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

Bernard Duhaime

Le rôle du Canada à l’égard de la protection des droits de la personne au sein des Amériques
Canada's Role in Protecting Human Rights in the Americas
El papel de Canadá en la protección de los derechos humanos en las Américas

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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:

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 Elise 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 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.

Indeed, since Canada has joined the Organization of American States [hereinafter OAS] in 1990, it has not yet adhered to the *American Convention on Human Rights* [hereinafter American Convention] and has not recognized the compulsory jurisdiction of the Inter-American Court of Human Rights [hereinafter Court or IACtHR]. It nevertheless recognized its international obligation to respect human rights as provided for in the *Charter of the Organization of American States* and in the *American Declaration of the Rights and Duties of Man* [hereinafter American Declaration], as well as the functions of the Inter-American
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 admissibility12 and three on inadmissibility.13 The IACHR has also published two thematic


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, “Estadisticas”, online: <www.oas.org>.


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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\(^{16}\) 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.


\(^{19}\) 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.
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Convention, an avenue long advocated by the author in the past. 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.

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]. 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 and the right to property.

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

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


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 Women34 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 rights36 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 System37 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

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.
35. Missing and Murdered, supra note 15.
38. Suresh v Canada, supra note 11.
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, in particular whether Article 4(1) of the American Convention, protecting the right to life “in general, from the moment of conception” would be compatible with current Canadian law on the issue of abortion.

The IACHR addressed indirectly this issue in the Baby Boy case, 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.
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 precautionary48 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 bodies51 dealing with UN human rights treaties already

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.
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.
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.\(^{56}\)

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\(^{54}\) 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 “[n]o 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, 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.

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. 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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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 Caeser (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.


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.

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. 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). 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, 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), 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 with other OAS Member States (including with Chile,
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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

\(^{70}\) See Foreign Affairs and International Trade Canada, “Negotiations and Agreements,” online: <www.international gc.ca>.

\(^{71}\) See also Etienne 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).


\(^{74}\) 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.\textsuperscript{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.\textsuperscript{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\textsuperscript{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.\textsuperscript{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


\textsuperscript{77} On this see, Aaronson 2008, supra note 72 at 20.

\textsuperscript{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>.
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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, 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.

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 and submit cases to the Commission and the Court, mainly dealing with complex legal and social issues.

79. Carozza, supra note 57.
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” or for their strategic use of human rights to discredit certain governments. 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.

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. 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.

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 desarmar (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.**

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\(^87\) Dulitzky, Desapariciones Forzadas, supra note 85.


\(^89\) 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.


\(^91\) 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>. 