

A copy-edited version of this article was published in *Pensamiento Propio*, vol. 38, June-December (2013)

A Special Relationship Gone Normal? Argentina and the Inter-American Human Rights System, 1979-2013*

Introduction

This article examines the relationship between Argentina and the Inter-American Human Rights System (IAHRS) as it has developed over time. Contemporary Argentina forming part of the regional human rights system is clearly different from what it was in the early 1980s. Although several structural factors continue to shape Argentine politics, the country has broken the cycle of alternation between military and civilian governments and the escalation of political violence that characterised Argentine political history for most of the twentieth century. Moreover, the politics of human rights that marked the opposition to Argentina's most recent military regime (1976-1983) has subsequently shaped the character of democratization since the transition during the government of Raúl Alfonsín. From the expressive and symbolic form of human rights activism that emerged during the period of the military regime and in the immediate transitional period, Argentine human rights politics has over time become increasingly legalized, judicialized, and transnationalized.

These patterns of evolution of human rights politics in Argentina have also transformed the country's linkages with the IAHRS. Argentina has consistently been one of the OAS members states with the highest number of petitions submitted to the IACHR against it. The country has generated a comparatively significant number of cases because of a combination of factors, including the experiences of human rights abuses by the military regime, the work of traditional human rights organizations during the period of state repression, and their efforts to bring perpetrators to justice following the transition to democracy. However, the evolution of Argentine cases before the IAHRS is in many ways exceptional compared to those countries with similar experiences of human rights abuses in the region. The early cases following the democratic transition were predominantly related

* The author is grateful to Bruno Boti Bernardi, Roberto Gargarella, the Editors of this special issue, and an anonymous reviewer for very helpful comments on a previous draft. The usual caveats apply. The article draws, in part, on research and interviews with key actors in Argentina conducted by the author. A fuller account of the historical development of the relationship between Argentina and the IAHRS can be found in Par Engstrom, "Transnational Human Rights and Democratization: Argentina and the Inter-American Human Rights System (1976-2007)" (DPhil dissertation, University of Oxford, 2010).

to human rights violations under the military regime and how the Alfonsín and Carlos Menem governments dealt with questions of transitional justice. These were followed by a number of emblematic cases relating to violations under the democratic regime that highlighted the structural nature of social violence, and the problematic character of democratization in Argentina. And over time, cases that involve issues of individual access to justice and due process have increasingly been submitted to the IAHRs. There is also a general development towards more individualized treatment of cases with regards to issues that often relate to areas in which the public interest as interpreted by Argentine state institutions collide with notions of individual rights.

Although the degree of its exceptional relationship with the IAHRs should not be over-stated, the case of Argentina offers important insights into the historical development of the regional human rights system as well as highlights potential future directions. Indeed, from fierce resistance to the IAHRs during the military regime of the 1970s to the supportive, embedded, and disaggregated interactions during much of the period since the country's democratic transition, the relationship between the IAHRs and Argentine society has become bound up with broader processes of democratization.¹ Today, Argentina is one of the most denounced countries in the IAHRs. This is not due to more human rights violations being committed in Argentina relative to other countries in the region. Instead, this could be explained by the fact that the IAHRs – in terms of its human rights norms and institutions – is widely seen as a natural human rights mechanism when domestic mechanisms fail. However, as evidenced in this article, the path towards the more complex and multi-layered connections that characterise the contemporary relationship between Argentina and the IAHRs has been neither smooth nor inevitable. Nor have the regional human rights institutions operating within the traditional inter-state structures of the international system themselves been immune to change from without following its engagement with Argentina.

It is precisely because of this inherent volatility, instability and contested nature of human rights politics and the ever-present risks of reversals of any advances made, that a *longue durée* perspective on the relationship between Argentina and the IAHRs is instructive. Indeed, one of the key points of this article is that the historical development of the relationship is crucial in order to understand the more recent positions of the Argentine government in the context of the IAHRs reform process that

¹ More generally on the Inter-American Human Rights System and democratization in Latin America, see Par Engstrom and Andrew Hurrell, "Why the Human Rights Regime in the Americas Matters," in *Human Rights Regimes in the Americas*, ed. Mónica Serrano and Vesselin Popovski (Tokyo: United Nations University Press, 2010).

is the focus of this special issue. The Inter-American System has over time become an important actor in Argentine human rights politics, though its role and relative influence has evolved over time through a number of overlapping yet distinct stages following the 1979 visit by the IACHR and the subsequent discrediting of the military junta. The relationship strengthened as the Alfonsín government formally signed and ratified a number of international human rights instruments, and through the role of the IAHRs in seeking accountability for past human rights abuses in the early transitional period. It expanded as the IAHRs addressed authoritarian and rights-violating state practices in a formally democratic Argentina. And it deepened with the diversification of human rights activism since the mid-1990s. As a result of these developments, contemporary Argentina forming part of the regional human rights system is clearly different from the Argentina of the 1980s, in terms of official attitudes towards the system and as a result of domestic political developments in Argentina. These changes have combined to transform the character of the country's linkages with the system giving rise to the 'special relationship' that has developed over time. And yet, the increasing politicisation of human rights in Argentina in general in recent years combined with the Argentine government's ambivalent positions with regards to the IAHRs reform process illustrate the fragility of these institutional developments.

This article proceeds in two main parts. The first unpacks the ways in which Argentina's relationship has been shaped by domestic political changes, i.e. democratization. Three overlapping, yet distinct, human rights arenas, are examined: civil society mobilisation, constitutional and judicial politics, and state institutions. The second part reverses the analytical focus and highlights what the specific case of Argentina can tell us about the development of the IAHRs, and, in particular, emphasises the extent to which Argentina has found itself at the vanguard of human rights struggles within and around the IAHRs. Yet, as this article demonstrates, Argentina's relationship with the IAHRs has become increasingly strained in recent years, which demonstrates once more that human rights progress tends to be uneven and prone to reversals.

I. The IAHRs and Democratization in Argentina

The relationship between the IAHRs and Argentina is complex and continually evolving. Since the 1970s Argentina has been deeply engaged with the IAHRs and it continues to be an important user of the system. Today, Argentina is one of the most denounced countries in the IAHRs. This pattern of recourse to regional institutions across countries reveals interesting points of departure. If the use of the regional human rights regime were primarily driven by the scale and severity of human rights

abuses, one would not expect to see Argentina as the country that consistently gives rise to some of the highest numbers of complaints among OAS member states. Instead, human rights politics in Argentina is intimately connected with the specific character of the country's on-going processes of political democratization. Argentina experienced an abrupt opening up to international scrutiny of its domestic human rights record in the early phase of its democratic transition after a period of intense hostility to international human rights law and institutions. The democratization of political contestation in Argentina opened up the country to international human rights influences in ways observed in few, if any, other Latin American countries. The IAHR, in particular, has become increasingly embedded in Argentine human rights politics, and in terms of its human rights standards and institutional interventions in domestic political affairs it is widely seen as a legitimate human rights mechanism when domestic mechanisms fail.

The role and relative impact of international human rights in processes of democratization in Argentina has varied over time. Human rights emerged as a new and powerful language of political opposition to the military regime in the 1970s that framed understandings of the individual and collective consequences of the political violence of that period. Human rights became a political issue in part because of the unprecedented nature of the political repression by the military regime, but also because of the emergence internationally of a new language of human rights available to oppositional actors. The particular constellation of political actors that successfully mobilised against the military regime, and the language and methods they used, were unprecedented, but would continue to shape Argentine political developments after the fall of the military regime. The discourse of human rights subsequently shaped the demands of accountability for past violations in the immediate transitional period; it underpinned the legitimacy of the new democratic regime as it sought to strengthen its position against repeated challenges to its authority by the military; and it motivated a range of measures aimed at state and legislative reforms. As the priorities of the government shifted with a new administration towards the end of the 1980s and in the beginning of the 1990s, human rights moved largely to the institutional sphere of the national judiciary. Following the economic crisis of 2001/2 matters of human rights – conceived as accountability for abuses under the military regime – received renewed attention under the Néstor Kirchner administration.

Hence, human rights have consistently been a topic of public debate in Argentina since the democratic transition in 1983, yet the translation into public policy of human rights has varied over time. Moreover, processes of democratization in Argentina have been exposed to significant, albeit

uneven, transnational influences and human rights activism by civil society actors. As a result, the capacity of Argentine governments to control the human rights agenda has frequently been limited due to the complex interplay between the multiple actors that has characterized the development of human rights politics in Argentina.

1. The 1979 IACHR Visit and Transition to Democracy

The 1979 visit of the Inter-American Commission on Human Rights (IACHR) to Argentina marks the beginning of the ‘special relationship’ that would develop over time between the IACHR and Argentina.² The IACHR visit for two weeks in September 1979 generated considerable domestic and international attention as it put the spotlight on the human rights record of the military regime.³ The eventual IACHR report on the human rights situation in Argentina was not acted upon, however, when presented to the OAS General Assembly in April 1980.⁴ Yet, while a new US administration under Reagan and the internal politics of the OAS may have prevented the condemnation of Argentina by its member-states, for the IACHR itself the Argentine country visit represents a defining moment in the development of its identity as an independent and operational human rights institution.⁵

In terms of its impact on the human rights situation in Argentina, after the IACHR’s visit, the number of disappearances appeared to decrease. But the exact cause of the military regime’s apparent cessation of the use of disappearances following the visit remains disputed. For Kathryn Sikkink the marked improvement in the human rights situation in Argentina was due to international pressures and the result of a change in the political climate following the IACHR visit.⁶ There is evidence to suggest however, that the military’s declared ‘war against subversion’ was already near completion such that by the time of the IACHR visit no further disappearances were deemed necessary. Indeed, in September 1979 the military government had claimed that it had won the war against the ‘subversives’. On this account, if the IACHR visit had any immediate effect at all it was to strengthen the position of the junta’s ‘hardliners’ in the short term at least as they were proven

² For a synthesis of press coverage of the IACHR visit see:

<http://www.cels.org.ar/documentos/index.php?info=detalleDoc&ids=3&lang=es&ss=&idc=1160>

³ Lars Schoultz, *Human Rights and United States Policy toward Latin America* (Princeton, N.J.: Princeton University Press, 1981); Sikkink, *Mixed Signals*.

⁴ IACHR, *Report on the Situation of Human Rights in Argentina*, 11 April 1980.

⁵ The IACHR had conducted very few country visits before Argentina and the visit set a precedent for the IACHR in terms of its modus operandi. For some of the short-term negative repercussions for the IACHR following the publication of the report, see Weissbrodt and Bartolomei, ‘Effectiveness of International Human Rights Pressures’.

⁶ Sikkink, *Mixed Signals*.

right that the visit would backfire and generate bad publicity for the regime.

Nonetheless, the 1979 IACHR visit constituted a turning point in the opposition to the military regime.⁷ Although Argentina at the time of the IACHR visit was not a signatory to any of the OAS human rights instruments and, moreover, the report and recommendations of the IACHR were strictly speaking ‘unenforceable’, the IACHR visit had a discernible normative impact in that it framed the political situation in Argentina in human rights terms and provided local actors with a powerful vocabulary in their political opposition against the military regime. In particular, the IACHR visit generated information about the nature and the scale of the military repression, and the report awoke many to a situation they had chosen to ignore.⁸

Ultimately, a combination of external and internal pressures led to the collapse of the military regime in 1983. The military defeat to the UK in the Malvinas/Falklands war in 1982 severely undermined the military’s position. The military government and its civilian allies were weakened by strikes prompted by the mishandling of the economy and denunciations of acts of corruption. Military and economic incompetence are clearly important factors in explaining the military’s downfall, but the shift away from the general acquiescence among many sectors of the Argentine population over the alleged necessity for repressive policies to deal with ‘subversion’ is also important in explaining the gradual erosion of the military’s standing and support.

In particular, the IACHR’s 1979 visit firmly grounded in Argentina the idea of the institution as a distinct international resource for domestic human rights activism; it made the IACHR known to Argentinians more generally and enabled the wider dissemination of knowledge about the system; and it solidified in the country the perception of the IACHR as a body that would ‘tell the truth’.⁹ The visit laid the foundations for future interactions between Argentine human rights organizations, several generations of human rights lawyers and legal professionals, and future government officials on the one hand and the regional human rights system on the other. It is to the character of these interactions that has shaped the relationship between Argentina and the IAHRs that we now turn.

⁷ Elizabeth Jelin, ‘The Politics of Memory: The Human Rights Movement and the Construction of Democracy in Argentina’ *Latin American Perspectives*, vol. 21, no. 2, 1994. p.54.

⁸ Mignone, *Derechos Humanos y Sociedad*.

⁹ See the speech by Cristina Fernandez de Kirchner at the 30th anniversary of the IACHR visit, 11 September 2009. On file with author.

2. Civil Society Mobilisation

In the first instance, the consolidation of the IAHRs and codification of an increasingly wide-ranging and ambitious set of rights provide important opportunities for Argentine human rights activists to pursue transnational advocacy strategies. The IAHRs provides opportunities for coalitions and alliances between on the one hand international and regional organizations with knowledge of the system and local organizations with detailed knowledge of local issues on the other. In these ways the availability of the IAHRs for human rights groups in Argentina has the potential to alter domestic political dynamics by strengthening the domestic position of the groups that engage with the system. In particular, engagement with the IAHRs enables human rights groups to highlight their specific demands and provide them with a privileged channel of access to state institutions.

In terms of concrete impact moreover, the IAHRs does not only monitor the Argentine state's human rights behaviour, but it also forms part of negotiation strategies of civil society organizations with the state. The extensive experience of Argentine groups in using the IAHRs means that in general Argentine litigants are today among the best prepared in terms of having acquired an understanding of how the system actually works in practice. Over time significant social learning among Argentine human rights groups in terms of engagement with the IAHRs have been accumulated. This also means that among Argentine civil society organisations there is a generalized and widespread set of attitudes that, if justice, however conceived, is not secured domestically, the IAHRs constitutes a realistic and legitimate option to pursue.

For many Argentine human rights groups the state has become the central focus of social movement activity and the primary referent for seeking change, opening public spaces of deliberation, and improving the 'quality' of democracy. Human rights groups using the IAHRs are increasingly linking their demands to maintaining and improving the capacity of state institutions to address human rights problems and formulate and implement appropriate public policies. Indeed, given the structure of the IAHRs and its institutionalized procedures of gaining access, the state needs to be engaged at some level. This is also a consequence of the changing character of the Inter-American system, which has gone from being primarily concerned with 'naming and shaming' repressive military regimes in the region, to engaging democratic regimes through a (quasi)judicial process that assumes at least partially responsive state institutions.

However, there is significant variation among civil society organizations in their use of the system,

generally across the Americas, as well as in the case of Argentina. The capacity of actors to mobilize the law is highly unequal,¹⁰ and transnational activism varies across time as well as between different actors. The resource-intensive process of accessing the IAHRs has led to clear differentiation in the human rights movement with some human rights organizations, operating on the ‘inside’, working with institutions and making use of ‘invited spaces’, and those groups on the ‘outside’. The differentiated engagement with the IAHRs by Argentine human rights organizations reflects varied capacities in terms of organizational structures, legal and technical expertise, and international connections.¹¹

Crucially however, despite the clear differences among Argentine human rights groups in terms of their use of the IAHRs, there is a widespread sense that the IAHRs, although frequently problematic in practice, is fundamentally legitimate. The IAHRs serves as a resource for Argentine human rights groups; it shapes the discourses and practices of domestic groups; and it impacts on the relationship between NGOs and the state. Indeed, patterns of human rights mobilization in Argentina have changed significantly over time and reflect broader political trends and on-going processes of democratization in the country. In particular, the IAHRs has impacted on human rights mobilization in Argentina by reinforcing the three interrelated trends of professionalization of human rights groups; of legalization of human rights demands; and of internationalization of human rights activism. These developments shape, in turn, the capacity of actors to mobilize the IAHRs and the likelihood of their success in achieving their objectives through participating in the procedures set up by the IAHRs. Argentine human rights organizations have developed differential links with the IAHRs partly as a consequence of domestic changes but also partly in response to the development of regional mechanisms of rights protection. The IAHRs privileges certain civil society actors with resources, expertise, and international connections, while other groups find it more difficult to gain access to the IAHRs. Still, the dense and varied interactions between Argentine petitioners and the IAHRs have led to the embedding of the regional human rights system in domestic political processes and the strengthening of the relationship over time.

3. Constitutional Embedding and Judicial Politics

An additional way in which the relationship between Argentina and the IAHRs has developed is the

¹⁰ Michael McCann, 'Litigation and Legal Mobilization' in Keith E. Whittington, et al., eds., *The Oxford Handbook of Law and Politics* (Oxford: Oxford University Press, 2008).

¹¹ The Argentine human rights group that most clearly illustrates these dynamics is CELS.

incorporation of the regional human rights system into Argentina's domestic legal system and how these legal processes of internalization have affected political actors, particularly the Argentine judiciary. There are three overlapping and mutually reinforcing dimensions to these legal and judicial dynamics of the relationship and how it has consolidated over time.

First, the process by which human rights norms become constitutional rights is a key step towards the domestic incorporation of international human rights law and towards making them politically and legally salient at the local level. At the most fundamental level therefore, a country's relationship with the IAHRs depends in large part on the value conferred upon them by domestic legislation. In the case of Argentina, the 1994 constitutional reform has 'constitutionalized' international human rights law, and the IAHRs. The constitutional reforms incorporated international treaties on human rights into the Argentine Constitution and gave some human rights treaties constitutional status and others legal superiority over national laws. The debate regarding the legal status of international human rights law was essentially settled with the constitutional reforms, and an outright and explicit sovereigntist judicial position vis-à-vis international human rights law has become untenable. In particular, the constitutional reforms enabled an increasing interaction between the development of regional human rights jurisprudence and national-level constitutional developments in Argentina.¹²

The second dimension of the ways in which judicial dynamics affect the relationship between Argentina and the IAHRs is related to the country's judicial politics and culture, broadly understood. There is clearly significant variation not just in the effective enforcement of human rights within Argentina's domestic judicial system but also in the willingness of Argentine judges to engage in the transnational legal culture of human rights and to take advantage of the potential legal and argumentative resources provided by the IAHRs. Although the IAHRs provides important opportunities for transnational judicial dialogues, these continue to be shaped by the local political context in which they are inextricably embedded. Many international human rights treaties ratified by Argentina have direct domestic effects, but crucial mediating factors such as judicial independence, judicial attitudes toward international human rights law, and the authority of judges and respect for the rule of law more generally deeply affect the domestic impact of the IAHRs; particularly within provincial judicial systems. The sources of this variation can be understood in terms of the degree of judicial independence in the first instance, but also in terms of the character of

¹² This was amply illustrated in the *Simón* case and in the judicial process culminating in the overturning of the 'impunity laws'.

national legal traditions, patterns of legal education, and links with the transnational legal community in and around the regional human rights system. That is, transnational judicial processes are fundamentally shaped by the local political context in which they are inextricably embedded.

Third, the formal embedding of IAHR norms in domestic law provides crucial opportunities for individuals and groups to claim, define, and struggle over human rights. Although far from sufficient to guarantee rights, the availability of litigation before domestic courts drawing from international human rights norms incorporated in domestic law is a key legitimating factor for civil society actors in their efforts of political and legal mobilization. Moreover, the recourse to the regional human rights system formally requires the prior exhaustion of domestic remedies; a condition that has become particularly salient with the return of democracy and state institutions that are at least partially responsive to human rights claims. In particular, domestic courts have become key arenas for Argentine human rights politics as litigants are seeking to enforce Argentina's international human rights commitments. Litigation over rights contained in international human rights instruments increases the opportunity for domestic judges to engage in transjudicial dialogues as cases with international legal components provide opportunities for judges to import international norms into domestic jurisprudence. But, again, whether litigation is an effective human rights strategy depends on how receptive judges are to this form of legal activism, and in turn their engagement with transnational human rights. Clearly, the mere existence of legal tools does not mean that they can be effectively employed. A certain degree of legal literacy is required to engage in human rights litigation. However, the experiences during the military regime and the high-profile role the IAHR played during this period have firmly rooted the IAHR as a distinct resource and opportunity for human rights advocacy in Argentina. There is a significant body of human rights professionals that know how to use the IAHR. Indeed, Argentina differs from many other countries in the region in terms of its relationship with the IAHR in that it is not only professional human rights NGOs that are using the IAHR. Here the impact of human rights culture is important, which further highlights the central role of human rights activists as political actors and their engagement with transnational legal culture and the IAHR.

Yet, one of the most important conditions for litigation to be a potentially useful strategy to enforce rights against the state is judicial openness. Anticipating futility, individuals or groups may decide to avoid courts altogether. The historic role of courts in Argentina would indicate such futility to Argentine litigants. However, contemporary patterns of the judicialization of human rights in

Argentina suggest a more complex picture. There has been a marked change in the nature and character of judicial involvement in political matters since the 1980s and ever greater recourse to courts.¹³ These trends add to the pressures on the Argentine judiciary to take a more active role in the formulation and implementation of public policy. In short, judicial processes are deeply embedded in the political context of democratization in Argentina. This puts the spotlight on state institutions and the ways in which the Argentine state responds to and engages with political and judicial demands for human rights reforms, including the IAHRs.

4. The Disaggregated State

The relationship between the Argentine state and the regional human rights system has shifted fundamentally over time. From the perspective of the IAHRs the Argentine state has gone from being a serial abuser of human rights to being their main guarantor. Conversely, from actively resisting the IAHRs the Argentine state has since the return to democracy adopted a general state policy of cooperation with the IAHRs. In terms of state responses to the IAHRs, despite differences between the various governments that have ruled Argentina since the return to democracy, commitment to international human rights has consistently been viewed positively by governing elites. The Alfonsín government, confronted with the challenges of establishing democracy at home, used a principled foreign policy to develop support for democracy and human rights abroad.¹⁴ Alfonsín sought to draw on international norms to lock-in domestic policies, to internationally anchor domestic political struggles, and to ensure international pressure in case of threats to the democratic regime. As a concrete expression of this policy outlook, shortly after his election, Alfonsín ratified the American Convention on Human Rights, recognized the jurisdiction of the Inter-American Court, and signed a number of other international human rights instruments.

The Menem administrations of the 1990s on the other hand were predominantly concerned with economic reforms, and the primary concern for foreign policy was the improvement in Argentina's relations with the US; a radical departure from traditional Peronist foreign policy. In the first instance the alignment with the US was grounded in the interest of securing US support in Argentina's negotiations with international creditors. But it also reflected Menem's ambition for Argentina to re-insert itself into the international system. This policy was seen in efforts to rebalance the relationship

¹³ Angell, et al., *The Judicialization of Politics in Latin America*.

¹⁴ Dominique Fournier, 'The Alfonsin Administration and the Promotion of Democratic Values in the Southern Cone and the Andes' *Journal of Latin American Studies*, vol. 31, no. 1, 1999.

with the US, but also in the normalization of diplomatic relations with the UK; strengthening of ties with the EU; contributions to UN peacekeeping missions; deepening regional integration in the Southern Cone; and the withdrawal from the Non-Aligned Movement. Hence, the strategy of professing adherence to international norms and institutions to signal membership of the club of ‘developed states’ and to attempt to ‘lock-in’ domestic policy preferences displayed remarkable continuity with the Alfonsín administration, despite otherwise starkly dissimilar political ideologies, intellectual traditions, and policy priorities.¹⁵

Following the economic crisis of 2001/2 the government of Néstor Kirchner gave the question of domestic accountability for past human rights abuses a prominent position on his government agenda. In part the prioritisation of domestic human rights accountability under Kirchner needs to be understood as part of efforts to break with the Menemist past, but also in terms of the precarious political circumstances in which Kirchner came to power. With a weak political mandate entering the presidential office Kirchner moved quickly and astutely to seize the opportunity to legitimize his rule through public support for accountability for past human rights abuses. Kirchner displayed a willingness to strategically push human rights in those areas where there were few political obstacles, such as with the military.

There has been, in other words, a noteworthy continuity across different Argentine governments in the discursive commitment to human rights, and it has prevailed throughout various economic, social and political crises. As a result, the relationship with the IAHRs in particular has become one of the few areas of genuine and consistent state policies in Argentina. There has never been an open attack on the system (as in the cases of Peru and Venezuela for example), nor a manifest indifference (as in the case of the US). Despite significant and often dramatic shifts in other policy areas, this policy of cooperation with the IAHRs has been remarkably consistent over time and across different governments. As a result, through repeated interactions with the IAHRs and human rights organizations, a human rights bureaucracy has consolidated within state institutions in Argentina. The engagement with the IAHRs is becoming increasingly diffused throughout the Argentine state apparatus, as seen, for example, in the involvement of the *Ministerio Público* in cases before the

¹⁵ The economic and political reforms under Menem had significant impact on Argentina’s relationship with the outside world. Most obviously the country was opened up to foreign investors, and foreign direct investment increased dramatically under Menem. Manuel Pastor and Carol Wise, ‘Stabilization and Its Discontents: Argentina’s Economic Restructuring in the 1990s’ *World Development*, vol. 27, no. 3, 1999.

IAHRS in recent years. In the process human rights norms have become embedded in formal state institutions and the informal politics surrounding them.

The institutional management of IAHRS cases by different state entities has opened up space for dialogue and cooperation between different state institutions, and the increasing interaction with the IAHRS has strengthened the relative status of sections of the bureaucracy dealing with human rights. The Argentine state no longer interacts with the system solely through the human rights section of the Ministry of Foreign Affairs (*Cancillería*). Several distinct institutional channels shape the relationship with the IAHRS, including the Ministry of Justice, the *Ministerio Público*, and provincial authorities. These processes have also led to a discernible degree of socialization of state officials responsible for the formulation and implementation of human rights policies. This means that when Argentine cases are taken up by the IAHRS, instead of “defending the indefensible”, Argentine officials have tended to seek to engage in a dialogue with petitioners in order to reach friendly settlement agreements and to avoid litigation. These policies have remained reasonably consistent despite increased interaction between Argentina and the IAHRS over the course of nearly three decades and a steadily increasing number of cases against the Argentine state before the system.

And yet, despite a significant degree of political cooperation with the IAHRS since the democratic transition in Argentina the capacity of state institutions to ensure the implementation of human rights reforms is limited. It is therefore important to consider the variable ways in which Argentine state institutions respond to transnational pressures and demands channelled through the IAHRS and how these responses in turn shape the relationship between Argentina and the IAHRS. State institutions often represent the ‘black box’ of political analysis through which societal interests are translated into policies and policy outcomes. Unpacking the various ways in which the Argentine state responds to the IAHRS demonstrates however, the importance of moving beyond the unitary state to consider how various state institutions interact with and shape the relationship with the IAHRS.

A significant dose of realism is required nonetheless. Despite significant advances in the relationship with the IAHRS, many challenges facing substantive human rights reforms in Argentina remain. Even in cases where political will exists to comply with the judgements and recommendations of the IAHRS, state institutions do not always have the capacity – whether managerial, administrative,

technical, or human – to ensure effective implementation of human rights reforms.¹⁶ Nonetheless, from fierce resistance to the IAHRs during the military regime of the 1970s, the interactions between the IAHRs and Argentina have become broadly supportive, embedded, and disaggregated. Moreover, state compliance with the judgements and recommendations of the IAHRs increasingly involves not merely the adoption of remedies in individual cases but also more wide-ranging human rights reforms. Hence, a significant feature of the changes in the relationship between Argentina and the IAHRs has been the increasing use of individual cases to gain momentum behind legislative and policy reforms. Indeed, most domestic human rights reforms in Argentina can be traced back to the development of international human rights, particularly under the auspices of the IAHRs.

These processes have in large part been driven by efforts of human rights organizations to push specific human rights issues on to the agenda and to promote government policy changes and institutional initiatives. But, successful human rights activism in Argentina depends on locating supporters within the state bureaucracy and sustaining these relationships throughout the process of human rights reform. Yet, significant challenges related, particularly, to the administrative capacity of state institutions to implement and enforce human rights reforms remain. The fact that successive Argentine governments since the return to democracy have demonstrated a significant political commitment towards the IAHRs, does not necessarily translate into effective implementation of the IAHRs' decisions and recommendations.

II. Argentina and the IAHRs: A Special Relationship?

The first part of this article outlined an account of how and why the relationship between Argentina and the IAHRs has developed the way it has. Underpinning this analysis is an implicit comparative dimension that maintains that Argentina's relationship with the IAHRs has been particularly dense and mutually reinforcing. It is precisely as a result of these comparatively deep and varied interactions that a 'special relationship' between Argentina and the IAHRs can be identified. It is important to note, however, that we can derive a more general understanding of the political dynamics of the IAHRs and how the regional system matters from the specific case of Argentina. This section reverses the analytical focus, therefore, to briefly outline what Argentina can tell us

¹⁶ On the increasing recognition in the human rights literature of the central importance of state capacity, though with the analytically narrow concept of 'limited statehood', see Tanja A. Börzel and Thomas Risse, 'Human rights in areas of limited statehood: the new agenda', in Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink (eds.), *The Persistent Power of Human Rights: From Commitment to Compliance* (Cambridge: Cambridge University Press, 2013). I am grateful to Bruno Boti Bernardi for making this connection.

about the development of the IAHRs, and the extent to which Argentina has found itself at the vanguard of human rights struggles within and around the IAHRs. Three key features need highlighting: (i) the transnational dynamics of regional human rights politics; (ii) the changing character of the IAHRs; and (iii) the constant risks of reversal of any human rights progress, as demonstrated in the increasingly ‘normalised’ relations between the Argentine government and the IAHRs in recent years.

1. Transnational Human Rights

The analysis of Argentina and the IAHRs demonstrates that the specific transnational linkages that exist between domestic actors and institutions and the IAHRs have given rise to a transnational political space in the area of human rights. In the first instance, the development of Argentina’s engagement with the IAHRs over time, and the extent of the normative embedding of the IAHRs in the country’s constitutional order – in terms of ratification and the constitutional status of the IAHRs’ human rights treaties – indicate the degree of the transnational connections with the IAHRs. However, the political salience of the IAHRs does not only lie in the depth and breadth of its legal instruments and mechanisms, but most significantly in the process of internalization that link regional human rights to domestic political institutions and actors. The ‘menu of alternatives’ available to actors is amplified to the extent that they are plugged into transnational networks and active participants in transnational and regional dialogues on matters of human rights. In particular, three interlinked arenas of transnational human rights that shape the relationship with the IAHRs can be identified: civil society mobilization, domestic courts and judiciaries, and state bureaucracies.

First, with regards to civil society mobilization, the IAHRs influences the strategies and agendas of human rights advocates. Human rights activists are faced with a strategic dilemma in the form of the gap that exists between the formal presence of human rights as embodied in international human rights instruments ratified by regional states and enshrined in the domestic legal system on the one hand, and the lived experiences of citizens, on the other, for many of whom these formal rights have little substantive meaning. Civil society mobilization as a force of ‘compliance’ with the IAHRs involves both a willingness to formulate a set of demands asserted in terms of the norms developed by the IAHRs and a willingness and capacity to organize to press for them.

The Argentine case suggests that those human rights groups that have adopted more professionalized organizational structures; that focus primarily on legal advocacy strategies; and that are plugged into

regional support networks such as those offered by CEJIL or Human Rights Watch, will be more adept at benefiting from the resources and opportunities provided by the IAHRs. Professional organizations and activists with technical expertise are therefore better positioned to engage with the IAHRs and state institutions. Moreover, organizations with a deeper level of engagement with regional and international networks are better equipped with information, financial resources, and political clout, and more extensive comparative experiences of campaigns and policy proposals in other countries. In this way regional human rights norms and institutions shape the ability of civil society organizations to engage in national and transnational activism and highlight the continuing need for these actors and organizations to adjust their roles and strategies to the changing national, regional and global political contexts.

Second, the recourse to the IAHRs formally requires the prior exhaustion of domestic judicial remedies; a requirement that is particularly salient in relation to abusive, but formally democratic, societies and state institutions that are at least partially responsive to human rights claims. As a consequence, domestic judiciaries have emerged as important political actors within the Inter-American system. The extent of the judiciary's engagement with the IAHRs and whether regional human rights norms and jurisprudence affect the reasoning and judicial decisions of courts have therefore become an increasingly significant dimension of how the IAHRs matters. The contrast between Argentine and Brazilian judicial attitudes towards IAHRs jurisprudence, for example, is an important factor in explaining the relative influence of the IAHRs in these respective countries. Clearly political factors still shape the judiciaries' use of international human rights law, as the Kirchner government's pressures on the judiciary to overturn the 'impunity laws' demonstrate in the case of Argentina.

Moreover, beyond questions related to the political dependence of judges, Latin American judiciaries have traditionally not been the most progressive of social institutions.¹⁷ Hence, the broader effects of Latin American judiciaries' engagement with international human rights law, and particularly with the IAHRs, depend on litigants bringing human rights cases to the courts. The effective translation of IAHRs norms and constitutional human rights protections into practice, and more broadly, the use of law and courts for social change, requires the activities of lawyers and legal practitioners. This highlights the importance of domestic activists bringing human rights cases before domestic courts

¹⁷ As Roberto Gargarella puts it: "in Latin America, as in most other places, judges have no good incentives to do things like defend democracy or protect disadvantaged minorities." Gargarella, 'Democratic Justice', pp.194-95.

and arguing their cases on the basis of IAHR norms. Human rights litigation before domestic courts therefore has become an important mechanism for human rights activists in their efforts of activating the IAHR at the domestic level and in applying regional human rights standards in litigation of concrete cases before domestic courts.

Third, the role of state institutions and state officials in responding to the judgements and recommendations of the IAHR underlines the importance of institutional mechanisms for effective implementation. The case of Argentina highlights that the impact of the IAHR on domestic public policy formulation and implementation is to a large extent a function of its embedment in state institutions, and whether the state has effectively organized its institutions in ways that provide effective remedies for human rights violations. Argentina also underlines the potential of socialization of state officials as a consequence of their engagement with the IAHR. The interaction between the IAHR and sectors of the Argentine state bureaucracy has given rise to processes of socialization on the part of state officials involved. Whatever their original views, engaging with the IAHR, petitioners and domestic human rights groups, having to justify policy within the terms of the dominant discourse of the system, may foster such socialization within state bureaucracies. Yet, in light of the administrative frailties of many Latin American states, one of the key challenges lies in establishing administrative procedures and institutional mechanisms that ensure the implementation of IACHR recommendations, the sentences of the Inter-American Court, and that would not rely on the discretionary support of the executive on a case to case basis. Indeed, the IAHR increasingly stresses the need to develop institutional mechanisms and to generate discussion of policy reforms beyond individual cases. The IAHR has also developed increasingly intrusive human rights norms that promote standards for the organization of state institutions. In particular, the IAHR provides a political space for discussion and negotiation between the key actors involved in human rights reforms (including different parts of the state); it provides an authoritative set of norms and standards to regulate the specific issue-area subject to the reforms; and it adds an additional layer of political pressure, momentum and urgency to the resolution of human rights problems.

2. The Changing Character of the IAHR

The case of Argentina also raises broader issues concerning the development of the IAHR, particularly as they relate to analytical debates about the conceptual understandings of the impact of international human rights law and institutions. Three points in particular need highlighting.

First, the IAHRs is no longer primarily concerned with “naming and shaming” of repressive military regimes. It seeks rather to engage democratic regimes through a (quasi)judicial process that assumes at least partially responsive state institutions. This broader trend in the logic of state compliance with the IAHRs highlights the shifting incentives facing states in cooperating with the regional human rights regime. It also underlines, moreover, the importance for human rights scholarship to move beyond the unitary state to consider how various state institutions and officials interact with the IAHRs to shape human rights compliance. Sustained human rights activism has indeed strengthened processes of socialization in many Latin American states, but rule-consistent behaviour as predicted by earlier human rights scholarship remains patchy at best.¹⁸ An analytical focus on the disaggregated state would allow a better understanding of many contemporary human rights violations in Latin America, and elsewhere, that are occurring in the context of weak and fragile states where state responsibility for violations is difficult to establish and often even absent. In the practice of the IAHRs and for many human rights activists in the region, states in Latin America have gone from being abusers of human rights to being their main guarantor.

Second, the internalization of IAHRs mechanisms and norms in domestic political and legal systems has significantly altered the character of state compliance. Engagement, or non-engagement, with the IAHRs has traditionally been dominated by the political branches of government and largely controlled by the Executive and the Ministry of Foreign Affairs in particular. Although these state entities remain crucial, a broader range of state institutions and actors are now involved. Domestic court systems in particular have come to play more prominent roles as arenas of human rights politics, leading to increasingly judicialized processes of compliance. Moreover, domestic actors tend not to remain passive recipients of international human rights norms and there are important feedback mechanisms as these actors influence the development of international norms and institutions.

Third, the IAHRs has become increasingly inserted into domestic policy and legislative debates on specific human rights issues across the region. This signals a gradual move away from a dominant focus on contentious litigation of individual cases to attempts to settle cases through, for example,

¹⁸ The final stage of the influential “spiral model” of internalization of human rights norms developed by Risse, Ropp and Sikkink posits that sustained human rights activism under certain conditions will lead to the institutionalization of international human rights norms into actual state practice. Risse-Kappen, et al., *The Power of Human Rights*. For a more recent and qualified account see Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink (eds.), *The Persistent Power of Human Rights: From Commitment to Compliance* (Cambridge: Cambridge University Press, 2013).

friendly settlement procedures. This “change of paradigm” in human rights activism reflects the increasing use of individual cases to promote broader government policy changes and institutional changes. But it also reflects an increasing emphasis on enabling, as opposed to constraining, state action for the protection and promotion of human rights. Yet, much scholarship continues to adopt understandings of human rights that focus exclusively on imposing constraints on state behaviour. This is certainly the case with Beth Simmons’ landmark study of international human rights law, which despite its methodological sophistication considers international legal norms mainly to the extent that they impose constraints on state behaviour.¹⁹ The case of Argentina shows, however, that focusing exclusively on the law as a constraint misses the important constructive role that international human rights law has in legitimating political behaviour and in enabling state reforms. In order to better understand, therefore, the ways in which international legal norms impact on states and societies richer understandings of the role of law in shaping political behaviour are required.²⁰

3. Fragility of Progress and Risks of Reversals

Argentina has been in the vanguard of the development of the IAHRs, in part because of the ways in which Argentine human rights politics have affected the development of the IAHRs, and in part because leading Argentine lawyers have regularly occupied prominent positions within the IAHRs. Moreover, since the mid-1980s the Argentine state’s generally consistent policy of cooperation with the IAHRs has generated a broad sense of progress in the relationship with the regional human rights system. And yet, human rights politics is prone to reversals. In recent years, this has been demonstrated in the politicisation of human rights in Argentina on the one hand, and the abandonment of the IAHRs in favour of short-term foreign policy interests by the Argentine government in the context of the IAHRs reform process, on the other. Though these processes of human rights reversal are playing out on two distinct policy arenas – at home and abroad – they are nonetheless overlapping.

On the domestic front, contemporary Argentine politics has become centred on heated debates around the character of *Kirchnerismo*, with significant implications for the Cristina Fernández de Kirchner government’s human rights policies. Since the election of Néstor Kirchner in 2003, the

¹⁹ Simmons, *Mobilizing for Human Rights*.

²⁰ Important contributions to this end include: Brunnée and Toope, 'International Law and Constructivism'; Jutta Brunnée and Stephen J. Toope, *Legitimacy and Legality in International Law: An Interactional Account* (Cambridge: Cambridge University Press, 2010).

question of accountability for past human rights abuses has been given a prominent position on the government agenda. Together with the significant weakening of the military as a political actor, the support of successive Kirchner governments has been crucial in precipitating the most recent shift in Argentina's pathway to accountability for past human rights abuses.²¹ Since the reopening of the trials for violations committed during the military regime, significant prosecutorial momentum has developed.²²

And yet, there are noteworthy limitations on Argentina's most recent approach to its past, with important effects on contemporary human rights struggles, political accountability, and the relationship with the IAHRs. In the first instance, the politics of human rights in Argentina has tended to revolve around more narrow concerns about accountability for historically defined past abuses, rather than around broader accountability in Argentina's inevitably – though not uniquely – flawed democracy. The intimate association in the minds of significant sectors of the population between human rights and abuses by the military regime, has limited the advocacy agenda to abuses of the past, whilst for many sectors of society, the widespread abuses of the present constitute a more pressing concern. The association of the vocabulary of human rights with military abuses of the past has often made it difficult to mobilise the human rights discourse around pressing contemporary challenges. The pursuit of accountability for past human rights violations in Argentina continues to co-exist with very persistent impunity for a wide range of human rights violations; from rampant police violence to enduring discrimination against indigenous communities. There are, in other words, considerable accountability deficits in Argentina that are quite unrelated to the extent to which accountability for past human rights crimes are achieved.

For some time it has been pointed out that the focus of successive Kirchner governments on the crimes of the past has allowed them to avoid dealing with current human rights problems. Yet, there is now a real risk that the politicisation of human rights discourse and practice in Argentina is reaching a tipping point. Numerous indicia point in this direction. First, the strong political association between the *Madres* and *Kirchnerismo* may have been mutually beneficial – in addition

²¹ For further details see: Par Engstrom and Gabriel Pereira "From Amnesty to Accountability: The Ebb and Flow in the Search for Justice in Argentina", in Leigh A. Payne and Francesca Lessa (eds.), *Amnesty in the Age of Human Rights Accountability: Comparative and International Perspectives*, Cambridge, Cambridge University Press (2012).

²² Although figures vary, around 1,000 individuals are currently indicted (*procesados*), and over 400 have been convicted. Though given the Argentine legal system, the number of individuals with confirmed sentences is considerably lower. The sheer scale and scope of the on-going trials testify to the drama of Argentina's protracted political and legal struggles over transitional justice.

to its instrumental role in advancing the current human rights trials. But the moral leadership of *Madres* has become shrouded in doubt as a consequence of the controversies surrounding the Schoklender corruption case. Similarly, the recent appointment of Army Chief César Milani by the government has triggered an intense polemic over the General's alleged involvement in human rights violations as a young officer during the military regime; a controversy that has engulfed CELS.²³ The Cristina Fernández government is also facing increasingly vocal accusations of corruption, and political opponents have gained some leverage in their attempts to portray the trials as a partisan attempt at 'victors' justice'. Indeed, supporters of the military regime have sought to appropriate the language of 'accountability', with the government as their target, to oppose the trials, and perpetrators have sought to portray themselves as 'victims' of government persecution.

This politicisation of human rights may have been inevitable. Any meaningful struggle for human rights is deeply politicised, and where consequential, likely to provoke opposition. Indeed, thirty years have passed since Argentina returned to democratic rule, and a consensus on transitional justice, and the role of human rights in Argentine democracy more broadly, remains elusive. A 'contentious coexistence' of opposing, and competing, views about the past may indeed be what can be reasonably wished for.²⁴ Moreover, selective government support for human rights is problematic, though often predictable. After all, addressing the past of previous political rulers at the expense of the present and the future tends to be politically expedient for an incumbent government. Yet, the increasingly intense politicisation, and instrumentalisation, of human rights domestically has also impacted on Argentina's relationship with the IAHRs. Successive Argentine governments have acknowledged special international obligations that limit the scope of political discretion and the autonomy of domestic laws in human rights matters. The government recognition of such international obligations has been matched by robust diplomatic support to the IACHR, in particular.²⁵

In recent years however, the Cristina Fernández government has appeared to signal a reversal by failing to support the Inter-American Commission on Human Rights against retrograde attempts to

²³ See: <http://www.lanacion.com.ar/1601501-la-carta-del-presidente-del-cels-por-el-ascenso-de-cesar-milani>; <http://www.pagina12.com.ar/diario/elpais/1-224963-2013-07-21.html>; <http://www.pagina12.com.ar/diario/elpais/1-229871-2013-09-26.html>. I am indebted to Roberto Gargarella for highlighting this case.

²⁴ Leigh Payne, *Unsettling Accounts*

²⁵ Refer to, e.g., CFK speech on the occasion of the 30 year anniversary of the 1979 IACHR visit.

restructure the regional human rights body.²⁶ The Argentine government's diplomatic support for the IAHRs started to deteriorate after the resignation of the Foreign Minister, and former IACHR Executive Secretary (1996-2001), Jorge Taiana in June 2010. Taiana's replacement, Héctor Timerman induced a further regional alignment of Argentina with the ALBA countries. These more general shifts within Argentine government's foreign policy-making coincided with an acceleration of the slow, yet continuous, decline of the Organisation of American States (OAS) on the regional scene. The OAS has become increasingly marginalised from addressing the many challenges of human rights, insecurity, inequality, democratic rule, and economic development in the broader region. Clearly, the centre of gravity of the regional institutional landscape has shifted away from the OAS towards competing regional arrangements, such as UNASUR (Union of South American Nations), and ALBA. Many Latin American countries, including Argentina, also increasingly look beyond the region for diplomatic and economic cooperation (with China, India, and Iran, for example).

It is in this regional context of institutional flux that the Argentine government appears to have sacrificed support for the IAHRs in favour of other regional priorities. In particular, the ambition of both Néstor Kirchner and Cristina Fernández to consolidate relations with the South American sub-region has led to a general recalibration of foreign policy priorities. This was seen in efforts to broaden Mercosur (to include Venezuela) as well as deepen it (beyond purely economic relations and towards political cooperation, including on human rights matters). The increasing focus on South America as a privileged arena for Argentine foreign policy was also reflected in the creation of UNASUR, with Néstor Kirchner briefly serving as the first Secretary-General. Throughout the IAHRs reform process Argentina appeared more concerned with strengthening South American ties and its bilateral relationships with Venezuela and Ecuador than with supporting the IACHR.²⁷ In addition, the Cristina Fernández government may also have judged that its interests lie with Ecuador and Venezuela in their criticisms of the IACHR, particularly in relation to the Special Rapporteurship on Freedom of Expression. These criticisms resonate with the Argentine government's domestic efforts to push through a controversial media law reform and in its on-going struggles with the media group Clarín. The Argentine government even proposed to support the

²⁶ Details of the reform process are covered elsewhere in this special issue.

²⁷ An additional example of these shifts and the privileging of diplomatic relations over human rights concerns can be found in the Argentine government's much criticised agreement with Iran to set up a joint Commission to investigate the 1994 AMIA bombing. I am grateful to Roberto Gargarella for this point.

move of the IACHR from Washington D.C. to Buenos Aires in response to calls to weaken the perceived U.S. dominance of the Commission.²⁸ The proposal was dropped, however, following a meeting between Cristina Fernández and Rafael Correa in Ecuador, after which the former stated its continued support for a move of the IACHR, but not to Buenos Aires. Similarly, in its relations with Brazil the Argentine government has appeared equally willing to down-prioritise its traditional diplomatic support for the IAHRs, as seen in the aftermath of the IACHR's interim measures in April 2011 requesting Brazil to halt the construction of the Belo Monte dam. The response by the Dilma Rousseff government to the IACHR was very swift when it decided to suspend its annual contribution to the human rights body. At the time, it also withdrew the former Human Rights minister, Paulo Vannuchi's candidacy to become member of the Inter-American Commission. It appears that following a personal request for assistance from the Brazilian president, Cristina Fernández agreed to support the Brazilian position vis-à-vis the IACHR.

The relationship between Argentina and the IAHRs, in recent years, appears, in other words, less and less 'special'. That is, the main point here is precisely that the Argentine government in recent years has 'normalised' its relationship with the IAHRs. This can be seen in a series of moves to balance its foreign policy priorities and in the process downgrade its support for the IAHRs when it has come into conflict with other policy objectives. The problem, for the IAHRs, and for Argentine society as well, is that this policy reorientation has coincided with the IAHRs reform process. Clearly, the IAHRs is at a delicate conjuncture as a result of the divergent tracks of regional institutionalisation referred to above. The Inter-American Commission in particular is facing fierce criticisms from several regionally influential countries, including Venezuela, whose government under former president Hugo Chávez took the step to renounce the jurisdiction of the Inter-American Court. Although there has been a gradual return to the status quo by the Brazilian government, as reflected in the recent election of Paulo Vannuchi to the Inter-American Commission, the very public challenge to the IACHR's authority in the *Belo Monte* case has been damaging. Equally detrimental to the effectiveness of the IAHRs is the combination of indifference with which certain OAS governments treat the IAHRs, as evidenced in uneven ratification rates (the US, Canada, English-speaking Caribbean not having ratified the American Convention and not having accepted the jurisdiction of the Inter-American Court), lack of adequate financial support, and patchy compliance

²⁸ <http://www.lanacion.com.ar/1562013-el-gobierno-quiere-que-la-sede-de-la-cidh-se-mude-a-la-argentina>

rates.²⁹

The risk of the slow death of the IAHR by asphyxiation is real. The rise of sub-regional organisations in Latin America challenging the OAS has gained a certain momentum, and at least before the passing of Hugo Chávez there were determined considerations of the creation of human rights bodies as part of either UNASUR or CELAC. Moreover, with the consolidation of Mercosur's human rights mandate, the IAHR may appear less and less the 'only game in town' for the many groups and individuals seeking international redress for human rights abuses in Latin America. Indeed, the recent creation of the *Instituto de Políticas Públicas en Derechos Humanos* (IPPDH) by Mercosur, with headquarters in Buenos Aires, was strongly supported by the Argentine government. The IPPDH can be seen in part as an effort by Argentina to channel regional human rights debates away from UNASUR and towards its own sub-region.³⁰ It can also be understood as a way for the Argentine government to try to reconcile its professed support for human rights with its ambition to consolidate its South American foreign policy priorities. It should be noted, however, that the Director of IPPDH, Victor Abramovich, a former Executive Director of CELS and IACHR Commissioner, has sought to establish a mutually beneficial working relationship between Mercosur and the IAHR/OAS in human rights matters. Whether Argentina's sub-regional efforts to consolidate Mercosur's human rights mandate will work in harmony with the IAHR or will lead to further regional fragmentation is too early to tell.

And yet, for many of the supporters of the IAHR the reform process has proved, thus far, less monumental than initially feared. The reform process was strongly dominated by governments trying to tie down the IACHR, in particular, and reduce its autonomy. But the counter-mobilisation of a regional network of human rights groups proved relatively effective. In the case of Argentina specifically, the long-standing relationship of prominent human rights organisations with the IAHR, has provided an important check on government policies.³¹ But it should be noted that some Argentine human rights groups, including CELS, have been broadly supportive of successive Kirchner governments, and have developed close political relationships. This highlights a central advocacy dilemma for human rights groups in any democratic society: too close a relationship with

²⁹ See Santiago Canton's call for a reform of the OAS:

<http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1836&context=hrbrief>

³⁰ I am grateful to the anonymous reviewer for emphasising this point.

³¹ http://www.clarin.com/politica/Argentina-lejos-CIDH_0_715728572.html

government is likely to gradually undermine organisational autonomy and agendas, and jeopardise their independent authority to hold government to account; while being too far removed from government is likely to reduce their capacity to influence policy.

In the case of CELS, this balancing act has proved delicate in recent years in a domestic context of increased political polarisation on several key human rights struggles, from accountability for crimes committed during the military regime to the reform of Argentina's media law. In its public declarations CELS has sought to lend its regional prestige as one of Latin America's foremost human rights NGOs to support the IAHRs, in collaboration with several other organisations. Yet, its public advocacy work has appeared primarily to focus on monitoring of the IAHRs reform process, and making a general case for the relevance of the IAHRs.³² Discursively these efforts have been based, partly, on the IACHR's historical record in the case of Argentina (cemented in the 1979 visit), and, partly, in general terms, on the continuing relevance of a regional human rights system in problematic contemporary democratic societies in Latin America.³³ Also, CELS, together with other human rights organisations, have not been oblivious to the shifting regional institutional landscape within which the IAHRs reform process has played out. This can be seen, for example, in efforts to strike a balance between lamenting the decision of the Venezuelan government under Hugo Chávez to renounce the jurisdiction of the Inter-American Court on the one hand, and criticising the lack of ratification of the American Convention and the acceptance of the Court's jurisdiction by the U.S. on the other.³⁴

Human rights organisations have also sought to lobby governments in various OAS fora. An evaluation of the effectiveness of these behind the scenes lobbying efforts is tricky of course, and particularly so with regards to the Argentine government's positions on the IAHRs reform processes referred to above. This has mainly to do with the impenetrable and untransparent ways in which much domestic and foreign policy making is generally conducted by the Cristina Fernández government; providing highly limited space for any external input into the policy process. Moreover, this also means that the state human rights bureaucracy, including within the *Cancillería*, is unlikely to have had much effective input to shape the government's positions on the IAHRs reform process.

³² This is in line with previous efforts by CELS to insert itself into OAS politics in support of the IAHRs, see, e.g.: <http://www.cels.org.ar/documentos/?info=detalleDoc&ids=3&lang=es&ss=&idc=644>

³³ See, e.g. <http://www.cels.org.ar/documentos/?info=detalleDoc&ids=3&lang=es&ss=&idc=1550>

³⁴ See, e.g. <http://www.cels.org.ar/documentos/index.php?info=detalleDoc&ids=3&lang=es&ss=&idc=1239>, and <http://www.cels.org.ar/documentos/?info=detalleDoc&ids=3&lang=es&ss=&idc=1606>

The broader point here, however, is that no matter the extent and intensity of external lobbying of the Argentine government the IAHRs was far from being a priority on the government's foreign policy agenda, especially so after the departure of Jorge Taiana. And no available evidence suggests that when the IAHRs reform process was raised in bilateral discussions, with Ecuador for example, the Argentine government prioritised the strengthening of the IAHRs over other policy objectives.

Nonetheless, the attempt by the Cristina Fernández government to adopt an ambivalent position, or, possibly, pursue *realpolitik* at the expense of the IAHRs³⁵, was eventually met with domestic and transnational resistance. Indeed, regional human rights groups, including CELS, played a central role in shifting the debate on the IAHRs reform process away from a highly state-controlled political context, where the IAHRs had few supporters – and where a confluence of interests of otherwise conflicting country positions could be found (e.g. between Colombia and Venezuela) – towards a more pluralistic and open environment. Put differently, the current Argentine government may have been prevented from moving decisively – for short-term political interests – against the IAHRs because of the path-dependent relationship that has developed over time between Argentina and the regional human rights system. Moreover, this also demonstrates that discourses matter. Consistent and high-profile diplomatic support for IAHRs means that a change of course does not come without significant reputational costs. Such costs do not make discursive and policy change impossible of course, but potentially prohibitively expensive in the absence of clearly defined mitigating benefits. True, in the end, Argentine officials played a central mediating role in the negotiations of the OAS resolution on the IAHRs reform process adopted by the OAS Extraordinary General Assembly meeting in March 2013.³⁶ Yet, the fragility of this institutional path dependence and embedment of policy discursive are evident.

Conclusion

It is the key contention of this article that an appreciation of the evolution of the relationship between Argentina and the Inter-American Human Rights System is indispensable for our understanding of the current conjuncture and the role of Argentina in the IAHRs reform process. The specific character of political democratization in Argentina has driven the increasingly diverse interactions between Argentine society and the regional human rights system. The unpacking of these interactions identified the ways in which human rights activists use the system; how the IAHRs has

³⁵ http://www.elcomercio.com/politica/Argentina-define-posicion-CIDH-Derechos-Humanos-SIDH_0_890310989.html

³⁶ I am indebted to Natalia Saltalamacchia for this point.

shaped patterns of human rights mobilization in Argentina; and distinguished the extent to which the IAHRs mediates relations between human rights groups and state institutions. The analysis also examined the extent to which the IAHRs human rights norms have become part of Argentina's domestic legal system, the role of national courts as distinct human rights arenas, and the role of Argentine judges in interpreting and activating IAHRs human right jurisprudence in the domestic judicial system.

Particular emphasis has also been given to the remarkably consistent support given to the IAHRs by successive Argentine governments. The variable ways in which state institutions respond to human rights demands, and the ways in which the state bureaucracy engages with the IAHRs continue to fundamentally shape the relationship between Argentina and the regional human rights system. As a result the IAHRs has become deeply embedded in the human rights politics of Argentina. Conversely, the contributions of Argentine actors to the development of the IAHRs over the years have been significant.

Tracing the relationship between Argentina and the IAHRs over time is exactly for this reason of broader relevance. The (special) case of Argentina highlights the extent to which the IAHRs has evolved from its institutional origins as a 'classical' intergovernmental regime into a normatively intrusive regime. An independent regional human rights court and an autonomous commission are regularly judging whether regional states are in compliance with their international human rights obligations. The access of individuals and regional human rights organizations to the human rights regime has strengthened over time as the system has become increasingly judicialized with a procedural focus on legal argumentation and the generation of regional human rights jurisprudence. The IAHRs has also exercised its jurisdiction to explicitly advocate the strengthening of regional democracies as the strongest guarantees for the protection of a wide range of human rights.

Although clear regional differences between countries persist, the normative and institutional evolution of the IAHRs has led to an increased interaction between domestic political processes, national legal orders and regional human rights institutions. In the process the IAHRs has become embedded in domestic political and legal systems, and is increasingly used for the implementation of regional human rights norms. These processes of regionalization have opened up space for transnational political agency, providing opportunities for domestic and transnational human rights actors to bring pressure for change in their domestic political and legal systems.

The case of Argentina also illustrates however, that human rights politics is prone to reversals. This has been demonstrated in recent years by the Argentine government's ambivalent and lacklustre positions in the context of the IAHR reform process. And yet, though increasingly 'normal' in its relationship with the IAHR at the level of regional inter-state diplomacy, the multiple and varied relationships between Argentine society and the IAHR remain. In particular, the demand from victims, relatives of victims, and human rights organisations in Argentina, remains robust, which – after all – bodes well for the future of the IAHR.