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Ten Reasons Why Canada Should Join the *American Convention on Human Rights*

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El papel de Canadá en la protección de los derechos humanos en las Américas

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Résumé de l'article

Le présent article propose dix raisons pour lesquelles le Canada devrait adhérer à la Convention américaine relative aux Droits de l'Homme *et reconnaître la juridiction obligatoire de la Cour interaméricaine des Droits de l'Homme.*

Ten Reasons Why Canada Should Join the *American Convention on Human Rights*[1]

Bernard Duhaime*

ABSTRACT

The present contribution seeks to present comprehensively ten reasons why Canada should join the American Convention on Human Rights *and recognize the compulsory jurisdiction of the Inter-American Court of Human Rights.*

KEY-WORDS:

Inter-American Human Rights System, American Convention on Human Rights*, Canada, International law, International policy, Latin America.*

RÉSUMÉ

Le présent article propose dix raisons pour lesquelles le Canada devrait adhérer à la Convention américaine relative aux Droits de l'Homme *et reconnaître la juridiction obligatoire de la Cour interaméricaine des Droits de l'Homme.*

MOTS-CLÉS :

Système interaméricain des droits de la personne, Convention américaine relative aux Droits de l'Homme*, Canada, droit international, politique internationale, Amérique latine.*

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1. This paper was presented on 17 September 2017 during the conference titled "150th Anniversary of Canadian Confederation in the Americas: Canada's Role Regarding the Protection of Human Rights," held at the University of Ottawa. The author would like to thank the organizers of this event. Some of the issues discussed in this paper were previously addressed by the author: Bernard Duhaime, "Canada and the Inter-American Human Rights System: Time to Become a Full Player" (2012) 67:3 Intl J 639 [Duhaime, "Time to Become a Full Player"]; Bernard Duhaime, "Strengthening the Protection of Humans Rights in the Americas: A Role for Canada?" in Monica Serrano, ed, *Human Rights Regimes in the Americas* (Tokyo: United Nations University Press, 2010) 84 [Duhaime, "A Role for Canada?"]. The author thanks Élise Hansbury and Noémie Boivin for their assistance in the finalization on this paper.

This special issue of the *Revue générale de droit* and the colloquium, which inspired it, constitute a great opportunity to address the importance and relevance of the Inter-American Human Rights System [hereinafter System or IAHRS], a topic seldom discussed in Canadian academia[2] and not well known by the public. This is probably in part due to the fact that Canada is not yet a "full player" in the System.[3]

Indeed, since Canada has joined the Organization of American States [hereinafter OAS] in 1990,[4] it has not yet adhered to the *American Convention on Human Rights* [hereinafter *American Convention*][5] and has not recognized the compulsory jurisdiction of the Inter-American Court of Human Rights [hereinafter Court or IACtHR].[6] It nevertheless recognized its international obligation to respect human rights as provided for in the *Charter of the Organization of American States*[7] and in the *American Declaration of the Rights and Duties of Man* [hereinafter *American Declaration*],[8] as well as the functions of the Inter-American

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2. A few similar academic colloquia took place in Canada in the past. See eg Bernard Duhaime, Gordon Mace & Jean-Philippe Thérien, ed, *Protecting Human Rights in the Americas: The Inter-American Institutions at 60* (2011 Special Edition) RQDI; François Crépeau, "Préface" (1999) 12:1 RQDI 1. A handful of Canadian faculties of law includes Inter-American Human Rights Law in their curriculum. The author established such a course in 2007 at UQAM and similar initiatives were later undertaken in McGill and Ottawa.

3. On this issue see Duhaime, "Time to Become a Full Player", *supra* note 1.

4. See Organization of American States (OAS), *Charter of the Organization of American States* (A-41), online: <www.oas.org/en/sla/dil/inter_american_treaties_A-41_charter_OAS.asp>. On Canada's membership in the OAS, see generally Peter McKenna, *Canada and the OAS: From Dilettante to Full Partner* (Ottawa: Carleton University Press, 1995).

5. *American Convention on Human Rights: "Pact of San José, Costa Rica"*, 22 November 1969, 1144 UNTS 123 (entered into force 27 August 1979) [*American Convention*].

6. See generally Standing Senate Committee on Human Rights, *Enhancing Canada's Role in the OAS: Canada's Adherence to the American Convention on Human Rights*, 2003, online: <www.sencanada.ca> [Senate Report 2003]; Standing Senate Committee on Human Rights, *Canadian Adherence to the American Convention on Human Rights: It Is Time to Proceed*, Eighteenth Report, May 2005, online: <publications.gc.ca/site/fra/397899/publication.html> [Senate Report 2005]; Duhaime, "A Role for Canada?", *supra* note 1.

7. *Charter of the Organization of American States*, 30 April 1948, 119 UNTS 3 (entered into force 13 December 1951, amended by *Protocol of amendment to the Charter of Organization of American States (B-31) "Protocol of Buenos Aires,"* 27 February 1967, 721 UNTS 322, by *Protocol of Amendment to the Charter of the Organization of American States (A-50) "Protocol of Cartagena de Indias,"* 5 December 1985, 25 ILM 527, by *Protocol of Amendments to the Charter of the Organization of American States (A-56) "Protocol of Washington,"* 14 December 1992, 33 ILM 1005, and by *Protocol of Amendment to the Charter of the Organization of American States (A-58) "Protocol of Managua,"* 10 June 1993, 33 ILM 1009.

8. OAS, Inter-American Commission on Human Rights, *American Declaration of the Rights and Duties of Man* (1948), OR OEA/Ser.L/V/II.23/Doc. 21, rev. 6, 1979.

Commission on Human Rights [hereinafter Commission or IACHR], including its competence to formulate recommendations to Member States and to receive and process individual petitions.[9]

This being said, very few individual actions have been brought against Canada before the Commission,[10] which has only adopted three Canadian decisions on the merits,[11] six on admissibility[12] and three on inadmissibility.[13] The IACHR has also published two thematic

9. On this issue see generally OAS, Inter-American Commission on Human Rights, *Report on Terrorism and Human Rights*, OR OEA/Ser.L/V/II.116/Doc. 5, rev. 1, (2002) at 39. The binding nature of some of the *American Declaration*'s provisions has been reaffirmed on several occasions by the OAS General Assembly (see eg OAS, General Assembly, 7th Sess, *Means to Promote Respect for and Protection of Human Rights*, OR AG/RES.315/VII-0/77 (1977); OAS, General Assembly, 8th Sess, *Report of the Inter-American Commission on Human Rights on the Situation of Human Rights in Paraguay*, OR AG/RES.370/VIII-0/78 (1978); OAS, General Assembly, 31th Sess, *Support for Inter-American Human Rights Instruments*, OR AG/RES.1829/XXXI-0/01 (2001); by the Commission (*James Terry Roach and Jay Pinkerton v United States* (1987), Inter-Am Comm HR, No 3/87, *Annual Report of the Inter-American Commission on Human Rights: 1986–87*, OEA/Ser.L/V/II.71/Doc. 9, rev. 1 at paras 46–49 [*James Terry Roach and Jay Pinkerton v United States* (1987)]; *Michael Edwards and al v Bahamas* (2000), Inter-Am Comm HR, No 48/01, *Annual Report of the Inter-American Commission on Human Rights: 2000*, OEA/Ser.L/V/II.111/Doc. 9, rev. 1 at para 107 [*Michael Edwards and al v Bahamas* (2000)]; and by the IACtHR, *Interpretation of the American Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights* (1989), Advisory Opinion OC-10/89, Inter-Am Ct HR (Ser A) No 10, at paras 29–47).

10. See eg, of the 2 567 petitions brought before the Commission, only 11 dealt with Canada (0.4%). To consult the statistics of petitions brought before the IACHR against Member States of the OAS, see OAS, "Estadísticas", online: <www.oas.org>.

11. See *Manickavasagam Suresh v Canada* (2016), Inter-Am Comm HR, No 8/16, *Annual Report of the Inter-American Commission on Human Rights: 2016*, OEA/Ser.L/V/II.157/Doc.12 [*Suresh v Canada*]; *John Doe and al c Canada* (2011), Inter-Am Comm HR, No 78/11, *Annual Report of the Inter-American Commission: 2011*, OEA/Ser.L/V/II/Doc 65; *Grand Chef Michael Mitchell c Canada* (2008), Inter-Am Comm HR, No 61/08, *Annual Report of the Inter-American Commission: 2008*, OEA/Ser.L/V/II.134/Doc. 5, rev. 1 [*Grand Chef Michael Mitchell c Canada*].

12. *Loni Edmonds and children c Canada* (2013), Inter-Am Comm HR, No 89/13, *Annual Report of the Inter-American Commission: 2013*, OEA/Ser.L/V/II.149/Doc. 50, rev. 1; *Hul'qumi'num Treaty Group c Canada* (2009), Inter-Am Comm HR, No 105/09, *Annual Report of the Inter-American Commission: 2009*, OEA/Ser.L/V/II/Doc. 5, rev. 1; *John Doe et al c Canada* (2006), Inter-Am Comm HR, No 121/06, *Annual Report of the Inter-American Commission: 2006*, OEA/Ser.L/V/II.127/Doc. 4, rev. 1; *James Demers c Canada* (2006), Inter-Am Comm HR, No 85/06, *Annual Report of the Inter-American Commission: 2006*, OEA/Ser.L/V/II.127/Doc. 4, rev. 1; *Grand Chief Michael Mitchell c Canada* (2003), Inter-Am Comm HR, No 74/03, *Annual Report of the Inter-American Commission: 2003*, OEA/Ser.L/V/II.118/Doc. 5, rev. 2; *Manickavasagam Suresh c Canada* (2002), Inter-Am Comm HR, No 7/02, *Annual Report of the Inter-American Commission: 2002*, OEA/Ser.L/V/II.117/Doc. 1, rev. 1.

13. *Charles Toodlican c Canada* (2007), Inter-Am Comm HR, No 61/07, *Annual Report of the Inter-American Commission: 2007*, OEA/Ser.L/V/II.130/Doc. 22, rev. 1; *Andrew Harte & Family c Canada* (2005), Inter-Am Comm HR, No 81/05, *Annual Report of the Inter-American Commission: 2005*, OEA/Ser.L/V/II.124/Doc. 5; *Cheryl Monica Joseph Report c Canada* (1993), Inter-Am Comm HR, No 27/93, *Annual Report of the Inter-American Commission: 1993*, OEA/Ser.L/V/II.85/Doc. 9.

reports on Canada, the first concerning the Canadian Refugee Determination System (2000)[14] and the second on Missing and Murdered Indigenous Women in British Columbia.[15]

Of course, the limited use of the IAHRS by Canadians can be explained in many ways.[16] Indeed, one can consider that the general human rights situation in Canada is relatively good when compared to that in other OAS States. In addition, the domestic judicial system, while far from perfect, is relatively effective and can probably respond to most human rights concerns in the country. But the main reason may be that most Canadians, including most members of the Canadian legal community, are not familiar with the System.[17]

The topic had been the object of greater Canadian attention in the 1990s and early 2000s when Canada's adhesion to the *American Convention* was being discussed in several sectors of Canadian society. Indeed, one should recall the two reports published on the matter by the Standing Committee on Human Rights of the Canadian Senate, the many reports published by civil society, as well as the consultations held by federal agencies at the time.[18]

As this special edition of the *Revue générale de droit* shows, there is a renewed interest in Canada regarding the System[19] and, more specifically, in the possible adhesion of Canada to the *American*

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14. OAS, Inter-American Commission on Human Rights, *Report of the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System*, OR OEA/Ser.L/V/II.106/Doc. 40, rev. 1 (2000) [*Situation of Asylum Seekers*].

15. OAS, Inter-American Commission on Human Rights, *Missing and Murdered Indigenous Women in British Columbia, Canada*, OEA/Ser.L/V/II.14/Doc. 30 (2014) [*Missing and Murdered*].

16. See Duhaime, "Time to Become a Full Player", *supra* note 1 at 642.

17. *Ibid*. See also Geneviève Lessard, "From Québec to Lima: Human Rights, Civil Society and the Inter-American Democratic Charter. A Perspective from Rights and Democracy" (2003) 10:3 Canadian Foreign Policy Journal 87.

18. See Senate Report 2003 and Senate Report 2005, *supra* note 6. See also eg Rights and Democracy 2000, *Brief Regarding Ratification by Canada of the American Convention on Human Rights*, 2000 [Rights and Democracy 2000]; Rebecca Cook, *Les droits des femmes et la Convention américaine relative aux droits de l'homme*, Rights and Democracy, 2001; John W Foster, *La ratification canadienne de la CARDH et du Protocole de San Salvador : vers un plus grand respect des droits économiques, sociaux et culturels des Canadiens et Canadiennes*, Rights and Democracy, 2001; Amnesty International, *Letter Concerning Canada's Commitment to the Inter-American Human Rights System*, 2004 [Amnesty International, 2004]; Canadian Lawyers for International Human Rights, *Canada's Accession to the American Convention on Human Rights*, 2003 [CLAIHR].

19. See also David Gómez Gamboa, "El rol de Canadá frente a la Comisión Interamericana de Derechos Humanos en el contexto de la OEA" (2012) 6:1 Cuestiones Jurídicas 33.

Convention, an avenue long advocated by the author in the past.[20] As its title indicates, this contribution seeks to present comprehensively *ten reasons why Canada should join the American Convention on Human Rights* and recognize the compulsory jurisdiction of the Court.

1. Canada should join the *American Convention* mostly ***because that is the will expressed by the majority of Canadians consulted on the issue,*** as indicated in the Senate's Standing Committee 2003 and 2005 Reports, which recommended Canada's adhesion, as most commentators at the time.[21]

2. Canada should join the *American Convention* and recognize the compulsory jurisdiction of the Court ***because this would provide another international instrument to protect the human rights of Canadians, as well as offer another recourse to do so.*** Currently, Canadians are protected by two general international human rights instruments: the *American Declaration* and the *International Covenant on Civil and Political Rights* [hereinafter ICCPR].[22] Adhering to the *American Convention* would provide for another instrument, which protects certain rights not covered by the latter two instruments: for example the right of reply[23] and the right to property.[24]

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20. See eg Duhaime, "Time to Become a Full Player," *supra* note 1; Duhaime, "A Role for Canada?," *supra* note 1.

21. See eg Senate Report 2005, *supra* note 6 at 3, 8. See also Amnesty International, 2004, *supra* note 18 at 2.

22. *International Covenant on Civil and Political Rights*, 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

23. *American Convention*, *supra* note 5, art 14, "Right of Reply":
    1. Anyone injured by inaccurate or offensive statements or ideas disseminated to the public in general by a legally regulated medium of communication has the right to reply or to make a correction using the same communications outlet, under such conditions as the law may establish.
    2. The correction or reply shall not in any case remit other legal liabilities that may have been incurred.
    3. For the effective protection of honor and reputation, every publisher, and every newspaper, motion picture, radio, and television company, shall have a person responsible who is not protected by immunities or special privileges.

24. *Ibid*, art 21, "Right to Property":
    1. Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society.
    2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.
    3. Usury and any other form of exploitation of man by man shall be prohibited by law.

In addition, victims of human rights violations who are unable to obtain a remedy domestically may currently present only two types of general international recourse, either to the IACHR (regarding allegations of violations of the *American Declaration*) or to the United Nations Human Rights Committee [hereinafter UN Committee], alleging violations of the ICCPR. While both remedies are useful, neither process allows for a full trial, during which oral arguments can be made, witnesses and experts be examined, and exhibits be presented. If Canada were to recognize the compulsory jurisdiction of the IACtHR, victims (and the State) could resort to such mechanism, which allow for fuller, more complete judicial procedures, including a better protection of judicial guarantees, as well as more visibility for victims and human rights issues.

In addition, while Canada has the good faith obligation to respect recommendations of the UN Committee and of the IACHR in good faith,[25] it would have the legal obligation to implement the binding judgments and other judicial orders issued in its respect by the IACtHR.[26]

Finally, if it were to adhere to the *American Convention*, Canada could then adhere to other inter-American human rights treaties that require State Parties to have previously joined the said Convention, such as the *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights*, also called the *Protocol of San Salvador*, which contains additional protections for such rights and allows victims to present petitions regarding allegations of violations of certain economic, social, and cultural rights.[27]

3. Canada should join the *American Convention* ***because the standards developed by the System are relevant for the better understanding of the current situation of human rights in Canada*** and for a better protection of Canadians, including regarding issues such

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25. See *James Terry Roach and Jay Pinkerton v United States* (1987), *supra* note 9 at paras 46–49; *Michael Edwards and al v Bahamas* (2000), *supra* note 9 at para 107. See also *General Comment No 33: Obligations of States Parties Under the Optional Protocol to the International Covenant on Civil and Political Rights*, UNHCR, 94th Sess, UN Doc CCPR/C/GC/33 (2008).

26. See *inter alia*, *American Convention*, *supra* note 5, arts 51, 62.

27. *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (A-52)* "Protocol of San Salvador," 17 November 1988, OAS Treaty Ser No 69 (entered into force 16 November 1999) [*Protocol of San Salvador*]. See more generally Foster, *supra* note 18 at 3. See also Bernard Duhaime, "L'OEA et le Protocole de San Salvador" in Lucie Lamarche & Pierre Bosset, eds, *Donner droit de cité aux droits économiques, sociaux et culturels — La Charte des droits et libertés du Québec en chantier* (Cowansville (Qc): Yvon Blais, 2011) 363 at 369–71.

as the rights of indigenous peoples; violence against women and girls; national security and public safety; poverty, homelessness and food security; racial and religious discrimination; and the situation of groups and persons in situations of vulnerability, including immigrants and refugees.[28]

For example, the IACHR has adopted very detailed standards with regards to the protection of women against violence and States' obligations to fight against the impunity related to such crimes.[29] Indeed, in addition to its very rich jurisprudence,[30] the Commission has also produced several important thematic reports providing useful recommendations to States to remedy this situation.[31] Similarly, the IACtHR

28. These were the main issues raised during the last cycle of Universal Periodic Review undertaken by Canada at the UN Human Rights Council. See *Report of the Working Group on the Universal Periodic Review: Canada*, UNHCR, 24th Sess, UN Doc A/HRC/24/11 (2013).

29. On this issue, see generally Rosa M Celorio, "The Rights of Women in the Inter-American System of Human Rights: Current Opportunities and Challenges in Standard-Setting" (2011) 65:3 U Miami L Rev 819. See also Karla I Quintana Osuna, "Recognition of Women's Rights Before the Inter-American Court of Human Rights" (2008) 21:2 Harv Hum Rts J 301; Ruth Rubio-Marin & Clara Sandoval, "Engendering the Reparations Jurisprudence of the Inter-American Court of Human Rights: The Promise of the *Cotton Field* Judgment" (2011) 33:4 Hum Rts Q 1062; Juana I Acosta López, "The *Cotton Field* Case: Gender Perspective and Feminist Theories in the Inter-American Court of Human Rights Jurisprudence" (2012) 21 International Law: Revista Colombiana de Derecho Internacional 17; Caroline Bettinger-Lopez, "Human Rights at Home: Domestic Violence as a Human Rights Violation" (2008) 40:1 Colum HRLR 19; Caroline Bettinger-Lopez, "*Jessica Gonzales v United States*: An Emerging Model for Domestic Violence & Human Rights Advocacy in the United States" (2008) 21:2 Harv Hum Rts J 183; see also Bernard Duhaime, « Women's Rights in Recent Inter-American Human Rights Jurisprudence » in *Processings of the ASIL Annual Meeting* (Cambridge University Press, 2017) 258.

30. See eg *Raquel Martín de Mejía v Peru* (1995), Inter-Am Comm HR, No 5/96, *Annual Report of the Inter-American Commission on Human Rights: 1995*, OEA/Ser.L/V/II.91/Doc. 7; *Ana, Beatriz and Celia Gonzalez Perez v Mexico* (2001), Inter-Am Comm HR, No 53/01, *Annual Report of the Inter-American Commission on Human Rights: 2001*, OEA/Ser.L/V/II.114/Doc. 5; *Maria da Penha Maia Fernandes v Brazil* (2001), Inter-Am Comm HR, No 54/01, *Annual Report of the Inter-American Commission on Human Rights: 2001*, OEA/Ser.L/V/II.114/Doc. 5 rev.; *Jessica Lenahan (Gonzalez) and al v United States* (2011), Inter-Am Comm HR, No 80/11, *Annual Report of the Inter-American Commission on Human Rights: 2011*, OEA/Ser.L/V/II/Doc. 69.

31. OAS, Inter-American Commission on Human Rights, *Access to Justice for Women Victims of Sexual Violence: Education and Health*, OR OEA/Ser.L/V/II/Doc. 63 (2011); OAS, Inter-American Commission on Human Rights, *The Right of Women in Haiti to Be Free From Violence and Discrimination*, OR OEA/Ser.L/V/II/Doc. 64 (2009); OAS, Inter-American Commission on Human Rights, *The Right of Women in Haiti to Be Free From Violence and Discrimination*, OR OEA/Ser.L/V/II/Doc. 64 (2009); OAS, Inter-American Commission on Human Rights, *Access to Justice for Women Victims of Violence in the Americas*, OR OEA/Ser.L/V/II/Doc. 68 (2007); OAS, Inter-American Commission on Human Rights, *Violence and Discrimination Against Women in the Armed Conflict in Colombia*, OR OEA/Ser.L/V/II/Doc 67 (2006); OAS, Inter-American Commission on Human Rights, *The Situation of the Rights of Women in Ciudad Juárez, Mexico: The Right to Be Free From Violence and Discrimination*, OR OEA/Ser.L/V/II.117/Doc. 44 (2003).

has adopted many standard-setting binding judgments on the same issue, referring to specific procedural and substantive guarantees for women.[32]

These, as well as more specific standards on the protection of indigenous women from violence established in recent Court judgments,[33] as well as by the Commission in its 2017 *Report on Indigenous Women*[34] and its 2015 *Report on Missing and Murdered Indigenous Women in British Columbia*,[35] would certainly be very useful, for example, to the National Commission of Enquiry into Missing and Murdered Indigenous Women and Girls currently at work in Canada.

Similar Inter-American normative developments on the issue of migrants' rights would also be useful to strengthen the protection of the rights[36] of immigrants and refugees in Canada, in particular considering the Commission's 2000 *Report on the Situation of Human Rights of Asylum Seekers Within the Canadian Refugee Determination System*[37] as well as its recent decision in the *Suresh* case,[38] which complements and enriches the Supreme Court of Canada judgment in the *Charkaoui* case on a similar matter.[39]

Canada would, of course, benefit as well from the standards produced by the IAHRS regarding the other above-mentioned topics.[40]

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32. See eg *Miguel Castro-Castro Prison (Peru)* (Merits, Reparations and Costs) (2006), Inter-Am Ct HR (Ser C) No 160; *González and al ("Cotton Field") (Mexico)* (Preliminary Objection, Merits, Reparations and Costs) (2009), Inter-Am Ct HR (Ser C) No 205; *Espinoza González (Peru)* (Preliminary Objection, Merits, Reparations and Costs) (2014), Inter-Am Ct HR (Ser C) No 289.

33. *Fernández Ortega (Mexico)* (Preliminary Objection, Merits, Reparations and Costs) (2010), Inter-Am Ct HR (Ser C) No 215; *Rosendo Cantu (Mexico)* (Preliminary Objection, Merits, Reparations and Costs) (2010), Inter-Am Ct HR (Ser C) No 216.

34. OAS, Inter-American Commission on Human Rights, *Indigenous Women and Their Human Rights in the Americas*, OR OEA/Ser.L/V/II.17/Doc. 44 (2017) [*Indigenous Women*].

35. *Missing and Murdered*, *supra* note 15.

36. See eg Bernard Duhaime & Catherine Lafontaine, "Equality Rights and Migrations in the Americas: Revisiting the *Dorzema et al v Dominican Republic* Case" (2012) 25 QJIL 449.

37. *Situation of Asylum Seekers*, *supra* note 14.

38. *Suresh v Canada, supra note 11*.

39. *Charkaoui v Canada (Citizenship and Immigration)*, 2007 SCC 9, [2007] 1 SCR 350.

40. On the issue of national security and public safety see for eg OAS, *Inter-American Commission on Human Rights, Report on Terrorism and Human Rights : 2002*, OR OEA/Ser.L/V/II.116/Doc. 5, rev. 1 (2002); on poverty, homelessness and food security as well as on the situation of groups and persons in situations of vulnerability see eg Bernard Duhaime, "Le système interaméricain et la protection des droits économiques, sociaux et culturels des personnes et des groupes vivant dans des conditions particulières de vulnérabilité" (2007) 44 Can YB Intl L 95; on racial and religious discrimination see eg Bernard Duhaime, "Vers une Amérique plus égalitaire?

4. Canada should join the *American Convention* ***because there is no legal obstacle for adhesion.*** In the past, some concerns were expressed as to the compatibility of certain provisions of the *American Convention* with current Canadian law,[41] in particular whether Article 4(1) of the *American Convention*, protecting the right to life "in general, from the moment of conception"[42] would be compatible with current Canadian law on the issue of abortion.[43]

The IACHR addressed indirectly this issue in the *Baby Boy* case,[44] dealing with a decision of the US Supreme Court overturning a conviction of a physician who had conducted an abortion. In an *obiter dictum* the IACHR considered that Article 4(1) of the *American Convention* does not *per se* prohibit States from allowing abortion. Indeed, an analysis of the drafting history of Article I of the *American Declaration* showed that the drafters had removed language previously proposed during the negotiations of Article I of this Declaration, which protected the right to life from the moment of conception, and replaced it with its final wording, avoiding that several States derogate laws, which allowed abortions in certain circumstances. The Commission also analyzed the drafting history of Article 4(1) of the *American Convention* and concluded that the terms "in general" were inserted into the final version of the Article as the result of a compromise during the drafting negotiations between States which tolerated abortion and those against it. The drafting of the provision thus reflected the fact that the drafters did not intend to move away from the meaning of Article I of the *American Declaration*.

L'interdiction de la discrimination et le système interaméricain de protection des droits de la personne" in Ludovic Hennebel & Hélène Tigroudja, eds, *Le particularisme interaméricain des droits de l'homme* (Paris: Pedonne, 2009) 151.

41. See Senate Report 2003, *supra* note 6; Senate Report 2005, *supra* note 6.

42. *American Convention*, *supra* note 5, art 4(1): "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. No one shall be arbitrarily deprived of his life."

43. See Senate Report 2003, *supra* note 6 at 42–44, indicating that "[t]he Supreme Court of Canada found in *R v Morgentaler* that the procedure created under section 251 of the *Criminal Code* for obtaining an abortion was incompatible with a woman's right to the security of her person. No new provision has been adopted to replace s 251," *ibid* at 43. See *R v Morgentaler*, [1988] 1 SCR 30, 1988 CanLII 90 (SCC).

44. *Christian White and Gary Potter v United States* (1981), Resolution 23/81, Inter-Am Ct HR (Sec C), Case 2141, *Annual Report of the Inter-American Commission on Human Rights: 1980–1981*, OEA/Ser.L/V/II.54/Doc. 9, rev. 1 (1981).

Similarly, in its judgment on *in vitro* fertilization, the *Artavia Murillo* case, the IACtHR indicated that "the object and purpose of Article 4(1) of the *American Convention* is that the right to life should not be understood as an absolute right, the alleged protection of which can justify the total negation of other rights."[45] It also added that "it can be concluded from the words 'in general' that the protection of the right to life under this provision is not absolute, but rather gradual and incremental according to its development, since it is not an absolute and unconditional obligation, but entails understanding that exceptions to the general rule are admissible."[46] While these exceptions have yet to be defined, they probably include certain types of situations already encountered by both the Commission and the Court in decisions dealing with friendly settlements,[47] as well as precautionary[48] and provisional measures,[49] in which both ruled that abortions must be made available in certain circumstances, including in cases of pregnant children victims of rape, when the health of the mother is at risk and when the fetus is not viable.[50]

These developments seem to be in line with similar decisions of United Nations bodies[51] dealing with UN human rights treaties already

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45. *Artavia Murillo (in vitro fertilization) (Costa Rica)* (Preliminary Objections, Merits, Reparations and Costs) (2012), Inter-Am Ct HR (Ser C) No 257 at para 258.

46. *Ibid* at para 264.

47. *Paulina Del Carmen Ramírez Jacinto v Mexico* (2007), Inter-Am Comm HR, No 21/07, *Annual Report of the Inter-American Commission on Human Rights: 2007*, OEA/Ser.L/V/II.130/Doc. 22, rev. 1. See also Bernard Duhaime & Ariel E Dulitzky, "Review of the Case Law of the Inter-American Human Rights System in 2007" (2007) 20:2 QJIL 299 at 306; R Copelon & al, "Human Rights Begin at Birth: International Law and the Claim of Fetal Rights" (2005) 13:26 Reproductive Health Matters 120 at 122.

48. *Precautionary Measures (Mainumby, Paraguay)* (2015), Inter-Am Comm HR, No 178/15.

49. *Precautionary Measures (B, El Salvador)* (2013), Inter-Am Comm HR, No 114/13.

50. On these decisions see M A Olaya, "Medidas provisionales adoptadas por la Corte Interamericana de Derechos Humanos en el asunto B con El Salvador y el fortalecimiento de la protección de los derechos reproductivos en el sistema interamericano" (2014) 10 Anuario de Derechos Humanos 177.

51. See *Karen Noelia Llantoy Huamán v Peru*, Communication No 1153/2003, UNHCR, 2005, UN Doc CCPR/C/85/D/1153/2003 at para 6.4; *VDA v Argentina*, Communication No 1608/2007, UNHCR, 2011, UN Doc CCPR/C/101/D/1608/2007 at para 9.3. See also *Concluding Observations of the Human Rights Committee, Chile*, UNHCR, UN Doc CCPR/C/79/Add 104 (1999) at para 15; *Concluding Observations of the Human Rights Committee, Argentina*, UNHCR, UN Doc CCPR/CO/70/ARG (2000) at para 14; *Concluding Observations of the Human Rights Committee, Costa Rica*, UNHCR, UN Doc CCPR/ C/79/Add 107 (1999) at para 11; *Concluding Observations of the Human Rights Committee, Peru*, UNHCR, UN Doc CCPR/CO/70/PER (2001); *Concluding Observations of the Human Rights Committee, United Republic of Tanzania*, UNHCR, UN Doc CCPR/C/79/Add 97 (1998) at para 15; *Concluding Observations of the Human Rights Committee, Venezuela*, UNHCR, UN Doc

ratified by Canada, including the ICCPR, the *Convention on the Elimination of All Forms of Discrimination Against Women*,[52] and the *Convention on the Rights of the Child*.[53]

If concerns would remain as to the compatibility of Canadian legislation with Article 4(1) or other provisions of the *American Convention*,[54] one should also consider that, in situations where Canadian law or another international treaty ratified by Canada would provide a broader human rights protection than the *American Convention*, the latter could not be interpreted in a way which would restrict this broader protection.[55] While it is generally not Canadian policy to do so, any remaining concern could also be addressed by entering a reservation or an interpretative declaration as to specific aspects of the *American Convention*, when adhering to it.[56]

CCPR/CO/71/VEN (2001) at paras 19, 22; *Concluding Observations of the Human Rights Committee, Poland*, UNHCR, UN Doc CCPR/CO/82/POL (2004) at para 8; *Concluding Observations of the Human Rights Committee, Bolivia*, UNHCR, UN Doc CCPR/C/79/Add 75 (1997) at para 22; *Concluding Observations of the Human Rights Committee, Colombia*, UNHCR, UN Doc CCPR/C/79/Add 76 (1997) at para 24; *Concluding Observations of the Human Rights Committee, Ecuador*, UNHCR, UN Doc CCPR/C/79/Add 92 (1998) at para 11; *Concluding Observations of the Human Rights Committee, Mongolia*, UNHCR, UN Doc CCPR/C/79/Add 120 (2000) at para 8(b); *Concluding Observations of the Human Rights Committee, Poland*, UNHCR, UN Doc CCPR/C/79/Add 110 (1999) at para 11; *Concluding Observations of the Human Rights Committee, Senegal*, UNHCR, UN Doc CCPR/C/79/Add 82 (1997) at para 12. See also Committee on the Rights of the Child, *General Comment No 4: Adolescent Health and Development in the Context of the Convention on the Rights of the Child*, UNCRC, 33rd Sess, UN Doc CRC/GC/2003/4 (2003) at para 31, reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, UN Doc HRI/GEN/Rev 7 (2004); *Concluding Observations of the Committee on the Rights of the Child, Guatemala*, UNCRC, 27th Sess, UN Doc CRC/C/15/Add 154 (2001) at 40; *Concluding Observations of the Committee on the Rights of the Child, Chad*, UNCRC, 21st Sess, UN Doc CRC/C/15/Add 107 (1999) at para 30; *Concluding Observations of the Committee on the Rights of the Child, Nicaragua*, UNCRC, 21st Sess, UN Doc CRC/C/15/Add 108 (1999) at para 35. See in addition eg *L v Peru*, Communication No 22/2009, UNCEDAW, 2011, UN Doc CEDAW/C/50/D/22/2009 at para 8.15. See also *Concluding Observations on Peru*, UNCEDAW, CEDAW/C/PER/CO/7-8 (2014) at para 36.

52. *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981).

53. *Convention on the Rights of the Child*, 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990).

54. On the compatibility of Canadian anti-hate speech legislation with Article 13 of the *American Convention*, see eg Duhaime, "A Role for Canada?," *supra* note 1.

55. Indeed, Article 29b) of the *American Convention* provides that "[no] provision of this Convention shall be interpreted as […] restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said states is a party"; *American Convention*, *supra* note 5.

56. Duhaime, "A Role for Canada?," *supra* note 1.

5. Canada should join the *American Convention* ***because there is no obstacle related to the compatibility of Canada's legal cultures with Inter-American Law,*** as sometimes suggested in certain circles of the Canadian legal community. While there are different legal cultures in the Americas (influenced by European continental civil law, the English common law, and indigenous legal traditions), and while there exists—to some extent—what could be called a linguistic, jurisdictional and legal Anglo-Latin divide,[57] both the Commission and the Court have been able to interpret each Member State's international obligations under inter-American human rights instruments, taking into consideration internal normative and procedural guarantees in accordance with the principle of subsidiarity and a balanced generally use of deference to domestic courts.[58]

Indeed, while the Commission and the Court often provide for very detailed decisions—on reparations in particular—, the level of specificity of recommendations or orders has mostly been in line with the capacity of each State to implement the latter through legislative, executive and judicial institutions, following a detailed analysis of each specific case. This is well illustrated in the recent *Suresh* case, which deals with Canadian immigration and refugee law—the only case decided against Canada so far—where the Commission recommended, in very general terms, that Canada grant the victim "integral reparations, including compensation and measures of satisfaction; and […] take legislative or other measures to ensure that subjects of security certification have: access to prompt judicial oversight of their detention without delay, are not subjected to indefinite mandatory detention, and are accorded equal access to judicial review of their detention at reasonable intervals."[59]

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57. See on this issue Paolo Carozza, "The Anglo-Latin Divide and the Future of the Inter-American System of Human Rights" (2015) 5:1 Notre Dame J Int & Comp L 152.

58. On this specific issue, see generally Bernard Duhaime, "Standard of Review in the Practice of the Inter-American Human Rights Institutions. Subsidiarity and the Struggle Against Impunity in the Americas: What Room Is There for Deference in the Inter-American System?" in Lukasz Gruszczynski & Wouter Werner, ed, *International Law Between Constitutionalization and Fragmentation: The Role of Law in the Post-National Constellation* (Oxford: Oxford University Press, 2014) 289.

59. *Suresh c Canada*, *supra* note 11.

In addition, notwithstanding the majority of cases from civil law tradition countries, the IACHR[60] and the Court[61] have indeed often addressed very complex issues of English common law, not only in the field of criminal law and due process guarantees, but also on indigenous rights,[62] including regarding Canada.[63] On this specific issue, it is interesting to note that recent inter-American jurisprudential developments on indigenous land rights are somewhat similar to Canadian Supreme Court standards, in particular with the recognition of rights and the respect of the State obligation to ensure prior consultations.[64]

6. Canada should join the *American Convention* ***because it would strengthen Canada's capacity to have greater incidence on other States' human rights policy, in particular in the Americas.*** Indeed, the fact that it has not accepted the same normative and institutional obligations within the IAHRS lessens considerably its credibility, legitimacy as well as its moral and political capacity to engage other OAS Member States regarding their human rights record.

In the past, this has played against Canada regarding the human rights situation in Trinidad and Tobago as well as in Peru.[65] In the latter

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60. See eg *Michael Edwards and al v Bahamas* (2000), *supra* note 9; *Desmond McKenzie v Jamaica* (1998), Inter-Am Comm HR, No 41/00, OEA/Ser.L/V/II.102/Doc. 6, rev.; *Andrew Downer and Alphonso Tracey v Jamaica* (1999), Inter-Am Comm HR, No 41/00, OEA/Ser.L/V/II.106/Doc. 3, rev. (1999); *Carl Baker v Jamaica* (1999), Inter-Am Comm HR, No 41/00, OEA/Ser.L/V/II.106/Doc. 3, rev.; *Dwight Fletcher v Jamaica* (1999), Inter-Am Comm HR, No 41/00, OEA/Ser.L/V/II.106/Doc. 3, rev.; and *Anthony Rose v Jamaica* (1999), Inter-Am Comm HR, No 41/00, OEA/Ser.L/V/II.106/Doc. 3, rev.

61. See eg *Case of Dacosta Cadogan (Barbados)* (Preliminary Objections, Merits, Reparations and Costs) (2009), Inter-Am Ct HR (Ser C) No 204; *Case of Boyce and al (Barbados)* (Preliminary Objection, Merits, Reparations and Costs) (2007), Inter-Am Ct HR (Ser C) No 169; *Case of Caesar (Trinidad and Tobago)* (Merits, Reparations and Costs) (2005), Inter-Am Ct HR (Ser C) No 123; *Case of Hilaire, Constantine and Benjamin and al (Trinidad and Tobago)* (Merits, Reparations and Costs) (2002), Inter-Am Ct HR (Ser C) No 94; *Case of Constantine and al (Trinidad and Tobago)* (Preliminary Objections) (2001), Inter-Am Ct HR (Ser C) No 82; Case of Benjamin et al (Trinidad and Tobago) (Preliminary Objections) (2001), Inter-Am Ct HR (Ser C) No 81; *Case of Hilaire (Trinidad and Tobago)*, (Preliminary Objections) (2001), Inter-Am Ct HR (Ser C) No 80.

62. See eg *Mary and Carrie Dann v United States* (2002), Inter-Am Comm HR, No 75/02, *Annual Report of the Inter-American Commission on Human Rights: 2002*, OEA/Ser.L/V/II.117/Doc. 1, rev. 1.

63. See eg *Grand Chef Michael Mitchell c Canada*, *supra* note 11.

64. See eg *Case of the Saramaka People (Suriname)* (Preliminary Objections, Merits, Reparations and Costs) (2007), Inter-Am Ct HR (Ser C) No 172. See also *Delgamuukw v British Columbia*, [1997] 3 SCR 1010, 1997 CanLII 302 (SCC) and *Haida Nation v British Columbia (Minister of Forests)*, 2004 SCC 73, [2004] 3 SCR 511.

65. See Duhaime, "Time to Become a Full Player", *supra* note 1 at 651. See also "An Amber Light for Fujimori", *The Economist* (8 June 2000), online: <www.economist.com>. See also Lloyd Axworthy, "A Model for Promoting Democracy in the Americas" (2003) 10:3 Canadian Foreign Policy 13.

case, the Fujimori administration tried to discredit Canada's criticism of the Peruvian government's attacks on the Commission's 2000 Peru country report and on the Court's judgments as well as of Peru's attempt to pull out of the inter-American Court's jurisdiction.[66] One could only imagine how Venezuela, which denounced the *American Convention* and pulled out of the Court's jurisdiction in 2012, would react if Canada complained about it leaving the IAHRS…

Similarly, by not being a party to the Convention, Canada also risks being excluded from negotiations dealing with the regime's norms and institutions. This has almost been the case in 1999, during discussions regarding suggested reforms to the System (some OAS Member States tried unsuccessfully to exclude from the debate those States that had not yet ratified or adhered to the Convention).[67] This could very well happen in the future, as was the case when State Parties to the *Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women*,[68] to which Canada is not a party, discussed the creation of a monitoring mechanism for the treaty and excluded from the negotiations the States that were not parties to the instrument.

7. Canada should join the *American Convention* ***because this would be coherent with its policy regarding greater regional economic integration.*** Indeed Canada was an important player in the efforts to establish a Free Trade Area in the Americas (FTAA),[69] which—in the end—never materialized. Currently, Canada is party to the North American Free Trade Agreement with the United States and Mexico, and has concluded several bilateral or sub-regional free trade agreements [hereinafter FTA] with other OAS Member States (including with Chile,

66. See also Amnesty International, *Summit of the Americas: Canada Must Take Concrete Action in Favour of Human Rights*, 2001; CLAIHR, *supra* note 18 at 4; Cook, *supra* note 18 at 2. See also Rights and Democracy 2000, *supra* note 18 at 3; and Jean-Philippe Thérien, Patrick Héneault & Myriam Roberge, "Le régime interaméricain de citoyenneté : acquis et défis" (2002) 33:3 Études int 421 at 440.

67. On this issue see Rights and Democracy 2000, *supra* note 18 at 3.

68. *Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women (A-61) "Convention of Belem do Para,"* 9 June 1994, 33 ILM 1534 (entered into force 5 March 1995).

69. See Calivin Sims, "Free-Trade Zone of the Americas Given a Go-Ahead," *The New York Times* (20 April 1998); Gordon Mace & Louis Bélanger, *The Americas in Transition: The Contours of Regionalism* (Boulder (CO), London: Lynne Rienner Publishers, 1999).

Colombia, Costa Rica, Honduras, Panama, and Peru), and is negotiating other agreements (with the Caribbean Community, El Salvador, Guatemala, Nicaragua and the Dominican Republic).[70] This is due in part to Canadian economic interests in the areas of investments, services and extractive industries.[71]

There is, of course, an important and complex debate as to whether FTAs are beneficial or detrimental to human rights and democratic development.[72] This being said, there is no doubt that certain human rights violations or problems can indirectly result of such agreements, for example when a State reduces or reorganizes certain economic or social protections or public services to ensure fair competition to foreign entities.[73]

In such circumstances, Canada is in the awkward position of asking other States to deregulate and privatize certain sectors of their economies in accordance with FTAs, but at the same time is expecting its trade partners to abide by regional human rights rules, which are stricter and tougher than those it is itself abiding to.[74] This asymmetric situation is not to the advantage of Canada's image, at a time where Canadian industries, mostly mining companies, are expanding their

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70. See Foreign Affairs and International Trade Canada, "Negotiations and Agreements," online: <www.international.gc.ca>.

71. On this, see Government of Canada, "Canada and the Americas: Priorities & Progress," online: <www.international.gc.ca>. See also Étienne Roy-Grégoire, *L'appui de l'État canadien aux activités de compagnies minières dans une société post-conflit. Évolutions de la politique étrangère canadienne concernant la transition démocratique au Guatemala* (Montréal: Chaire Charles-Albert Poissant de recherche sur la gouvernance et l'aide au développement (UQAM), 2009).

72. See eg Susan Ariel Aaronson, "On Righting Trade: Human Rights, Trade and the 2008 Election" (2007/08) 24:4 World Policy Journal 19 [Aaronson 2008]; Emilie Hafner-Burton, *Forced to Be Good: Why Trade Agreements Boost Human Rights* (Ithaca: Cornell University Press, 2009); Susan Ariel Aaronson, "Is the Wedding of Trade and Human Rights a Marriage of Convenience or a Lasting Union?" (2010) 10 Human Rights & Human Welfare 1; Emilie Hafner-Burton, "Trading Human Rights: How Preferential Trade Agreements Influence Government Repression" (2005) 59:3 International Organization 593.

73. See Aaronson 2008, *supra* note 72 at 23; Diane Bronson & Lucie Lamarche, *A Human Rights Framework for Trade in the Americas* (Montréal: Rights and Democracy, 2001); Lucie Lamarche, "L'exigence du respect des droits de la personne dans le processus d'intégration économique continentale" in Rights and Democracy, *Intégration hémisphérique et démocratie dans les Amériques. Rapport du symposium : Citoyenneté, participation, responsabilité* (Montréal: Rights and Democracy, 2000) 51; Centro de derechos humanos "Miguela Gustin Projuarez", *Impact of Economic Integration Processes on Human Rights in the Americas* (Mexico: 2005).

74. Duhaime, "Time to Become a Full Player," *supra* note 1 at 654.

activities in the Americas, and where extractive industries are often associated with allegations of human rights violations in the region.[75]

In addition, one should recall that a free trade regime is much more predictable and stable if all parties have the same rights and obligations. In fact, that is one of the principles of such regimes.[76] One can argue that predictability, including regarding potential litigation, is preferable for investors to confusion due to asymmetric State obligations, including human rights obligations.

The confusion due to the lack of common human right standards applicable to all partners of free trade treaties[77] is clearly visible in both Canada's and Colombia's recent reports presented in accordance with the *Canada-Colombia FTA* and subsequent agreement on human rights reporting.[78] Indeed, both reports are particularly cryptic and refer to human rights as an abstract concept rather than a legal norm based on an international treaty, as would be the case if both were to refer to a common standard: the *American Convention* (to which Canada should abide, as its Colombian partner).

8. Canada should join the *American Convention* ***because Canada's full membership would strengthen the inter-American human rights System.*** Canada is an important Member of the OAS, supporting the IAHRS both politically and financially. Indeed, it contributes to a substantial part of the OAS budget and it constitutes an alternative northern partner to the United States, at a time when US policies are perhaps less favourable to Latin America. In a context where the System has been the object of recent criticism by some OAS Members—including Bolivia, Nicaragua, and mostly Venezuela, which

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75. See on the issue OAS, Inter-American Commission on Human Rights, *Indigenous Peoples, Afro-Descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*, (2015) OR OEA/Ser.L/V/II.15/Doc. 47 (2015).

76. Andrew Paul Newcombe & Lluís Paradell, *Law and Practice of Investment Treaties: Standards of Treatment* (Alphen aan den Rijn: Kluwer Law International, 2009) at 147 and ff.

77. On this see, Aaronson 2008, *supra* note 72 at 20.

78. *Canada-Colombia Free Trade Agreement*, 21 November 2008, online: <www.international.gc.ca>; *Canada–Colombia Free Trade Agreement Implementation Act*, SC 2010, c 4, art 15(1), online: <//laws-lois.justice.gc.ca/eng/AnnualStatutes/2010_4/>. See also Foreign Affairs and International Trade Canada, *Fact Sheet: Canada's Engagement on Human Rights in Colombia*, online: <www.international.gc.ca>. See also Christine Kostiuk, *Legislative Summary of Bill C-2: Canada–Colombia Free Trade Agreement Implementation Act*, No 40-3-C2E, 30 March 2010, online: <www.parl.gc.ca>. See also International Centre for Trade and Sustainable Development (ICTSD), *Canada–Colombia FTA Gets Human Rights Amendment*, 31 March 2010, online: <www.ictsd.org>.

pulled out of the System altogether—Canada's full membership would certainly be the strongest possible political measure of support that it could adopt in favour of the IAHRS.

Canadian adhesion would thus be a significant step towards the *universalization* of the System. Indeed, the current situation contributes to some form of *Anglo-Latin divide*,[79] a system with two types of OAS Member States: 1) Latin-American States, of the civil law legal tradition, which are bound by the *American Convention* and which have recognized the compulsory jurisdiction of the Inter-American Court, and 2) English-speaking States, of the common law legal tradition, which are mostly bound by the *American Declaration* only and which are subjected to the jurisdiction of the Inter-American Commission. Again, a strong, stable and predictable regional human rights system should provide for the same rights and obligations for all, as is the case in the European model, where all States of the Council of Europe have to be parties to the *European Convention for the Protection of Human Rights and Fundamental Freedoms*.[80]

In addition, a Canadian adhesion to the *American Convention* would certainly ensure that more Canadians would know about and use the System. This would probably also have the effects of enriching inter-American law with new types of cases. Indeed, many current cases reach the Commission and the Court not because the petitioner has exhausted domestic remedies, but rather because such remedies are inadequate, ineffective or not timely at the national level. Accordingly, many current cases deal with dysfunctional judicial systems and their consequences on impunity, judicial guarantees, etc. Because of the relative efficiency of the Canadian legal system, it is likely that most petitioners would first exhaust domestic remedies in accordance with the *American Convention* and principles of international law[81] and submit cases to the Commission and the Court, mainly dealing with complex legal and social issues.

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79. Carozza, *supra* note 57.

80. *Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos 11 and 14*, 4 November 1950, ETS 5 (entered into force 3 September 1953).

81. *American Convention*, *supra* note 5, arts 46–47; see also *Exceptions to the Exhaustion of Domestic Remedies (Arts 46(1), 46(2)a) and 46(2)b) of the American Convention on Human Rights)* (1990), Advisory Opinion OC-11/90, Inter-Am Ct HR (Ser A) No 11.

Finally, if Canada truly wants to strengthen the IAHRS, it only makes sense to join it fully. Indeed, human rights regimes have often been criticized—sometimes rightly so—for their alleged postcolonial aspirations to civilize "the others"[82] or for their strategic use of human rights to discredit certain governments.[83] Northern States are sometimes accused of requiring respect for human rights only from Southern States, without ensuring the same "in their own back yard." The current asymmetry in the IAHRS certainly feeds this type of criticism and weakens the System as a whole. On the long run, universalization is a necessity for the System.[84]

9. Canada should join the *American Convention* ***because Canada and Canadians can and should learn from Latin America's experience in the defence of human rights.*** Indeed, while the region has been subjected to its load of human rights violations, it has also come up with complex, creative and well-adapted solutions to some of its problems. This is the case in domestic, inter-American law, and broader international human rights law.[85] At a time where Canada is at odds with several human rights problems, for example regarding indigenous peoples' rights, violence against women, discrimination, immigration and security policies, etc., some of these experiences may be useful in Canada.[86]

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82. See eg Makau Wa Mutua, "Savages, Victims, and Saviors: The Metaphor of Human Rights" (2001) 42:1 Harv Intl L J 201; Makau Wa Mutua, "The Ideology of Human Rights" (1996) 36 Va J Intl L 589.

83. See Rémi Bachand, "Le droit international et l'idéologie droits-de-l'hommiste au fondement de l'hégémonie occidentale" (2014 Special Edition) RQDI 69.

84. See OAS, Inter-American Commission on Human Rights, Considerations Related to the Universal Ratification of the *American Convention* and other Inter-American Human Rights Treaties (2014), OAS/Ser.V/II.152/Doc. 21.

85. See eg Ariel E Dulitzky, *Desapariciones Forzadas: Las Contribuciones de América Latina y de José Zalaquett*, 2017, online: <www.law.utexas.edu> [Dulitzky, *Desapariciones Forzadas*]. See also Ariel E Dulitzky, *Derechos humanos en Latinoamérica y el Sistema Interamericano, Modelos para (des)armar* (Querétaro (Mexico): Instituto de Estudios Constitucionales del Estado de Querétaro, 2017).

86. The author is pursuing a three-year research project on this issue, funded by the Pierre Elliott Trudeau Foundation; see Pierre Elliott Trudeau Foundation, "Bernard Duhaime", online: <www.trudeaufoundation.ca>. See also Elin Skaar et al, *Beyond Words: Latin American Truth Commissions' Recommendations*, Centre on Law & Social Transformation, 2017, online: <www.lawtransform.no>.

For example, the region's experience in dealing with the phenomenon of enforced disappearances[87] as well as with truth commissions and transitional justice processes,[88] as addressed in part by the inter-American case law, may certainly inform the current work of the National Commission of Enquiry into Missing and Murdered Indigenous Women and Girls and the follow-up measures that will ensue.[89]

10. Finally, Canada should join the *American Convention* ***because it's the Canadian thing to do*****.** Indeed, Canada has a rich history of being a supporter of human rights. After all, the *Universal Declaration of Human Rights* (UN) was drafted in part by a Canadian, John Humphrey,[90] as many Canadian human rights defenders like to recall. This being said, can a State wishing to be a universal or regional champion for human rights[91] not join its own region's basic human rights instruments? Asking the question is answering it: ***Canada should join the American Convention because it's 2018*****.**

87. Dulitzky, *Desapariciones Forzadas*, *supra* note 85.

88. A Rachel, "'Truth' and Truth Commissions in Latin America" (2013) 21:2 Investigación y Desarrollo 494; Kathryn Sikkink & Carrie Booth Walling, "The Impact of Human Rights Trials in Latin America" (2007) 44:4 Journal of Peace Research 427; Cynthia E Milton, "At the Edge of the Peruvian Truth Commission: Alternative Paths to Recounting the Past" (2007) 98 Radical History Review 3.

89. As mentioned above, inter-American contributions specifically dealing with indigenous women will, of course, be relevant as well. See *Fernández Ortega y Otros v México* (2010), Inter-Am Ct HR (Ser C) No 215; and *Rosendo Cantu v Mexico* (2010), Inter-Am Ct HR (Ser C) No 216; *Indigenous Women*, *supra* note 34; *Missing and Murdered*, *supra* note 15.

90. John P Humphrey, "The *Universal Declaration of Human Rights*: Its History, Impact and Juridical Character" in B G Ramcharan & International Forum on Human Rights & United Nations General Assembly, ed, *Human Rights: Thirty Years After the Universal Declaration: Commemorative Volume on the Occasion of the Thirtieth Anniversary of the Universal Declaration of Human Rights* (The Hague/Boston: M. Nijhoff/Kluwer, 1979) 21.

91. See Kris Cates-Bristol, *Is Canada Still a Leader when It Comes to Human Rights?* (Waterloo: Centre for International Governance Innovation, 2009), online: <www.cigionline.org>.