

UNIT 6: INTERNATIONAL PROTECTION OF HUMAN RIGHTS FROM A REGIONAL PERSPECTIVE (III): THE WORK OF THE ORGANIZATION OF AMERICAN STATES

1. General ideas. 2. The protection of human rights based on the OAS Charter. 3. The Protection of Human Rights based on the American Convention on Human Rights. 4. Other Conventions for the protection of human rights.



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1. GENERAL IDEAS



- OAS (Charter of Bogota, 30/4/1948-in force 13/12/1951):
 - Oldest regional IO established in order to achieve among its member states—as stipulated in Article 1 of the Charter—"an order of peace and justice, to promote their solidarity, to strengthen their collaboration, and to defend their sovereignty, their territorial integrity, and their independence." (not HR). BUT they appear in the Charter.
 - Currently. 35 member States and 4 pillars of work: democracy, human rights, security, and development.
 - Inter-American human rights protection system two sources (partial overlap):
 - ❖ OAS Charter of 1948 and related instruments: 35 member states.
 - ❖ American Convention on Human Rights (Pact of San José de Costa Rica- 22/11/1969 and its Protocols): 23 States.
 - Structure: The General Assembly; the Meeting of Consultation of Ministers of Foreign Affairs; the Councils (the Permanent Council and the Inter-American Council for Integral Development); the Inter-American Juridical Committee; the Inter-American Commission on Human Rights; the General Secretariat; the specialized conferences; the specialized organizations; and other entities established by the General Assembly.

2. THE PROTECTION OF HUMAN RIGHTS BASED ON THE OAS CHARTER

- Different milestones in the protection of human rights based on the OAS Charter:
 - OAS Charter 1948.
 - American Declaration of the Rights and Duties of Man, 2/5/1948.
 - Creation of the Inter-American Commission on Human Rights, 1959.
 - Amendment of the OAS Charter by Protocol of Buenos Aires, 27/2/1967.
 - American Convention on Human Rights and new Statute of the Commission.

2.1. The OAS Charter of 30th April 1948.

- Human Rights References in the OAS Charter:
 - Preamble: *Confident that the true significance of American solidarity and good neighborliness can only mean the consolidation on this continent, within the framework of democratic institutions, of a system of individual liberty and social justice based on respect for the essential rights of man;*
 - Former art. 5.j) (current 3.l). *The American States proclaim the fundamental rights of the individual without distinction as to race, nationality, creed, or sex;*

- Former art. 13 (current 17) *Each State has the right to develop its cultural, political, and economic life freely and naturally. In this free development, the State shall respect the rights of the individual and the principles of universal morality.*

2.2. The American Declaration of the Rights and Duties of Man, May 2, 1948.

- First international instrument on human rights protection (prior to the Universal Declaration).
- Civil, political, social, economic and cultural rights, accompanied by duties (novelty) and recognizing their indivisibility.
- All of them, without any discrimination and limited by the rights of others, security and general interest requirements and democratic development.
- Current legal value: binding for State members.

2.3. *The creation of the Inter-American Commission on Human Rights.*

- Resolution VIII of the 5th Meeting of Consultation of Ministers of Foreign Affairs in Santiago de Chile: Creation of the Human Rights Commission (organized by the Permanent Council and in charge of promoting respect for human rights).
- Statute of the Commission (25/5/1960) applying the American Declaration as a standard.
 - Original functions: studies and reports on States, recommendations to Governments.

- 1965 Statute amendment: individual petitions on violations of right to life, liberty and security; equality; freedom of religion; freedom of expression; access to justice; prohibition of arbitrary detention; and right to a fair trial.

2.4. The amendment of the OAS Charter by the Protocol of Buenos Aires of February 27, 1967.

- Amendment of the OAS Charter modifying the legal status of the Commission and strengthening the normative nature of the Declaration-
 - Art. 51 Protocol (current 106 Charter): Commission's role in promotion and defense, and OAS advisory body.
 - Provision for Human Rights Convention that would determine structure and norms. Provisionally: Declaration.
 - Legal consequences (legitimacy to the system):
 - ❖ Existence and functions of the Commission derive from a treaty.
 - ❖ Commission: advisory body OAS.
 - ❖ Strengthening of the Declaration normative character.

2.5. The adoption of the American Convention on Human Rights and the new Statute of the Convention.

- [American Convention on Human Rights 11/22/1969](#): Commission as a consultative body of

the OAS (competence over all its members) and as the competent body for matters relating to compliance with the commitments of the States in the Convention (competence over States Parties).

- Modification of the Commission's 1979 statute.
 - Human Rights: Declaration + Convention.
 - ❖ The Declaration is the authentic interpretation of rights and source of obligations for OAS member states.
 - Composition 7 members elected by the OAS General Assembly list of candidates OAS member states.
 - Headquarters: Washington, USA.
 - It does not operate on a permanent basis. Ordinary/extraordinary meetings, with reserved character.
 - Decisions: Procedural matters: simple majority. Decisions regarding States not party to the Convention: absolute majority.
 - Functions and powers. The Statute distinguishes:
 - ❖ With respect to OAS member states (art. 18).
 - ❖ With respect to States party to the Convention (art. 19).
 - ❖ In relation to OAS member States not party to the Convention (art. 20).

➤ Functions as an OAS body:

- ❖ receive and examine individual petitions certain rights Declaration.
- ❖ Art. 20 Individual petitions.
- ❖ Art. 23 et seq. Commission Rules of Procedure: Examine communications from individuals, groups, NGOs legally recognized in member states, on their own behalf or on behalf of persons, violations of rights in the Declaration and even initiate proceedings on their own initiative.
 - ✓ Against any OAS member state, whether or not they are party to the Convention, in the case of violations of the Declaration.
 - Requirements (art. 28): non-anonymous, relevant data, exhaustion of domestic remedies and 6 months.
 - Grounds for inadmissibility: Pending before another international jurisdiction, res judicata, inadmissibility, unfounded.
 - Procedure: transmission to the State (2m reply)-admissibility of the case-registration as a case-proceeding on the merits (2m for both parties and possibility of *in loco* investigation)-confidential discussions-vote on the merits-report:
 - No violation: transmission and publication Annual Report.
 - Violation: Preliminary report of proposals and recommendations to the State and deadline to adopt measures. Notification to petitioner.

- Deadline 3m without remedy: Final report by absolute majority with final opinion and conclusions, and recommendations.
- Evaluation of compliance and publication of final report (Annual Report or other means) and follow-up measures on friendly settlement or recommendations.
 - Possibility of precautionary measures.
- ❖ Reports on human rights in a State (art. 58 Rules of Procedure):
 - ✓ General or special report on the human rights situation in a State (*in loco* via the Special Commission).
 - ✓ When it receives numerous individual petitions.
 - ✓ When it has clear evidence of frequent violations.
 - ✓ Procedure: Draft report-government State (observations in due time)-study and publication.

3. HUMAN RIGHTS PROTECTION BASED ON THE AMERICAN CONVENTION ON HUMAN RIGHTS.

- For States Parties: new legal basis protection system.
- Completed by:
 - Additional Protocol on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador), 17/11/1988.
 - Protocol to the American Convention on Human Rights to Abolish the Death Penalty, 8/6/1990.

3.1. Obligations of the parties

- Art. 1 and 2 (civil and political rights) and Art. 26 (economic, social and cultural rights).
 - Respect and guarantee, without discrimination.
 - Obligation to remove obstacles to enjoyment and organize the governmental apparatus to ensure free exercise.
 - Adopt legislative or any other type of measures to make them effective. Progressive development of economic, social and cultural rights.
- Possibility of suspension of obligations (art. 27):
 - War, public danger or emergency independence or security of the State.
 - Limit: incompatible with obligations under international law and without discrimination.

- Exceptions: juridical personality, life, personal integrity, slavery and servitude, legality and retroactivity, freedom of conscience and religion, protection of the family, right to a name, rights of the child, nationality, political rights, indispensable judicial guarantees.
- Procedure: immediately inform States via the OAS Secretary General of suspended provisions - reasons - expected date of termination.

3.2. *Recognized rights*

- Only civil and political, and correlative to duties to family, community and humanity:
 - Right to recognition of juridical personality.
 - Right to life.
 - Right to personal integrity.
 - Prohibition of slavery and servitude.
 - Right to personal liberty.
 - Judicial guarantees.
 - Principle of legality and retroactivity.
 - Right to compensation.
 - Freedom to protect honor and dignity.
 - Freedom of conscience and religion.
 - Freedom of thought and expression.
 - Right of rectification and reply.
 - Right of assembly.

- Right of association.
- Protection of the family.
- Right to a name.
- Rights of the child.
- Right to nationality.
- Right to private property.
- Right of movement and residence.
- Political rights.
- Equality before the law.
- Judicial protection.
- Possibility of other conventional rights (Protocols):
 - San Salvador 1988:
 - ❖ Right to work.
 - ❖ Right to fair, equitable and satisfactory conditions.
 - ❖ Trade union rights.
 - ❖ Right to social security.
 - ❖ Right to health.
 - ❖ Right to a healthy environment.
 - ❖ Right to food.
 - ❖ Right to education.

- ❖ Right to the benefits of culture.
- ❖ Right to the constitution and protection of the family.
- ❖ Right to childhood.
- ❖ Protection of the elderly.
- ❖ Protection of the disabled.

➤ Protocol Abolition Death Penalty: reinforcement of the right to life.

3.3. Bodies competent to hear matters related to compliance with the commitments assumed by the States Parties.

a) The Inter-American Commission on Human Rights.

- Main function: to promote observance and defense of human rights (Convention + trade union rights and the right to education of the Protocol of San Salvador).
- Jurisdiction:
 - Individual petitions or complaint of violation: Person, group of persons, NGO legally recognized in State party about violations of Convention or about certain rights of the Protocols (for member States must meet requirements Convention and Rules of Procedure).
 - ❖ Procedure: same as in the case of the OAS Charter.
 - ❖ Novelty: If the State has accepted the jurisdiction of the Court and it is considered that it has not complied with the recommendations of the report, the case will be submitted to the Court.

- Communications from States: Declaration of State recognizing this jurisdiction.
 - ❖ Procedure: Transmission to the State in question so that it may express its opinion on competence-acceptance and processing.

b) The Inter-American Court of Human Rights

- Competent body (autonomous judicial institution) to hear cases on compliance with commitments (interpretation and application of the Convention).
- Headquarters: San José (Costa Rica).
- Rules: Statute and Rules of Procedure.
- Composition: 7 judges (OAS member nationals) elected by secret ballot and by absolute majority of the States Parties to the Convention and proposed by the States.
- Organization: President, Vice President, Secretariat and Secretary.
 - Does not function on a permanent basis (regular/extraordinary sessions) and majority decisions with public hearings but private and secret deliberations.
- Competence:
 - Contentious: cases relating to the application of the Convention provided that States have recognized the Convention (special declaration or special convention).
 - ❖ Before: exhaustion of the Commission procedure.
 - ❖ Jurisdiction:
 - ✓ *Ratione persona*: States parties and Human Rights Commission.

- ✓ *Ratione materia*: interpretation and application of the Convention + San José Protocol (trade union rights and right to education).
- ❖ Phases of the procedure:
 - ✓ Written: Presentation of the application to the Secretariat of the Court in one of its working languages.
 - ✓ Oral: Hearings before the Court by State agents, Commission delegates, lawyers and counsel for the parties. Witnesses and experts.
 - ✓ Reasoned judgment and possibility of dissenting or individual opinions, read in public hearing and notified.
 - Final and unappealable:
 - Dismissal of the case.
 - Violation: guarantee to the injured party, reparation and payment of compensation (execution via domestic law procedure).
 - ⦿ Non-compliance with the sentence: mention in the OAS Annual Report.
- Consultative: interpretation of the Convention or other protection treaties in the OAS.
 - ❖ Jurisdiction (broad):
 - ✓ *Ratione persona*: OAS Member States (whether or not parties to the Convention) and organs Chapter VII OAS Charter

- ✓ *Ratione materiae*: interpretation of the Convention or other human rights protection treaties in the American States, and at the request of any State, the compatibility of domestic legislation with international instruments.

4. OTHER CONVENTIONS FOR THE PROTECTION OF HUMAN RIGHTS.

- Other Conventions:
 - Inter-American Convention on Forced Disappearance of Persons, 9/6/1994.
 - Inter-American Convention to Prevent and Punish Torture, 12/09/85.
 - Inter-American Convention Against Racism, Racial Discrimination and Related Forms of Intolerance, 5/6/2013.
 - Inter-American Convention Against All Forms of Discrimination and Intolerance, 5/6/2013.
 - Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities, 06/07/99.
 - Inter-American Convention on the Granting of Civil Rights to Women, 05/02/48.
 - Inter-American Convention on the Granting of Political Rights to Women, 05/02/48.
 - "Convention of Belem do Pará": Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, 06/09/94.

➤ Inter-American Convention on Protecting the Human Rights of Older Persons, 15/6/2015.



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