those whose rights have been violated, and to those who are vulnerable to violations. It also suggests potentially significant effects of the IAHRs not captured in compliance rates that demand closer scrutiny. Moreover, the IAHRs matters even in ways that are not captured through an examination of the impact of individual rulings and decisions. For

example, domestic courts in the region regularly use the Inter-American Court's jurisprudence in its decision-making. This means that much of the litigation based on IAHR norms and standards never even ends up formally in the System, as litigants can directly activate their rights domestically. Such activities are not registered in the System's caseload, but still represent a fundamental way in which the IAHR impacts on domestic human rights. Similarly, domestic legislatures in many countries frequently debate and develop legislation based on rights enshrined in the American Convention. And law schools across the Americas increasingly teach the law and jurisprudence of the Inter-American System. In short, the IAHR matters not only beyond rule compliance, but even beyond the individual cases that end up before the System. Hence, as understood in this book, compliance is narrower than impact in that while the former focuses on implementation of individual judicial rulings, the latter adopts a broader understanding of impact to include indirect effects such as ideational change and empowerment of local actors.²

To date, however, these 'extra-compliance' effects are poorly understood. This is partly explained by the lack of empirically-driven and theoretically informed scholarship on the IAHR, as well as a dearth of systematic comparative analysis. The empirically-minded research on the IAHR that does exist has almost exclusively focused on the Inter-American Court and it has adopted narrow rule compliance perspectives to assess its effects.³ In part the limited empirical scholarship on the IAHR can be attributed to the inherent difficulties in researching the System. A major challenge in assessing the impact of the IAHR is the absence of adequate data to allow for the development of reliable indicators and measurements of the effects of the System. Existing IAHR scholarship has been hampered by the inherent difficulties for individual researchers to catalogue, systematize, and process the vast empirical material on the

IAHRS. Facing legal, budgetary and political constraints, the material publically available on the Commission and the Court is limited. This is a particularly pressing problem with regards to institutional mechanisms such as precautionary measures and friendly settlements, where data is even less available than for other areas, such as Court judgments. One of the key contributions of this book therefore is to contribute with several original datasets and empirical data/materials to the study of the IAHRS.

Moreover, there has been limited theoretical depth and cross-disciplinary dialogue in the scholarship on the IAHRS. The existing literature on the IAHRS is dominated by legal scholars, many of whom combine their scholarship with personal involvement with the IAHRS and/or advocacy activities before the System. This law-dominated and practitioner-oriented literature tends to focus on questions of the System's legal and institutional development, jurisprudence, and descriptive accounts of IAHRS activity.⁴ Despite the important insights provided by these contributions, this literature generally includes little reference to wider disciplinary debates within and across social science and legal scholarship. It tends to be anecdotal in character and uncritically accepts or leaves implicit a range of theoretical assumptions. The contributors to this book bring insights from a variety of different disciplines beyond law to the study of the IAHRS.

It is on this basis that this book develops a contextual understanding of how the IAHRS influences the politics and struggles of actors and institutions seeking to advance the realisation of human rights and those who resist their efforts.⁵ Specifically, the book explores the System's impact in three overlapping, yet distinct, dimensions. The first perspective on the IAHRS' impact focuses on the variable effects of the System's different institutional mechanisms. The normative and institutional development of the IAHRS has amplified the System's impact beyond compliance. The evolution of the IAHRS highlights its role in advancing, interpreting, and

enforcing human rights standards. In terms of rule-making both the Inter-American Commission and the Court perform a crucial function in the development of an increasingly expansive set of human rights standards. The Court has developed progressive human rights jurisprudence through its rulings. The Commission also serves an important function in this regard through its thematic reports, development of policy guidelines (ranging from, e.g. freedom of expression, rights of detainees, to LGBT rights); in other words, though its role in the development of soft law. The IAHRs has developed an extensive set of institutional mechanisms that serve important accountability functions. The IAHRs regularly monitors and evaluates states' human rights records. The Commission in particular, has developed a set of tools in addition to individual cases that range from public diplomacy in the form of press releases, public hearings, onsite visits, interim measures (precautionary mechanisms), to behind the scenes negotiations with state officials and individual petitioners. When exclusively seen from a top-down perspective, however, these are weak accountability mechanisms. There are no enforcement mechanisms in place to hold states responsible for implementation to account. For example, there is no clearly mandated oversight body, such as the Council of Europe's Committee of Ministers in the European human rights system. Nonetheless, as the chapters in this book demonstrate, accountability can operate through various channels, including primarily domestic accountability mechanisms – e.g. in the form of mobilisation of public opinion around specific cases, raising awareness through media strategies, and domestic litigation processes.

The second perspective on the IAHRs' impact concerns its influence on domestic political and judicial actors and institutions. Generally marginalized by rule compliance models is the System's increasing insertion into domestic policy, legislative, and judicial debates beyond responses to rulings in individual cases. The normative and institutional evolution of the IAHRs,

as highlighted above, has led to increased and regular interactions between the System and domestic political processes and national legal orders. The IAHRs provides opportunities for domestic and transnational human rights actors to bring pressure for change in their domestic political and legal systems. We therefore need to better understand how the System affects actors and structures political relationships. Three particularly significant dimensions in this regard are assessed in this book: the role of the IAHRs in stimulating human rights mobilisation; how regional human rights standards and the Inter-American Court's jurisprudence are shaping domestic constitutional debates, litigation strategies, judicial thinking and practice; and the role of state institutions in the effective implementation of IAHRs rulings, recommendations and human rights standards.

The third perspective adopted in this book focuses on how domestic political contexts, and particularly resistance to human rights, mediate the impact of the IAHRs. The regional context of Latin America has the potential to offer scholarship and advocacy significant insights into how human rights politics works in practice. In the region, sustained human rights activism has strengthened processes of socialization in many societies, but rule-consistent behaviour as predicted by earlier human rights scholarship has not materialised (Risse et al., 1999). Understanding such partial outcomes requires a more contextualised grasp of Latin American societies and rights-violating groups, perpetrators, and the political support they enjoy. Such perspectives allow a better understanding of many contemporary human rights violations in Latin America, and elsewhere, that are occurring in the context of weak and fragile states where state responsibility for violations is difficult to establish. In this regional context, even where and when genuine political will may exist, implementation is often hamstrung by a state infrastructure ill-equipped to fulfil its function across the national territory (O'Donnell, 1993).

Attention to context also highlights the political contestation of human rights. The domestic impact of international human rights norms is invariably mediated by their broader norm salience in local contexts (Goodale & Engle Merry, 2007).

The impact of the IAHRs on domestic human rights, in other words, as understood in this book is characterised by prolonged and contested political and socio-legal processes. The complexities of studying such pathways of impact are clearly considerable and require a collaborative effort of the kind manifested in this volume. The contributions to this book illustrate the advantages of multidisciplinary and comparative research that pool together diverse methods and findings from both scholars and practitioners. The analysis in this book is also comprehensive in that it considers not only the Inter-American Court, but also the Inter-American Commission, which tends to be marginalised in scholarly assessments of the System. The book, moreover, includes authors from around the world whose experiences and expertise are complementary, and who cover often overlooked cases and sub-regions (such as Brazil and Central America) when examining the impact of the Inter-American System. It is precisely this diversity of perspectives on the IAHRs that gives the book its character and that hopefully contributes to a deeper understanding of the System's impact.

Perspectives on the Impact of the Inter-American Human Rights System

The book is organised in three parts that each adopts a distinct, yet complementary, analytical perspective on the impact of the IAHRs. The three chapters in the first part of the book examine the impact of institutional mechanisms developed by the Inter-American Commission. These include the Commission's individual petition mechanism, as well as little-studied cases of friendly settlements and precautionary measures, and confirm the existence of effects that reach beyond the degree of state compliance in individual cases. The chapter by

Engstrom and Low analyse the impact of the Commission's individual petition mechanism. Based on an empirical analysis of an original dataset of petitions submitted to the IACHR and in-depth case studies of litigation strategies by human rights organisations (HROs), the authors demonstrate that HRO mobilisation have important effects beyond resolution of (or compliance in) individual cases. Drawing on theoretical insights from the social movements and legal mobilisation literature, Engstrom and Low argue that the IACHR offers crucial opportunities for HROs in their legal advocacy strategies both at home and abroad. Although the authors caution that the capacity of litigators to use the Commission's petition mechanism varies considerably, HROs that successfully mobilise the IAHRs "can add pressure on governments to adopt policies, implement legislative changes, and reform institutions that advance the realisation of rights; even in the absence of a formal ruling requiring them to do so."

The chapter by Saltalamacchia, Álvarez Martínez, Romero Castelán, and Urzúa Valverde, examines the effects of the use of friendly settlements as an alternative mechanism to contentious litigation. By examining an understudied IACHR mechanism that have been increasingly used in recent years, the authors find that although friendly settlement proceedings are generally not more efficient (in terms of time required to process cases), they are more effective (in terms of higher compliance rates) than the Commission's individual petition mechanism. Interestingly, the chapter also shows that friendly settlements may not only be effective, they can also generate more general effects beyond the directly affected victims in individual cases. That is, friendly settlement agreements between states and petitioners "are not necessarily limited to the benefit of single victims but can also give rise to preventive measures aimed at improving human rights protection in general". More generally, in addition to identifying effects beyond compliance in individual cases, the chapter also underlines the need

for a more fine-grained analysis of compliance data. Specifically, the authors put the spotlight on the variation in ‘compliance pull’ between different IAHR mechanisms.

The chapter by Burbano-Herrera assesses another under-studied mechanism of the Inter-American Commission, which has generated significant controversies in recent years: precautionary measures (PMs). Burbano-Herrera investigates the impact of PMs to protect persons deprived of liberty; the group that have been most prominently subjected to PMs. As a form of interim measure in international law, PMs are designed to respond to rights violations in time-sensitive situations, where an urgent response is called for. The immediacy of these measures makes them particularly relevant to detainees, whose rights are particularly prone to violation due to the harrowing state of Latin America’s detention facilities. In other words, the specific human rights issues of the rights of detainees and prison conditions discussed in the chapter represent a ‘hard case’, where the IACHR’s impact could be expected to be limited. After all, improving conditions in places of detention requires structural changes that in turn depend on significant political will and institutional resources. Despite these challenges, the chapter illustrates how PMs may have positive direct impact on the intended beneficiaries in some cases, particularly when PMs generate publicity and media attention. Still, the overall assessment of the impact of PMs in the chapter is downbeat. Indeed, a significant take-away from the chapter’s evaluation of PMs is that impact does not necessarily depend on compliance. Burbano-Herrera considers cases where PMs have been complied with in that a specific measure as ordered by the Commission has been implemented, but it did not have the intended effect of protecting the beneficiary from violations. Yet again, an exclusive focus on compliance risks obscuring the effects (and non-effects) of international human rights mechanisms.

The second part of the book focusing on domestic actors and institutions starts with a chapter by Torelly, which focuses on these judicial dynamics by examining how domestic judges shape the legal impact of the Inter-American Court's jurisprudence. Contrary to studies that emphasise the domestic constitutional status of international human rights law, Torelly argues that interpretive choices made by judges, in turn shaped by prevailing 'legal culture', explain the variable domestic impact of the Inter-American Court's jurisprudence. That is, the willingness and ability of domestic judges to consider and apply international human rights law determine the extent to which the IAHRs influences when and how fundamental rights are applied by domestic courts. Put differently, Torelly shows that assigning constitutional status to international legal provisions - as many Latin American constitutional reforms did during the 1990s - does not necessarily strengthen the impact of international human rights law; an informed and engaged domestic judiciary is a necessary condition for impact.

Torelly's chapter also illustrates that the interaction between domestic judicial interpretations and the Inter-American Court's jurisprudence often gives rise to hybrid solutions that combine domestic and international normative perspectives. Indeed, the internalization of IAHRs norms in national constitutions across the region has partially shifted how the System works in practice. Traditionally, the System has relied on various forms of political pressure from the IACHR, the OAS (not common), or (highly infrequently) other countries to ensure compliance with its decisions and judgements. At the domestic level, the targets of compliance pressures would mainly be the executive or the legislative. That is, processes of compliance with the IAHRs were dominated by the political branches of government. However, the increasing constitutionalization of human rights has established domestic court systems, as the links between constitutional principles and human rights in practice, as key arenas of human rights

politics.⁶ There are also various pathways through which the procedures and norms of the IAHRs have become embedded in state bureaucracies. The increasing interaction with the IAHRs may strengthen the relative power of sections of the bureaucracy dealing with human rights, as well as encourage processes of socialization on the part of state officials involved. The impact of the IAHRs on public policy formulation and implementation is to a large extent a function of its embedment in state institutions, and whether the state has effectively organized its institutions in ways that provide effective remedies for human rights violations.

It is from this latter perspective that the chapter by Parra-Vera assesses how the IAHRs empowers domestic institutions, and shapes intra-state conflicts in support of progressive policy reforms. Specifically, the chapter examines a series of cases that illustrate the heterogeneity of Latin American states in their interactions with the IAHRs. Parra-Vera argues that “[w]hile a ‘fragmented state’ can reduce capacity to implement public policies which advance rights, particularly where these policies require coordinated action between different state entities, a ‘heterogeneous state’ offers a host of opportunities for identifying allies who can help push forward progressive human rights policies.” The chapter examines the direct and indirect ways in which IAHRs decisions have strengthened state agencies facing domestic obstacles in driving forward human rights policies due to resistance from other sectors of the state itself. Such institutional empowerment has generally occurred in the context of inter-institutional conflicts, either between branches of the state or between different agencies in the same branch. Despite these notable changes in the institutional relationships between many Latin American states and the IAHRs, significant challenges facing substantive human rights reforms undoubtedly remain. Clearly, the System is dependent on the cooperation of state institutions for it to have an impact on human rights outcomes. But, general political will to accept the authority of the IAHRs, albeit

important, does not necessarily translate into effective implementation of the IAHRs' decisions and recommendations. Moreover, even in cases where political will exists to comply with the judgements and recommendations of the IAHRs, state institutions do not always have the capacity – whether managerial, administrative, technical, or human – to ensure effective implementation of human rights reforms.

The IAHRs can provide, nonetheless, a political space for discussion and negotiation between the key actors involved in human rights reforms (including different parts of the state). It provides an authoritative set of norms and standards to regulate the specific issue-area subject to the reforms, and it adds an additional layer of political pressure, momentum and urgency to the resolution of human rights problems. An analytical focus on the disaggregated state in the region is therefore required. This is particularly the case with regards to national human rights institutions (NHRIs) in Latin America, as shown in the chapter by Pegram and Herrera. The authors argue that, “although lacking in enforcement authority themselves, NHRIs can play an important role in mobilising domestic human rights politics, drawing on a range of protective and promotional powers.” Their position within state structures could make these institutions effective domestic interlocutors of the IAHRs. Crucially, NHRIs can also facilitate domestic mobilisation of civil society actors, including providing resources and political support to efforts to engage with the IAHRs. However, their chapter highlights the still significant limitations on the roles that NHRIs can play. As Pegram and Herrera state “[e]ven where robust official implementation mechanisms such as NHRIs exist, careful attention must be paid to their actual performance in order to avoid the risk of creating ‘illusions of compliance’ whereby formal rule-compliance substitutes for more meaningful indicators of positive change.” These caveats notwithstanding, the interactions between NHRIs across the region and the IAHRs have been

limited to date, which means that there is an untapped potential for strategic alliances between the IAHRs and NHRIs in processes of human rights implementation.

The third section of the book focuses on concrete country case studies to highlight the importance of domestic politics and agency, including the role of domestic political constituencies in both facilitating and resisting the impact of the IAHRs. The chapter by Rocha Reis explores transnational activism and coalitions of domestic interest groups in Brazil. The author highlights the contrast between the persistent lack of compliance with IAHRs rulings by Brazilian authorities, on the one hand, and the continuing political relevance of the IAHRs as a political actor in the country, on the other. Drawing on an analysis of the IACHR's merits reports, with a focus on violations in the context of land conflicts in Brazil, Rocha Reis shows that the Commission has had an important impact on the balance of power between pro- and anti-human rights coalitions. Importantly, the chapter demonstrates that there are situations where the Commission's decisions have important positive effects on domestic human rights politics, without state authorities having formally responded to, or sought to comply with, the IACHR's recommendations and decisions.

Along the same line of analysis, the chapter by Boti Bernardi analyses the impact of the IAHRs on transitional justice in Peru. The author focuses on the contested politics of transitional justice (TJ) in Peru and describes the crucial role of NGOs bringing cases to the IAHRs, and the central importance of a receptive judiciary to advance TJ. The chapter advances an understanding of impact that goes beyond (rule) compliance and implementation of Court rulings, and that focuses on the capacity of the IAHRs to empower domestic pro-rights constituencies in their domestic struggles. As Boti Bernardi explains, "[s]ince the implementation of international standards involves political conflicts and clashes between anti-

and pro-compliance constituencies, the Inter-American System will only have an impact where domestic groups are able to, firstly, deploy the IAHRs as a mechanism and tool for their own empowerment and secondly, to overcome the resistance of actors who consider the IAHRs to represent a threat to their interests.” The specific case study of transitional justice struggles in Peru also shows the volatility of human rights politics and that domestic political circumstances and favourable pro-rights coalitions are prone to reversals, with consequent negative effects on the extent to which IAHRs norms and practices are adopted locally.

The politics of transitional justice is also the focus of the chapter by Martínez Barahona and Gutiérrez Salazar, which examines the impact of the IAHRs in the fight against impunity for past crimes in El Salvador and Guatemala. The authors assess the role of the IAHRs in advancing the realisation of victims’ rights to truth, justice and reparation in the inhospitable political conditions of the two Central American countries. Interestingly, despite some clear similarities between the two countries in terms of patterns of violations in their respective armed conflicts, the impact of the IAHRs has varied quite significantly. The authors argue that the differences in outcomes are explained by different levels of mobilisation by human rights groups in El Salvador and Guatemala. While the human rights movement in Guatemala has had some success in their efforts to engage with the IAHRs, such efforts have been much more limited in the case of El Salvador. As a result, despite the recent invalidation of the country’s amnesty law by El Salvador’s Supreme Court drawing on the Inter-American Court’s jurisprudence, progress towards human rights accountability in El Salvador is incipient at best. As in the chapters by Reis Rocha and Boti Bernardi, this illustrates how the impact of the IAHRs is facilitated by domestic actors and institutions. Understanding the factors that determine the impact of the IAHRs is especially important given the absence of effective enforcement mechanisms by the

political organs of the OAS. The normative and institutional evolution of the IAHRs has led to an increased interaction between the System and domestic political processes and national legal orders. These processes of regionalization provide opportunities for domestic and transnational human rights actors to bring pressure for change in their domestic political and legal systems. The extent to which such struggles are successful fundamentally depends on local constellations of political power.

The Future of the IAHRs: Prospects and Comparative Reflections

This book expands on insights in recent human rights scholarship. To date, there has been an overwhelming focus in empirical human rights research on evaluations of the relationship between state participation in human rights treaties and country performance on different measures of human rights in practice. Yet, an exclusive focus on formal treaties has important drawbacks. Most crucially, there is clearly no mechanical equivalence between treaty ratification and domestic human rights reforms. Rather, state ratification of human rights treaties is often followed by a protracted and contentious process of political struggle about the domestic implementation of human rights norms. By leveraging the IAHRs, domestic human rights groups across Latin America have been able to keep human rights demands alive, despite state and judicial resistance and obstacles encountered at home. The emergence and consolidation of movements of victims, their relatives, and human rights advocates explain to a large extent the persistence of claims over time that characterises the development of human rights as a field of political practice in Latin America. This highlights the importance of contextual analysis of domestic political processes of the kind developed in this book. The book lends empirical support to recent scholarship that indicates that international human rights are likely to have the greatest effects in partially democratic and transitional settings, where rights mobilization is

motivated by clear protection deficits, and where political space for such mobilisation exists (Simmons, 2009). Indeed, the IAHRs has a range of political, legal and social effects that may foster domestic human rights change. The contributions to this book demonstrate that (international) law not only acts as potential constraints on government action. Focusing exclusively on the law as a constraint, misses the important constructive role that international human rights law has in legitimating political behaviour. This has been highlighted by several of this book's authors in their discussions of the role of the IAHRs in enabling, as opposed to principally constraining, state action for the protection and promotion of human rights.

Taken together, the contributions to this book demonstrate that there are multiple ways in which the IAHRs matters that are not captured in traditional compliance models. The IAHRs has significant and demonstrable positive effects on domestic human rights that go beyond state compliance in individual cases. This shows that there is a highly significant conceptual and empirical difference between compliance with a particular ruling and the impact of that ruling, as well as the impact of the IAHRs more broadly. Using both qualitative and quantitative evidence from the IAHRs the chapters evaluate how different implementation paths unfold and how they are shaped by domestic political actors and institutions. While impact is shaped by a number of factors, the combined insights of the chapters in this book indicate that the IAHRs is likely to be most effective where its various mechanisms are employed in a coordinated fashion; where domestic actors utilise its rulings and precedents to further their own efforts to bring about national-level policy change; and where its decisions attract significant media attention.

Nonetheless, the IAHRs is currently facing a series of inter-locking political challenges that have raised fundamental concerns regarding its capacity to advance the realisation of human rights in the region. In recent years, several states have become increasingly strident in their

challenges to the System, particularly when IAHRs decisions have run counter to important geopolitical and economic policy objectives. Moreover, the rise of sub-regional organisations, such as the Union of South American Nations (UNASUR as per its Spanish acronym), has seen other incipient human rights mechanisms expand into areas that were previously the exclusive institutional remit of the IAHRs. The continued lack of universal ratification of the System's major human rights instruments, particularly by Anglophone parts of the region, remains a source of criticism for those seeking to undermine the IAHRs. Also, unlike in earlier periods of the System's institutional development, the region's governments are today nearly universally elected by popular vote. The formal democratic credentials of governments have made the balancing act for the IAHRs between its role as a supranational human rights arbiter on the one hand, and the principle and practice of subsidiarity on the other, increasingly delicate.⁷ In addition, transnational and domestic challenges to IAHRs jurisprudence risk damaging the System's authority and legitimacy in the eyes of its key stakeholders. At the transnational level, cross-national resistance movements target the System's developing jurisprudence and practice on particular human rights standards, such as women's or LGBTI rights, while challenges at the domestic level take many forms, including efforts to overturn IAHRs-inspired legislation.

It should be recognised, however, that throughout its history, the IAHRs has regularly been subject to fierce criticisms, and it has operated in an often politically hostile regional context. Indeed, one of the reasons why the Commission struggled in its early days was the perception that it had been created by the United States as part of its efforts to undermine the Cuban revolution (Engstrom, 2016). The System has also regularly faced challenges from states and officials hostile to its expansion and/or to certain rulings. One crisis in the late 1990s arose as a result of attempts by the government of Alberto Fujimori in Peru to withdraw from the

Court's jurisdiction. Over the past few decades, Brazil, Dominican Republic, Ecuador, Nicaragua, Peru, Trinidad and Tobago, and Venezuela have all variously suspended payment of organisational dues, (temporarily) withdrawn their ambassadors, claimed not to be bound by a particular Court judgment, and threatened to or actually denounced the American Convention following contested decisions.

A sanguine perspective on the IAHRs, therefore, would seek to put the System's contemporary challenges in context. While the threat of backlash from states is real, it is important to differentiate between backlash and routine domestic judicial and political processes. Resistance may, in part, be an inevitable consequence of being an international human rights institution fulfilling its institutional mandate of monitoring and scrutinizing the human rights records of states. Put differently, as the impact of the IAHRs grows, so, too, do the challenges to its authority. Backlash against the IAHRs, and international human rights more generally, also reminds us that any progressive human rights change is never irreversible. States can move away from implementing human rights standards just as they can move towards it. In other words, while the political challenges to the IAHRs have their immediate causes in the shifting regional politics of Latin America, resistance to impactful human rights politics should not come as a surprise.

The IAHRs itself also has important agency in confronting political challenges. The IAHRs has undertaken important institutional innovations and adaptations in response to changing political circumstances. New initiatives in recent years, such as creating a working group of experts to investigate the disappearances of students in Ayotzinapa, Mexico, have enabled impact in real time, rather than only as a result of years of extended legal proceedings.⁸ Moreover, the embedding of the IAHRs across the region – albeit highly uneven – has

significant implications for its institutional future, particularly in light of the challenges facing the IAHRs. The constitutional incorporation of the IAHRs across much of Latin America, for example, has effectively made the System part of domestic legal orders and institutional structures. And, as argued by Huneeus (2016, p.206) in relation to the Inter-American Court: “the expansion of the Court’s authority beyond judgment compliance in other states means that there are deep wells of growing support as well. [T]hese wells of support lie beyond the executive branch, and outside the government. Where the Court establishes authority beyond judgment compliance, and its compliance constituencies include actors beyond the parties to the case, its presence likely becomes more stable. It is hard to imagine that Colombia, where the American Convention and the jurisprudence of the IACtHR play so salient a role in domestic politics, could withdraw from the American Convention, and thus the Court’s jurisdiction, without domestic repercussions.” In short, the transnational character of the IAHRs that has expanded its normative and institutional influence beyond compliance has also strengthened the System’s resilience.

The character of these challenges is certainly not unique to Latin America, and the Americas more broadly. This suggests that the future of the IAHRs matters beyond its region. It is against this background that the book closes with an analysis of the IAHRs in comparison with other international human rights institutions, together with a substantive comparative reflection from a leading scholar on the African Human Rights System. The penultimate chapter of the book by Hillebrecht explores the effects of overlapping human rights institutions. Hillebrecht highlights an important, yet often overlooked, feature of the global human rights landscape, namely its institutional density. The global human rights regime is comprised of a dense network of regional and international treaties and enforcement mechanisms. When

considering the effects of international human rights therefore, it is important to assess how states respond to multiple and sometimes competing demands from several distinct human rights institutions. Hillebrecht addresses the interconnectivity of this human rights framework by focusing on the relationship between the Inter-American and UN human rights systems, the recommendations they issue, and the ways in which states implement and comply with these mandates. One of the chapter's key findings is that international human rights institutions with smaller membership and with higher levels of independence from stakeholders are generally more able to effect human rights change. But also, crucially, the chapter suggests "that implementation is [...] a domestic affair. [T]he variation in compliance and implementation appears to be across states, not across institutions. That is not to say that the institution providing the recommendation has no role, but rather that the effects of institutional design and membership interact with domestic politics."

The effects of overlapping institutions also have important cross-regional dimensions. The final chapter of the book by Viljoen explores the possibilities and challenges of cross-regional comparison by examining the impact of the African and Inter-American Systems, with references to the European System. Viljoen's chapter illustrates the largely unexplored potential to learn broader lessons from comparisons of implementation mechanisms and best practices in different regional contexts. For example, the IAHRs regularly issues structural reform orders, and it has experimented with prioritisation of structural cases. The experience of the European System shows that such procedures, when carefully implemented, can bring advances in particular thematic areas. Similarly, in the European system, the 'margin of appreciation' doctrine has been developed in the practice of the Court and extensively applied. The Inter-American Court has historically avoided this doctrine in its jurisprudence, but some judges have,

in recent years, expressed increasing willingness to consider its application in the region. Conversely, several chapters in this book show the importance of substantive civil society participation in the IAHRs, which stands in stark contrast in this regard with the European System. The central monitoring organ of the Council of Europe, the Committee of Ministers, has traditionally operated in a generally non-transparent manner, with highly limited access for civil society participation to its proceedings. The lessons learned from civil society participation in the IAHRs are therefore very significant for the European System. Similarly, Viljoen also emphasises that there are notable “similarities in patterns of compliance and design of political oversight in the Inter-American and African human rights systems [that] hold much potential for cross-regional learning to be derived from the various systems’ institutional responses to weak political oversight.”

These comparative reflections on regional systems offer a powerful reminder that human rights actors and institutions are not passive recipients of international human rights norms. In relation to the IAHRs specifically, the System has undergone wide-ranging institutional developments since its creation. The Inter-American Commission in particular, but also the Inter-American Court, has also at various critical junctures found allies in regional human rights movements. As a result, the normative strengthening of human rights, as codified by the IAHRs, can from this perspective be seen as a series of legal and institutional responses to the concrete conditions human rights advocates and groups face in Latin America. From this perspective, despite the many challenges it faces, there are reasons to confront the future of the IAHRs with an optimism of both the will and the intellect.

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Endnotes

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² For similar perspectives in the socio-legal studies literature, see, Kapiszewski & Taylor (2013).

³ Hillebrecht (2014), e.g., has assessed compliance on this basis and she has captured states' practices of picking and choosing discrete measures within each ruling, in what she refers to as *à la carte* compliance.

⁴ Examples of this often-times insightful literature include Pasqualucci (2013); Haeck et al. (2015); Abramovich (2009); Buergenthal (2005); Cavallaro & Brewer (2008); Dulitzky (2011); Goldman (2009).

⁵ Similar account is developed by Burt (2014, p.169). See also, Huneus (2015).

⁶ The Inter-American Court in particular has also been an active actor in seeking to foster increased interaction with domestic judges through the development of its 'conventionality control', which seeks to expand the role of domestic judiciaries in enforcing the American Convention on Human Rights and the rulings of the Court itself. See further Torelly in this volume.

⁷ Such challenges in balancing supranational supervision and domestic policy preferences have been evident in, for example, the Court's deliberations in relation to the applicability (or otherwise) of domestic reparation programmes, the rule of exhaustion of domestic remedies, and decisions handed down by domestic courts regarding reparations.

⁸ See the webpage of the Interdisciplinary Group of Independent Experts (GIEI) set up by the Inter-American Commission to investigate the Ayotzinapa disappearances for background:

<http://www.oas.org/en/iachr/activities/giei.asp>.