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Institutional complexity in the Inter-American Human Rights System: an investigation of the prohibition of torture

Cristiane Lucena Carneiro^a and Simone Wegmann^b

^aInternational Relations Institute, University of São Paulo, São Paulo, Brazil; ^bDepartment of Political Science and International Relations, University of Geneva, Geneva, Switzerland

ABSTRACT

Institutional complexity has enjoyed growing attention in the literature on international regimes. However, the concept has not found wide application in the field of human rights research. This article argues that institutional complexity is an important aspect of the international human rights regime, in particular because it may affect the compliance record, impact and effectiveness of international human rights commitments that states enter into. This article analyses the evolution of the prohibition of torture within the Inter-American Human Rights System through the lens of institutional complexity. It proposes that institutional complexity can be captured by two indicators: states' subscription to human rights treaties and their decision density on human rights. Detailed descriptive statistics show the evolution of recommendations, decisions and judgments issued by the judicial and quasi-judicial institutions that operate under the system, and the share of treaty ratifications in the region between 1980 and 2012. The analysis corroborates the theory that the Inter-American Human Rights System has evolved in the direction of greater institutional complexity. This analysis is complemented by an overview of the historical evolution of the institutions created by the regime, with a focus on developments of the Inter-American Commission of Human Rights' mandate over the years.

KEYWORDS

Human rights; institutional complexity; institutional development; Latin America

1. Introduction

Particular features characterise the international human rights regime. Above all, 'the costs of retaliatory non-compliance are low to non-existent, because a nation's actions against its own citizens do not directly threaten or harm other states'.¹ It follows that such human rights agreements are not self-enforcing.² Consequently, unlike trade agreements, for example, human rights agreements do not allow for a threat of retaliatory non-compliance to affect the behaviour of other states.³ Although the creation and development of the international human rights regime is the result of an agreement among states, compliance with the regime is often motivated by a different dynamic, wherein institutional complexity and domestic politics play a prominent role. Hence, the main research interest of this article is to address one of these dynamics that might influence compliance with human

CONTACT Cristiane Lucena Carneiro ✉ cristiane.lucena@usp.br 📧 International Relations Institute, University of São Paulo, Av. Prof. Lúcio Martins Rodrigues, s/n, trav. 4 e 5, São Paulo 05508-020, Brazil

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rights agreements: the role of institutional complexity. This article is a first effort to map indicators of institutional complexity in the Inter-American Human Rights System (IAHRS). It asks whether the system has evolved in the direction of greater institutional complexity, as gauged by two indicators that we propose.

A growing body of literature analyses the rationale for state compliance with human rights commitments. This scholarship is particularly interested in the influence of treaty ratification on state behaviour, but has identified several other factors that enhance respect for human rights. Early research on human rights protection identified economic and political factors, such as democracy, which significantly influence the level of respect of human rights. Authors have also identified conflict to be a determinant of human rights violations.⁴

Later work on human rights compliance has focused on the influence of treaty ratification on actual state behaviour. Camp Keith⁵ presents one of the first analyses testing whether ratification of the International Covenant on Civil and Political Rights (ICCPR) and its Optional Protocol influences respect for human rights. Several authors⁶ have analysed the effect of other United Nations (UN) treaties, among them the Convention Against Torture (CAT) and the Covenant on the Elimination of All Forms of Discrimination against Women (CEDAW). Hathaway and Neumayer⁷ also include regional treaties such as the European Convention for the Protection of Human Rights and Fundamental Freedoms, the American Convention of Human Rights and the African Charter on Human Rights. However, results show a rather mixed picture. Whereas some authors could not identify a positive effect of treaty ratification on state behaviour,⁸ others have emphasised the importance of factors such as domestic characteristics⁹ or the overall strength of the human rights compliance system.¹⁰

However, one concept that has enjoyed growing attention in the broader international relations literature¹¹ but that has not yet found wide application in the field of human rights research is the concern with institutional complexity as a potential characteristic that influences state behaviour. Regime complexity might be an important element contributing to the explanation of state compliance with human rights agreements, but, research so far has looked into the effect of treaty ratification without paying much attention to the broader institutional setting (i.e. complexity) on which these treaties are based.

This article analyses the development of the IAHRS through the lens of institutional complexity. It fills the gap in current research on human rights by proposing a measure of regime complexity at the country level. We argue that, to analyse the consequences of regime complexity for the human rights record of countries, we need to be able to assess the degree of complexity not only of a given regime in general, but also for different countries. The specific domestic context of a country at a given moment may render the hurdles associated with institutional complexity more palatable. The only way to analyse the impact of domestic politics on international human rights via the impact of institutional complexity, is by looking at the country level characteristics. The article accomplishes this task by building an original database with information on two indicators of institutional complexity that we propose: membership of human rights treaties and decision density for all Latin American countries. As we will show, the number of ratifications of human rights treaties and the decision density of human rights vary considerably between countries. Through the mechanism of treaty ratification, states themselves decide

on the level of regime complexity that they accept, which makes it important to look at institutional complexity from a country perspective.

Although an overarching assessment of the IAHRs or its performance is beyond the scope of this project, this article offers a first step towards identifying indicators of institutional complexity and investigating whether the system has moved towards greater complexity over time. Our analysis of the IAHRs contributes to the overall literature on international human rights regimes when it advances indicators of institutional complexity that can be used beyond the Latin American regimes to other regional and universal regimes. Underlying our empirical exercise there is a claim that institutional complexity is not only important but also that it can be measured at the country level over time. We anticipate similar patterns of greater levels of institutional complexity as human rights regimes evolve, with potential implications for the relationship between complexity and compliance and complexity and effectiveness.

Our definition of regime complexity builds on the characteristics of overlapping and parallel institutions that have found application in other research areas.¹² Based on these two key characteristics of institutional complexity, the article proposes a measure based on two dimensions that are directly observable: decision density of human rights and membership of human rights treaties. Decision density refers to the demand directed at states to address the decisions, judgments and recommendations issued by treaty-based judicial and quasi-judicial bodies in a timely manner; put simply, the measure equals the total number of decisions, judgments and recommendations against a country in a given year. Membership indicates the share of all available treaties a country ratified in a given year. This indicator ranges from 0 to 100, as countries may have ratified none or all of the treaties open for ratification that year.

This article thereby makes two key contributions to the existing scholarship. First, it presents a general discussion of institutional complexity and identifies several characteristics to assess the level of complexity of the IAHRs over time. We present a detailed overview of the institutional development of the IAHRs and show that the level of complexity in the system has increased significantly over time. Second, the operationalisation of institutional complexity at the country level offered here allows for a more fine-grained measure of complexity, one that goes beyond a general look at the overall regime level. The descriptive part of the article shows that countries vary considerably in their exposure to the complexity of the human rights regime. Hence, according to our measure, even though all countries are members of the IAHRs, they show very different patterns of membership of human rights treaties and their decision density of human rights. As we will argue in Section 2, these different levels of regime complexity for individual countries might have important consequences for the level of compliance with human rights. Hence, looking more closely at the effects of complexity might contribute to the understanding of why countries show extremely different levels of compliance with their treaty obligations.

2. Global governance and regime complexity

The scholarship on global governance has increasingly turned towards the study of factors beyond the state and its institutions to account for variation in rates of success and to explain efficiency gaps. To that end, scholars analyse public–private partnerships – or what some call transnational new governance,¹³ the role of institutional fragmentation,¹⁴

and the consequences of new forms of institutional arrangements – or regime-specific architecture.¹⁵ Contributions from this vast literature offer normative and empirical assessments of the underlying forces that international regimes embed. It is often the case that international regimes interact with domestic arrangements to generate a regime complex which will govern a specific issue area. International environmental politics offers a prominent example of this phenomenon.¹⁶ With respect to institutional fragmentation, environmental regulation also features prominently.¹⁷

Less well understood is the effect of novel forms of institutionalisation on the regulation of human rights. This is a particularly important area of research because of the inevitable synergy between international regulatory efforts and the inherently domestic nature of human rights protection, as the object of regulation. Recent efforts in this direction include work by Tom Pegram and by Alexander Betts.¹⁸ Pegram uses orchestration theory to analyse synergistic engagements by international organisations and non-state actors with respect to rights protection. His defence of orchestration theory's appropriateness to gauge both the domestic and international aspects of governance rests on the unified approach that the theory advocates. Pegram examines regime complexity through the lens of the UN Optional Protocol to the 1984 CAT and proposes a four-fold typology of orchestration outcomes. Orchestration efforts can be simple, competitive, mirror a cascade, or be reversed. The relationship between the orchestrator and the target will be directly influenced by the form of orchestration taking place, with clear implications for policy outcomes on the ground.¹⁹

Alexander Betts highlights the challenges that contemporary global governance presents to international organisations. Institutional complexity constitutes a prominent feature of this governance structure. The author analyses the case of the UN High Commissioner for Refugees in depth, and suggests that lessons learned from this exercise can be useful to other international organisations. In particular, he advocates for three strategies: (1) engaging with the politics of other issue areas; (2) expanding the scope or the organisation into new areas; and (3) seeking complementary overlaps.²⁰

Research on institutional complexity and global governance continues to attract interest and to cross-pollinate into new research agendas. An example of this trend is recent work on human trafficking.²¹ It remains to be seen how lessons learned from the analysis of other issue areas can be successfully applied to human rights research, and how these lessons can dovetail into insights that will lead to causal inference.

3. Institutional complexity

This section presents our view of institutional complexity and sets out to discuss two indicators of institutional complexity in the realm of human rights. Our goal is to propose aspects of complexity that are observable and susceptible to operationalisation, in order to contribute to a framework that can subsequently grasp the consequences of complexity on the ground, via cross-section analyses and other empirical designs.

The article departs from the conjecture that complex institutions behave differently and may underperform, when compared to institutions in which complex structures do not prevail.²² Our definition of regime complexity is based on the seminal work by Karen Alter and Sophie Meunier. Accordingly:

International regime complexity refers to the presence of nested, partially overlapping, and parallel international regimes that are not hierarchically ordered. Although rule complexity also exists in the domestic realm, the lack of hierarchy distinguishes *international regime complexity*, making it harder to resolve where political authority over an issue resides.²³

With respect to the IAHRs, two characteristics speak directly to these aspects of regime complexity: overlap and parallelism.²⁴ The authors explain that:

the situation of *parallel regimes* (where there is no formal or direct substantive overlap) differs from *overlapping regimes* (where multiple institutions have authority over an issue, but agreements are not mutually exclusive or subsidiary to another).²⁵

Overlap occurs between the regional and the international (that is UN) human rights regimes, whereas parallelism refers to the relationship between international obligations and domestic law (Figure 1). The ratification process is the key through which these international obligations penetrate the domestic legal system and become binding on states.

The article proposes that institutional complexity in the IAHRs can be captured by two indicators: decision density of human rights recommendations and membership of human rights treaties. Membership refers to treaty ratification *strictu sensu*, and conveys the level of commitment of a given country towards the system; decision density of human rights captures instances when a country was brought before the judicial or quasi-judicial institutions associated with the system. Far from being the sole faces of institutional complexity, the article nevertheless argues that membership of human rights treaties and decision density of human rights constitute important indicators of complexity. They are also observable and measurable, and they capture complexity at the individual country level. These two indicators are further analysed in the empirical section of the article, which presents a descriptive analysis of countries' membership of human rights treaties and their human rights decision density.

The article relies on these two indicators of institutional complexity to demonstrate that the institutional development of the IAHRs has moved in the direction of greater complexity. As a consequence, the system has produced a denser policy space with increasing demands on state capacity. When states confront overlapping or parallel human rights institutions, they must develop greater expertise and capabilities to cope with the demands originating from these institutions. We foresee two broader categories of

	Overlap	Parallelism
International	ICCPR First Optional Protocol CAT OPCAT	ICCPR First Optional Protocol CAT OPCAT
Regional	- Declaration on the Rights and Duties of Man - Inter-American CAT - Inter-American Convention on Human Rights	- Declaration on the Rights and Duties of Man - Inter-American CAT - Inter-American Convention on Human Rights
National		- Constitutional provisions against torture - National Anti-Torture Statutes - Domestic criminal law provisions that prohibit torture

Figure 1. Overlap and parallelism in the IAHRs.

institutional demands: first, there is an expectation to align state behaviour with treaty content; and second, there is an invitation to address the content of decisions and judgments rendered by treaty-based institutions. The two indicators of institutional complexity speak to these demands. First, membership (that is ratification of human rights treaties) directly affects the expectation to align state behaviour to treaty content. Second, decision density of human rights directly influences the demand to implement decisions and judgments issued by the system.

Within this context, treaty ratification is by no means cost-free.²⁶ When states choose to ratify a human rights treaty, governments are aware of the domestic consequences, which may include greater demands to adapt state behaviour to treaty content, higher costs associated with compliance, and even a potential conflict with respect to treaty interpretation. In fact, since ratification is often interpreted as a signalling gesture, the higher the costs associated with ratification, the more credible the commitment by the state becomes.²⁷

It remains to be seen whether ratification in highly complex institutional contexts, as we will argue is the case of the IAHRs, is associated with greater or lesser compliance by states. States, overwhelmed by the demands of these overlapping or parallel institutions, could fall short of complying with the normative and the decision-based demands they face, but they could engage in economies of scale wherein learning takes place, and the more complexity they encounter, the more efficient they become at making decisions. These conflicting expectations with respect to the consequences of institutional complexity reinforce the importance of studying the historical evolution of the IAHRs as an instance where the pattern of institutional development may hold the key to a deeper understanding of variation in levels of compliance.²⁸ The next section deepens the analysis of institutional complexity within the context of international human rights regimes in general and the IAHRs in particular.

4. Institutional complexity in international human rights regimes

The international human rights system is unique in that it comprises two different types of regimes. The first is the global human rights regime, which can be understood as a 'system of rules and implementation procedures centred on the United Nations'.²⁹ The second is the network of regional human rights regimes (most notably the African, European and Inter-American human rights regimes), which have features that distinguish them from the global regime.

The literature on international regimes has identified different categorisation schemes according to different levels of control mechanisms. For example, human rights regimes can be categorised according to a 'management-enforcement ladder' including the following four mechanisms: (1) preventive capacity building and rule clarification; (2) forms of monitoring which enhance transparency and state behaviour; (3) a legal system which permits cases against non-compliant states; and (4) a measure of deterrent sanctions.³⁰ Similarly, regimes can be classified according to their decision-making procedures, distinguishing between enforcement regimes, implementation regimes, promotion regimes and declaratory regimes.³¹

With reference to monitoring and especially enforcement mechanisms, some regional human rights regimes are more developed than the global regime. For example, the

European regime and the inter-American human rights regime each include a court, which equips them with stronger enforcement mechanisms. The global human rights regime, centred on the UN, does not include such enforcement mechanisms and is therefore classified by ‘international implementation including monitoring’ only.³²

While this article focuses on the IAHRs and not the UN system, we argue that their influence on states’ human rights practices and their institutional complexity are related. Most importantly, we recognise that regime complexity in the IAHRs stems not only from the presence of ‘partially overlapping and parallel institutionalisation’,³³ but also from the nature of the mandates of regime-specific institutions. The article treats the influence of the international human rights regime over the IAHRs as an important element, and proposes a measure of overlap designed to capture instances when states ratify regional and international human rights treaties that regulate similar behaviour. The presence of overlap is evidence of greater institutional complexity.

4.1. Institutional development of the IAHRs

The patterns of ratification of human rights treaties and decision density, coupled with the evolving nature of institutional mandates, have contributed significantly to the increase of the IAHRs’s level of regime complexity.³⁴ The major institutional reforms of the IAHRs, particularly the creation of the Inter-American Commission on Human Rights by the Organisation of American States in 1959, the granting of investigative powers to the commission in 1961, and the granting of the related authorisation to hear individual complaints in 1965³⁵ are all major milestones and mark the first phase of the Inter-American Commission’s work, and the first important development that has implications for the level of complexity of the system. This institutional development also coincided with the breakdown of democracy in the region, starting with Brazil in 1964.

The next important development was the signature of the American Convention on Human Rights in 1969. This is in keeping with the trend towards treaty-based commitments, wherein the UN ICCPR, signed in 1966, features prominently. Language already present in the American Declaration on the Rights and Duties of Men (1948) addressing the prohibition of torture had ‘hardened’ into treaty law with the new legal instruments (Figure 2).

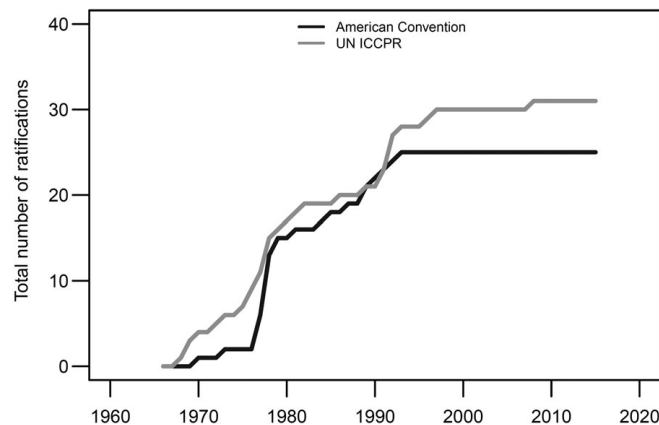


Figure 2. Patterns of ratification of the American Convention and the ICCPR by countries in the region (1966–2015).

The prohibition against torture was generally ignored by the authoritarian regimes in the region at the time. Perhaps as a direct consequence of the prohibitions that states had agreed on (at least at the political level), the Inter-American Commission on Human Rights received an unprecedented number of petitions. Tom Farer reveals that 'within seven years, the Commission's caseload [went] from about 50 petitions to over 7,000'.³⁶

The founding of the Inter-American Court of Human Rights in 1979 marks a further key shift towards more institutional complexity in the IAHRs, but the effect of this development was not felt until years later, in 1986, when the court effectively began to receive contentious cases. The court was only precariously inaugurated in 1979, without an established operating budget or a clear understanding of how the Inter-American Commission should engage with it. As a result, the first contentious cases did not reach the court until 1986, when the commission referred the Honduran disappearances cases. Before that, the court had the opportunity to decide on requests for advisory opinions.³⁷ By 1986, the UN ICCPR had been in force for ten years, and jurisdiction under the First Optional Protocol had enabled the UN Human Rights Committee to hear individual complaints against countries in the region. In 1987, the Inter-American Convention to Prevent and Punish Torture came into force, increasing institutional complexity in the IAHRs. Now the prohibition of torture was the subject of no less than six normative instruments: the UN's Universal Declaration and its Inter-American equivalent; the ICCPR, and its Inter-American equivalent – the American Convention on Human Rights; and the two torture conventions (the 1984 UN-sponsored treaty and the American Convention signed in 1985).

Developments at the level of the Inter-American Commission and the Inter-American Court were slightly more complicated. When, by the mid-1970s, the commission had to process thousands of individual petitions and did not possess the necessary infrastructure to handle the work, it decided instead to shift its focus to country reports. The practice evolved, wherein the commission at times would use the high number of individual complaints as an excuse to request permission to visit a country and conduct an investigation on the human rights situation. Several such visits took place: 1977 (unsolicited) in Panama, 1978 in Nicaragua, 1979 in Argentina, and 1980 in Colombia, to name but a few. The commission's mandate and investigative powers were negotiated on an ad hoc basis, before the country in question granted the commission permission to visit. Neither the mandate nor the procedure to handle the information and findings of the commission's report were established by the IAHRs's legal documents. The commission seized the opportunity and claimed broad discretion over how it was going to handle the findings. For example, it unilaterally decided that the content of the reports would be published after adoption by the General Assembly of the Organisation of American States. This decision is an important example of how legal practice contributed to increased institutional complexity in the system.

In a similar vein, and following repeated demands by the Inter-American Court, the commission decided to start referring cases to the court in 1986. Now, individual complaints that reached the commission and that remained unresolved, perhaps because the state party concerned did not comply with the commission's recommendations, could be sent to the court. This phase in the relationship between the commission and the court marks yet another important moment in the road towards greater institutional complexity. Proceedings before the Inter-American Court demanded more legal expertise, and the court's decisions entailed legal obligation and so states were to take proceedings

before the court more seriously.³⁸ This institutional environment became even more complex with the 2001 Amendment to the Rules of Procedure of the Commission, requiring referral of every case of non-compliance to the court. Incidentally, 2001 also corresponds with the peak in the number of decisions and judgments issued by the court; 20 in total, which may suggest that the court was engaged in judicial activism as a means to put pressure on the commission.

In the meantime, developments in the rules of procedure of the court and in its own legal practice evolved in the same direction, adding even more complexity to the system. A full-fledged analysis of the practice of the Inter-American Court is beyond the scope of this article, but to illustrate the point we take as an example the court's practice of issuing judgments that comprise several measures, including measures of non-repetition. States dealt with these different categories of judgments in fundamentally distinct ways, because the political costs associated with each of them vary.³⁹

In sum, the development of the IAHRs points towards four broad institutional reforms that contributed to more institutional complexity over time: (i) the creation of the Inter-American Commission on Human Rights by the Organisation of American States in 1959 (including the granting of investigative power to the commission in 1961 and the granting to hear individual complaints in 1965); (ii) The signature of the American Convention on Human Rights in 1969; (iii) The birth of the Inter-American Court of Human Rights in 1979; (iv) The start of the commission referring cases to the court in 1986 and the Amendment to the Rules of Procedure of the Commission in 2001 requiring referral of every case of non-compliance to the court.

However, even though the overall level of complexity of the IAHRs increased over time, the level of complexity states are confronted with varies considerably because, through their decision to ratify treaties and through the number of judgments that are addressed to them, states decide on the level of complexity they are confronted with.

4.2. Indicators of institutional complexity: decisions, judgments and recommendations

The picture of institutional complexity in the IAHRs is complemented by an analysis of the pattern of decisions, judgments and recommendations issued by the judicial and quasi-judiciary institutions that operate under the system. This section offers a first look at the impact of our first aspect of complexity, decision density of human rights, or the demand directed at states to address the decisions, judgments and recommendations issued by treaty-based judicial and quasi-judicial bodies in a timely manner. It presents descriptive statistics that reflect the decision density of states vis-à-vis the UN Human Rights Committee, the UN CAT, and the Inter-American Court of Human Rights. Because systematic data on recommendations by the Inter-American Commission are not available for the entire period under analysis (1981–2012), and in particular for the years 1981–2006, we will defer a more thorough study of states' interaction with the commission to a later stage of this research project.

The analysis seeks to identify the trends towards hard law, as legalisation arguably brings about greater levels of complexity. States face commitments that embed legal obligations, thus entailing higher reputational costs, but these obligations are often worded in ways that demand legal expertise. With respect to states' decision density in front of the

Inter-American Court of Human Rights, it is important to keep in mind that the decision density of one country over one instance of violation results from a judicial process. There can also be several entries associated with one case, as the court may have issued many decisions and judgments in that particular case. The sheer multiplicity of both procedural and objective decisions by the court can be seen as another indicator of institutional complexity.

Figure 3 shows the annual total number of recommendations by international human rights institutions that have jurisdiction over countries in the region. The analysis encompasses recommendations by the UN Human Rights Committee (HRC) and the UN Committee Against Torture, and decisions and judgments by the Inter-American Court of Human Rights.⁴⁰ These recommendations, decisions and judgments constitute responses to individual complaints submitted to the respective treaty bodies. As a consequence, a time lag exists between the moment the judicial or quasi-judicial institution received the complaint and the moment the recommendation, decision or judgment becomes public. This in part explains the interval between the entry into force of these institutions and the first recommendations, decisions and judgments recorded in our database. For example, the UN HRC was established in March 1976, but the first recommendation issued by the committee against a Latin American country did not come until late 1988.⁴¹ We can observe a similar, although smaller, gap in time between the inauguration of the Inter-American Court of Human Rights in 1979 and the publication of the first decision by the court in 1987. Here, a key variable is the role of the Inter-American Commission, which operated as a gatekeeper to the court in the beginning, and later as an institutional filter.

Figure 3 offers some interesting insights into the dynamic of judicial and quasi-judicial human rights institutions operating in Latin America from 1980 onwards. First, the quasi-

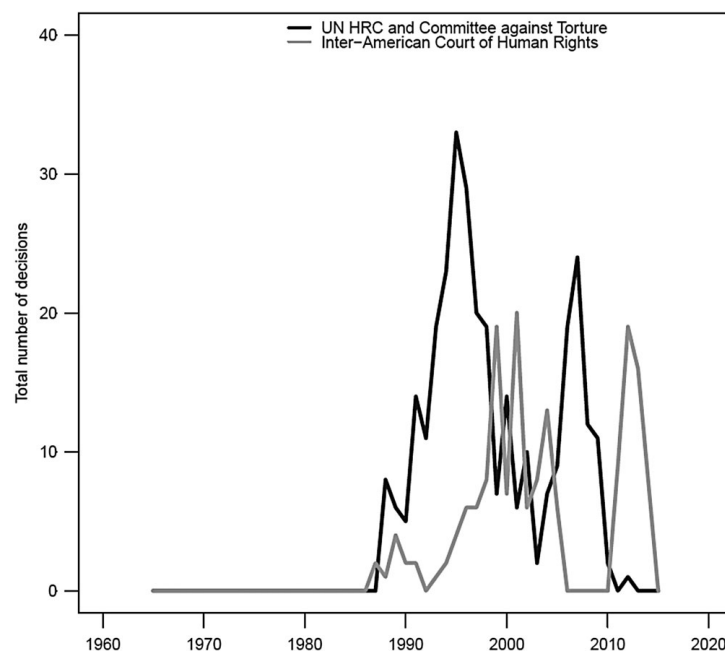


Figure 3. Number of decisions UN committees and the Inter-American Court of Human Rights (1980–2012).

judicial institutions, herein represented by the HRC and the Committee Against Torture, were more active than the Inter-American Court of Human Rights until the mid- to late-1990s. There was a sharp decrease in the number of recommendations issued by both committees after 1998 that is not matched by the record of the Inter-American Court. In fact, the number of decisions and judgments issued by the Inter-American Court rose almost continuously until 2001. The trend upward is less marked for the Inter-American Court when compared to the steep increase in the total number of recommendations issued by the HRC and the Committee Against Torture, revealing that complainants probably privileged the UN system over the IAHRs to begin with. This first phase of a relatively consistent picture ended in the late 1990s, when the clear pattern ceased to exist. The oscillation in the number of recommendations, decisions and judgments that followed signals greater levels of complexity, because these overlapping institutions may have produced conflicting jurisprudence. The legal culture of the UN and regional institutions evolved in parallel, which amounts to an added source of complexity.

There is a noticeable trend towards alternating between the two regimes, with the UN treaty-based regime built around the UN ICCPR and on the CAT (and their respective optional protocols), on one side, and the Inter-American Convention of Human Rights, on the other. Given the procedural prohibition against simultaneous submissions embedded in the admissibility requirements of both regimes, it comes as no surprise that complainants would choose one regime over the other.

The numerous recommendations issued by the Inter-American Commission during the period only add to the level of institutional complexity. These recommendations embed soft law obligations, but carry significant political weight. This was especially true during the first years of the commission's operations, when it had exclusive international jurisdiction over human rights in the region. At that time, recommendations received a lot of attention, if not overtly, then certainly behind the walls of government institutions.⁴² The reach of the commission's investigative powers and its self-invoked prerogative to pursue unsolicited on-site visits, in particular, constituted highly complex historical developments.

Figure 3 shows a rise in the number of decisions and judgments by the Inter-American Court which was much slower than the rise observed by the UN committees.⁴³ The largest number of decisions and judgments was in 2001 when the Inter-American Court issued 20 such rulings, followed by 10 in 1999 and in 2012. After 1990, each year the Inter-American Court issues an average of 6.2 decisions and judgments. However, the total number of decisions and judgments varies considerably. In the last 23 years (1990–2012), there have been only four years with more than 10 decisions and judgments, whereas six years have no such decisions or judgments.⁴⁴ Hence, most years show between one and nine decisions and judgments.

In total, the Inter-American Court published 40 decisions and judgments addressing Peru, which is the country with the highest total number of decisions and judgments, followed by Guatemala with 23, and Argentina with 14. Colombia, Ecuador and Honduras all have a total of 13 decisions and judgments by the Inter-American Court followed by Venezuela with 12. All other countries were the target of fewer than 10 decisions and judgments during the considered time period.⁴⁵

The picture that Figure 3 depicts for the UN committees is similar in the sense that we observe more than one peak in the number of decisions and judgments. Here, the highest

number of decisions and judgments is observed in 1998 with 35 rulings followed by 2007 with 24 such rulings. However, the average of decisions and judgments by the UN committees is considerably higher than the one by the Inter-American Court. Whereas the average number of decisions and judgments after 1990 is 6.2 for the Inter-American Court of Human Rights, it is 14.7 for the UN committees. Furthermore, whereas multiple years did not show any decisions or judgments of the Inter-American Court, only very recently (in 2011) do the UN committees show a year without any decisions or judgments. Canada has been the target of the highest total number of recommendations (106) by the UN committees followed, by Jamaica with a total number of 97 recommendations. The UN committees address Trinidad and Tobago in 30 recommendations, and all other countries have fewer than 30.⁴⁶

4.3. Indicators of institutional complexity: share of treaty ratifications

This section focuses on the second indicator to measure institutional complexity at the country level: the share of treaty ratification. Treaty ratification serves as an important indicator of the depth of state commitment towards human rights regimes. This article focuses on the core treaties of the UN and their corresponding treaties in the Inter-American human rights regime, and presents a first overview of the different levels of complexity that states face according to their pattern of ratification.

The proposed measure of regime complexity indicates the share of all available treaties a country ratified in a given year. Information on treaty ratification comes from the official website of the UN for the core treaties of the UN regime, and the Organisation of American States for the corresponding treaties of the Inter-American Human Rights System.⁴⁷ The resulting variable takes values from 0 to 100. Countries with a score of 0 have not ratified any of the available treaties, whereas countries with a score of 100 have ratified all of the available treaties in a given year. This measure allows an assessment of the level of complexity individual countries are confronted with. Based on this measure, the level of complexity is different for each country depending on the share of treaties they ratified.

Figure 4 shows the mean share of treaty ratification of the core treaties in the Inter-American Human Rights Regime in a given year among all American countries.⁴⁸ Overall, we see an increase in the share of treaty ratification among American countries. Whereas the share of treaty ratification was below 30% in the early 1990s, it has now reached almost 60%, meaning that, on average, states have ratified 60% of the available core treaties in a given year. Figure 4 also shows the significant rise in the share of treaty ratification in the late 1970s that took place after the Inter-American Convention on Human Rights was negotiated and became the first treaty of the Inter-American human rights regime available for ratification. The steady increase in the share of treaty ratification in the late 1970s and early 1980s shows that states increasingly ratified the convention.

In 1985 a second treaty, the Inter-American CAT, became available for ratification. The rather significant drop in the share of treaty ratifications following the negotiation of this treaty indicates that most countries did not ratify the CAT immediately after it became available. As several additional treaties became available for ratification in the late 1980s and during the 1990s, the share of treaty ratification increases only slowly and does not reach the level of the share before the CAT became available for almost 20

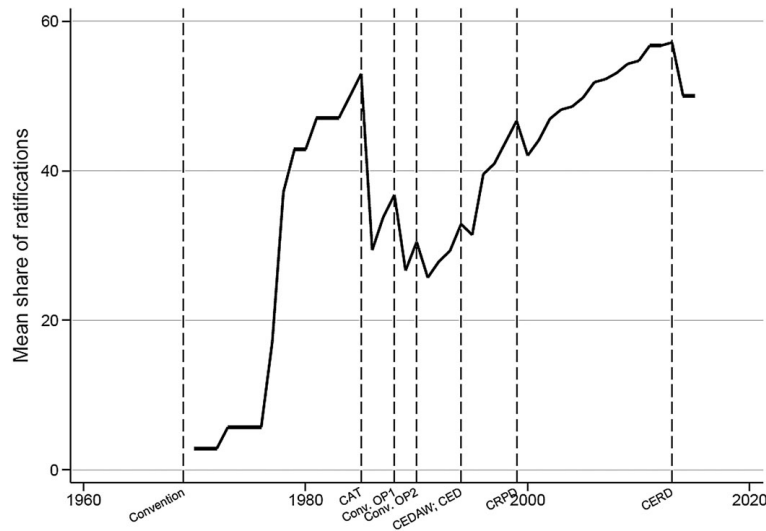


Figure 4. Share of treaty ratification in the Americas (1960–2012).

years. Even though the most significant drop in the share of treaty ratifications is observed after the CAT became available, [Figure 4](#) shows drops in the share of ratifications after a new treaty becomes available for all treaties. This indicates that most countries do not ratify immediately after a treaty becomes available. Nevertheless, in sum, [Figure 4](#) indicates that, over time, more countries start to ratify available treaties.

This development has important implications for the complexity of the IAHRs. The number of available treaties increases over time, which considerably adds to the level of institutional complexity as particular rights might become subject of several normative instruments. Hence, they constitute partially overlapping parallel institutions that are not hierarchically ordered. From the perspective of individual states, the overall rise in the share of treaty ratification also indicates that more states commit to the IAHRs. This higher share of treaty ratification also implies greater expectations to align state behaviour with treaty content. The level of complexity according to this second indicator varies for different states. Although they are all members of the same international regimes, their level of commitment, and therefore their acceptance of complexity, varies according to their share of treaty ratification.

Even though there is a positive overall picture of the share of treaty ratifications in the Americas, implying a growing level of complexity, countries vary considerably in the share of treaties they ratify. [Figure 5](#) shows the share of treaty ratifications by country, and three countries have not ratified any of the available treaties,⁴⁹ while several countries show a share of treaty ratification of 100% in at least one year after 2000.⁵⁰ But, as the Inter-American and the UN human rights regimes coexist and hence add an additional element of complexity, treaty ratifications of UN treaties should not be neglected. A closer look at the three countries with no ratifications of Inter-American human rights treaties further illustrates this. Cuba, Canada and the United States all have ratified several of the core UN human rights treaties, but none of the corresponding Inter-American treaties. [Figure 6](#) shows a more detailed picture of treaty ratification in four other countries, including not only the Inter-American treaties but also the core UN treaties available for ratification. The year in which a treaty becomes available for ratification is marked by a dot, and

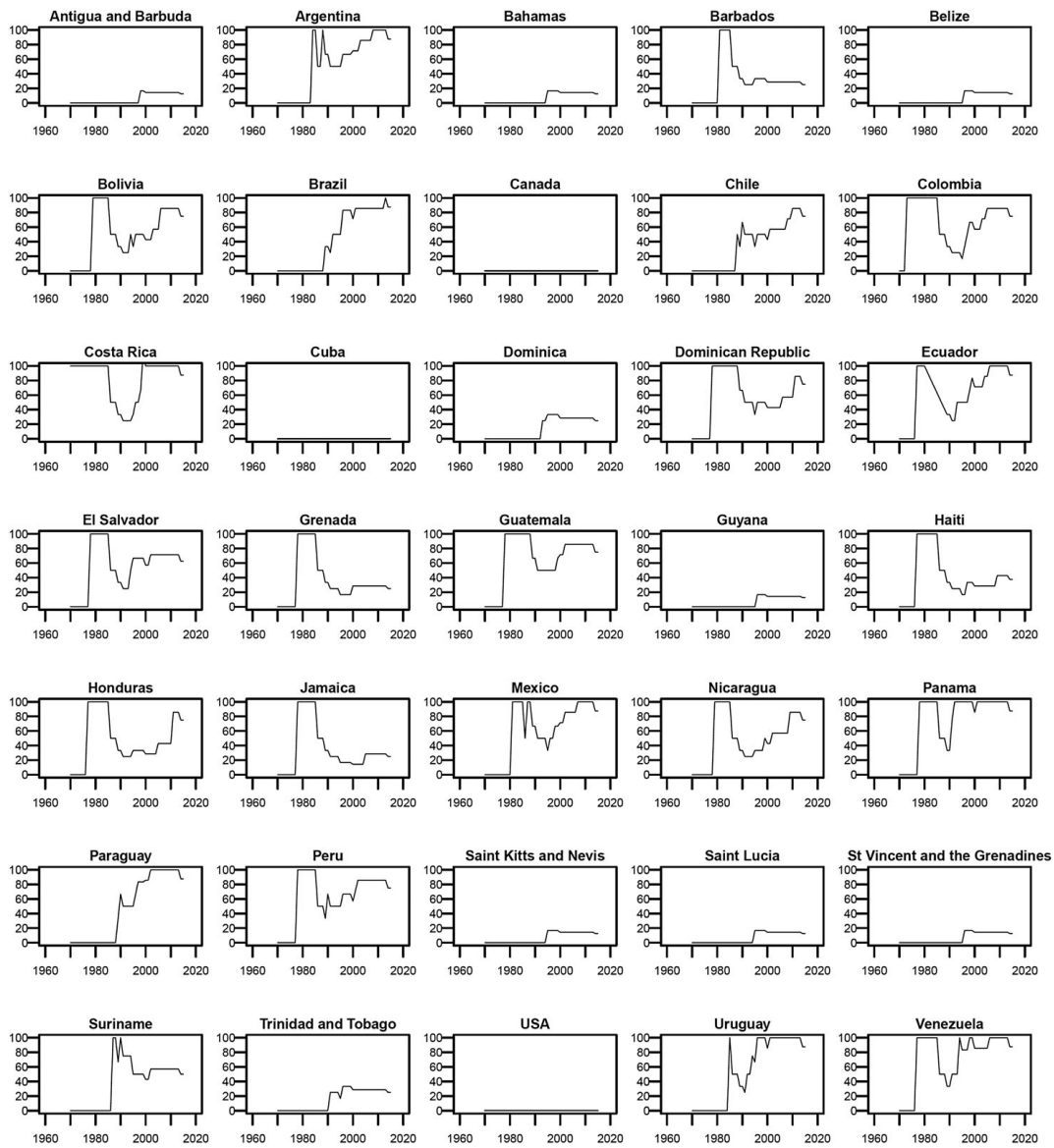


Figure 5. Share of treaty ratification in the Americas.

lines indicate the years of treaty ratification. Inter-American treaties are pictured in black and UN treaties in grey.

Costa Rica is among the countries with the highest share of treaty ratification (87.5%) at the time of writing. The only Inter-American treaty not yet ratified is the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance, which became available for ratification in 2013. Eight other countries show the same share of treaty ratification in 2015: Argentina, Brazil, Ecuador, Mexico, Panama, Paraguay, Uruguay and Venezuela. Furthermore, [Figure 6](#) shows that Costa Rica has ratified all but one of the core UN human rights treaties and their corresponding optional protocols.⁵¹ Moreover, Costa Rica is a rather fast ratifier, as is indicated by the short time difference between the first year of treaty availability and the ratification of the corresponding treaty.

In Honduras we can see longer periods between the year in which a treaty becomes available for ratification and ratification. For example, only more than 20 years after

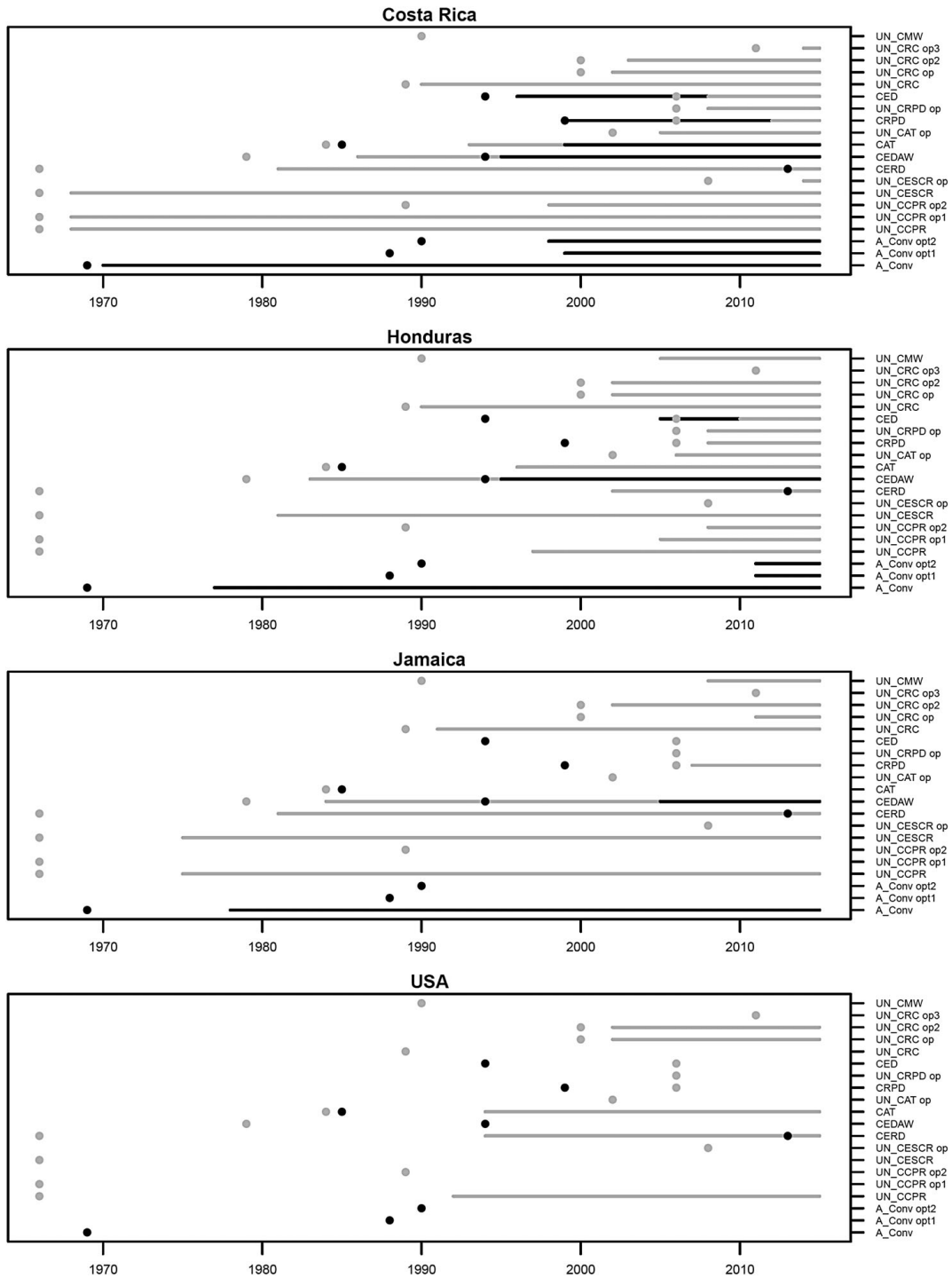


Figure 6. Treaty ratification in the Inter-American and the UN human rights regime.

the Inter-American Convention optional protocols became available for ratification did Honduras ratify them. At the time of writing, Honduras has a share of treaty ratification of Inter-American treaties of 75%, and has ratified all UN core treaties.

As Figure 6 shows, Jamaica and the United States show the importance of considering the coexistence of different human rights regimes. Jamaica has a current share of treaty ratifications in the Inter-American regime of only 25%. However, Jamaica has a

considerably higher share of UN treaty ratifications. The United States is among the most extreme cases, with no treaty ratification in the Inter-American human rights regime. However, after the 1990s the United States ratified some of the core UN treaties.

In sum, a closer look at the share of treaty ratification of individual countries emphasises the importance of measuring regime complexity not only at an overall regime level but also at an individual country level. The degree to which countries ratify different treaties and thereby agree to different levels of institutional complexity varies considerably. As these differences show, only measuring whether a country has ratified one specific treaty cannot capture the complexity of the human rights regime. This might have important consequences for the analysis of the influence of treaty ratification and regime complexity on actual compliance with human rights.

5. Conclusion

This article looked at the IAHRs through the lens of regime complexity. It was motivated by the need to better understand the characteristics of international regimes that face challenges to compliance. The Inter-American human rights regime, as most international human rights regimes, presents one instance wherein enforcement is weak and states have little incentive to engage in reputational-driven compliance.

Although a lot has been written about the challenges for compliance in international human rights from the perspectives of enforcement and reputation, little exists on regime characteristics when it comes to its level of complexity. This article argued that institutional complexity is an important aspect of the international human rights regime, in particular because complexity can influence the compliance record, effect and effectiveness of international commitments by states. The analysis presented here focused on the prohibition of torture within the IAHRs and maps the development of the system through the institutional complexity cleavage. It introduced two indicators of regime complexity in the field of human rights that are both observable and measurable. These two indicators derive from the definition of institutional complexity proposed by Karen Alter and Sophie Meunier, for whom institutional overlap and parallelism are key features of a complex regime. We departed from their definition and identified two aspects of the IAHRs that constitute evidence of overlap and parallelism: the share of treaty ratification by countries in the region, which is labelled membership, and states' decision density. The latter reflects the total number of recommendations, decisions and judgments issued by a human rights judicial or quasi-judicial body against American countries.

We analysed these two indicators empirically, through recourse to an original database covering the period 1980–2012. The descriptive analysis of states' membership and decision density documents unequivocally the trend towards greater institutional complexity in time. The empirical analysis was complemented by a historical account of the IAHRs major institutional inflections, with a focus to the evolution of the Inter-American Commission of Human Rights' institutional mandate. This qualitative analysis, which was based on the scarce historical accounts of the commission's work, confirmed the movement towards greater complexity.

The article contributes to the literature on institutional complexity by advancing two observable dimensions of this phenomenon that may as well work across human rights

regimes. The empirical contribution of the article informs a larger research agenda on the relationship between complexity and compliance, even beyond the realm of international human rights.

This article introduced a number of questions that will be the focus of future work, namely: if human rights regimes – and regional human rights regimes prominently among them – are moving towards greater institutional complexity, what does this tell us about the role of enforcement? What about expectations towards compliance? Do institutional experiences that mitigate complexity impact compliance? By theoretically and empirically examining institutional complexity in the IAHRs, this article influences future thinking on these and related questions.

Notes

1. Oona A. Hathaway, 'Do Human Rights Treaties Make a Difference?', *Yale Law Journal* 111 (2002): 1938.
2. Beth A. Simmons, *Mobilising for Human Rights: International Law in Domestic Politics* (New York: Cambridge University Press, 2009).
3. Hathaway, 'Do Human Rights Treaties Make a Difference?', 1951.
4. See for example Han S. Park, 'Correlates of Human Rights: Global Tendencies', *Human Rights Quarterly* 9 (1987); Neil J. Mitchell and James M. McCormick, 'Economic and Political Explanations of Human Rights Violations', *World Politics* 40 (1988); Conway W. Henderson, 'Conditions Affecting the Use of Political Repression', *Journal of Conflict Resolution* 35 (1991); Steven C. Poe and C. Neal Tate, 'Repression of Human Rights to Personal integrity in the 1980s: A Global Analysis', *American Political Science Review* 88 (1994); Steven C. Poe, C. Neal Tate, and Linda Camp Keith, 'Repression of the Human Right to Personal Integrity Revisited: A Global Cross-National Study Covering the Years 1976-1993', *International Studies Quarterly* 43 (1999).
5. Linda Camp Keith, 'The United Nations International Covenant on Civil and Political Rights: Does it Make a Difference in Human Rights Behavior', *Journal of Peace Research* 36 (1999).
6. Todd Landman, *Protecting Human Rights: A Comparative Study* (Georgetown University Press, 2005); Eric Neumayer, 'Do International Human Rights Treaties Improve Respect for Human Rights?', *Journal of Conflict Resolution* 49 (2005); Simmons, *Mobilising for Human Rights*; Daniel W. Hill, 'Estimating the Effects of Human Rights Treaties on State Behavior', *The Journal of Politics* 72 (2010); Wade M. Cole, 'Human Rights as Myth and Ceremony? Reevaluating the Effectiveness of Human Rights Treaties, 1981-2007', *American Journal of Sociology* 117 (2012).
7. Hathaway, 'Do Human Rights Treaties Make a Difference?'; Eric Neumayer, 'Do International Human Rights Treaties Improve Respect for Human Rights?'
8. Camp Keith, 'The United Nations International Covenant on Civil and Political Rights'; Emilie Hafner-Burton and Kiyoteru Tsutsui, 'Human Rights in a Globalising World: The Paradox of Empty Promises', *American Journal of Sociology* 110 (2005).
9. Simmons, *Mobilising for Human Rights*; Emilie Hafner-Burton and Kiyoteru Tsutsui, 'Justice Lost! The Failure of International Human Rights Law to Matter Where Needed Most', *Journal of Peace Research* 44 (2007).
10. Simon Hug and Simone Wegmann, 'Complying with Human Rights', *International Interaction* 42 (2016).
11. See for example Karen J. Alter and Sophie Meunier, 'The Politics of International Regime Complexity', *Perspective on Politics* 7 (2009).
12. See Alter and Meunier, 'The Politics of International Regime Complexity'.
13. Kenneth W. Abbott and Duncan Snidal, 'Strengthening International Regulation Through Transnational New Governance: Overcoming the Orchestration Deficit', *Vanderbilt Journal of Transnational Law* 42 (2009): 501.

14. Frank Biermann, Philipp Pattbert, and Harro van Asselt, 'The Fragmentation of Global Governance Architectures: A Framework for Analysis', *Global Environmental Politics* 9 (2009): 14.
15. Tom Pogram, 'Governing Relationships: The New Architecture in Global Human Rights Governance', *Millennium Journal of International Studies* 43 (2015): 618.
16. David Victor and Kal Raustiala, 'The Regime Complex for Plant Genetic Resources', *International Organisation* 32 (2004): 147.
17. Michael Zürn and Benjamin Faude, 'On Fragmentation, Differentiation, and Coordination', *Global Environmental Politics* 13 (2013): 119.
18. Ibid.; Alexander Betts, 'Regime Complexity and International Organisations: UNHCR as a Challenged Institution', *Global Governance* 19 (2013): 69.
19. Pogram, 'Governing Relationships', 636–7.
20. Betts, 'Regime Complexity and International Organisations', 76–7.
21. Laura Gómez-Mera, 'Regime Complexity and Global Governance: The Case of Trafficking in Persons', *European Journal of International Relations*, first published on 24 September 2015 as doi:10.1177/1354066115600226.
22. This claim is not unproblematic in the literature. As our main objective in this article is to propose two dimensions of institutional complexity that are amenable to operationalisation, we do not pursue the problematic question of whether more complexity brings about higher levels of efficiency, effectiveness or compliance. To that end, orderly designed institutions are merely arrangements wherein competences and mandates are: (1) hierarchically established; and (2) mutually respected most of the time.
23. Alter and Meunier, 'The Politics of International Regime Complexity', 13.
24. We chose to leave the 'nesting' aspect of institutional complexity outside of our analysis, because it does not feature as prominently in the IAHRS as 'overlap' and 'parallelism' do.
25. Ibid.; Alter and Meunier, 'The Politics of International Regime Complexity', 15.
26. Hathaway, 'Do Human Rights Treaties Make a Difference?', 1935; David J. Lektzian and Christopher M. Sprecher, 'Sanctions, Signals, and Militarised Conflict', *American Journal of Political Science* 51 (2007); Simmons, *Mobilising for Human Rights*.
27. See for example David Hollyer and Peter Rosendorff, 'Why Do Authoritarian Regimes Sign the Convention Against Torture? Signaling, Domestic Politics and Non-Compliance', *Quarterly Journal of Political Science* 6 (2011).
28. Alter and Meunier, 'The Politics of International Regime Complexity', 14. With respect to the relationship between institutional complexity and compliance, the authors advise that the associations brought to light by contributors to the special issue do not point in the same direction: sometimes complexity helps compliance, but at other times, complexity hinders it.
29. Jack Donnelly, *Universal Human Rights in Theory and Practice* (Ithaca, NY: Cornell University Press, (2003), at 206.
30. Jonas Tallberg, 'Paths to Compliance: Enforcement, Management, and the European Union', *International Organisation* 56 (2002): 632.
31. Donnelly, *Universal Human Rights in Theory and Practice*, at 127–9.
32. Ibid., at 127–9.
33. Alter and Meunier, 'The Politics of International Regime Complexity', at 13.
34. See also Par Engstrom and Andrew Hurrell, 'Why the Human Rights Regime in the Americas Matters', in *Human Rights Regimes in the Americas*, ed. Monica Serrano and Vesselin Popovski (Tokyo, New York, Paris: United Nations University Press, 2010).
35. Farer, 'The Rise of the Inter-American Human Rights Regime'. The 1967 Protocol of Buenos Aires grants the commission the right to receive individual petitions and the right to initiate investigations.
36. Farer, 'The Rise of the Inter-American Human Rights Regime', at 527.
37. Thomas Buergenthal, 'New Upload – Remembering the Early Years of the Inter-American Court of Human Rights', *New York University Journal of International Law and Politics* 37 (2005): 259.
38. Farer, 'The Rise of the Inter-American Human Rights Regime', at 543. By the end of the 1980s, the commission had shifted back to individual cases – with the task of building a

- 'body of doctrine interpreting the American Declaration and the Inter-American Convention on Human Rights'. This coincides with a growing trend towards democratisation in the region.
39. Courtney Hillebrecht, 'The Domestic Mechanisms of Compliance with International Human Rights Law: Case Studies from the Inter-American Human Rights System', *Human Rights Quarterly* 34 (2012): 959. Patterns of compliance with the different aspects of any given judgment by the court have become the subject of a growing literature, which now emphasises the different levels of compliance associated with each type of judicial award. Along the same lines, the domestic engines of compliance received a thorough analysis in Courtney Hillebrecht, *Domestic Politics and International Human Rights Tribunals* (Cambridge: Cambridge University Press, 2014).
 40. Data come from the website of the UN High Commissioner for Human Rights (Treaty Body Database) and from the website of the University of Minnesota Human Rights Library, respectively: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en; http://www1.umn.edu/humanrts/iachr/series_C.html
 41. From 1976 on and as early as in 1977 and 1978 for Ecuador, and 1979 for Chile, countries in the region were involved in conversations with the HRC related to their Country Reports. See 'Compilación de Observaciones Finales del Comité de Derechos Humanos sobre Países de América Latina y el Caribe, 1977–2004', United Nations Office of the High Commissioner for Human Rights, http://www.ohchr.org/Documents/HRBodies/CCPR/HRC-Compilacion1977-2004_sp.pdf
 42. Robert Goldman, 'History and Action: The Inter-American Human Rights System and the Role of the Inter-American Commission on Human Rights', *Human Rights Quarterly* 31 (2009).
 43. This is in keeping with the fact that the first is a judicial body, whereas the last two are quasi-judicial institutions, whose decisions do not generate legal obligations properly speaking.
 44. These years are 1999 (19 decisions and judgments), 2001 (20 decisions and judgments), 2004 (13 decisions and judgments), and 2012 (19 decisions and judgments). No decisions or judgments were issued in 1992, 2006, 2007, 2008, 2009 and 2010.
 45. These countries are: Suriname (7 rulings); Chile, Nicaragua, Trinidad and Tobago (5 rulings each); El Salvador (4 rulings); Bolivia and Panama (3 rulings each); Costa Rica, Dominica, Mexico, and Uruguay (2 rulings each), and Haiti (1 ruling).
 46. Canada is likely an outlier in the analysis, because an important number of cases challenged the prerogative of the Canadian government to extradite individuals to countries (most commonly the United States), where these individuals had been sentenced to death and were likely to be executed upon their return. Extradition in these circumstances is prohibited by the Second Optional Protocol to the ICCPR, which Canada has ratified.
 47. Information on treaty ratification: http://www.oas.org/en/sla/dil/inter_american_treaties.asp and <http://indicators.ohchr.org/>
 48. The figure considers the treaties that correspond to the UN core treaties.
 49. These countries are: Cuba, Canada and the United States of America (see Figure 4 in the Appendix).
 50. These countries are: Brazil, Costa Rica, Ecuador, Mexico, Panama, Paraguay, Uruguay and Venezuela (see Figure 4 in the Appendix).
 51. Until the present day, Costa Rica has not ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW), which became available for ratification in 2003. Variation in the levels of compliance has received growing attention by the literature, with a particular focus on the influence of domestic politics. See Carmela Lutmar, Cristiane L. Carneiro, and Sara McLaughlin Mitchell, 'Formal Commitments and States' Interests: Compliance in International Relations', *International Interactions* 42 (2016): 559, forthcoming.

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No potential conflict of interest was reported by the authors.

Notes on contributors

Cristiane Lucena Carneiro holds a PhD in Politics from New York University. She is an Assistant Professor at the International Relations Institute, University of São Paulo, and has experience in the areas of compliance, regime design, the World Trade Organization and human rights. Her current research investigates the impact of institutional complexity on compliance with international legal commitments, with a particular focus on the Inter-American Human Rights regime.

Simone Wegmann is a PhD student at the Department of Political Science and International Relations, University of Geneva, Switzerland. Her research interests include parliaments, political attitudes, transitions and consolidation of democracy, and human rights institutions and compliance with human rights.