The Institutional Pillars of the Latin American Response to the COVID-19 Pandemic: A Human Rights-Based Approach to Health[1♦]

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Abstract

Latin America has arguably been the most affected region by the COVID-19 pandemic, yet there is no academic article or academic publication on institutional regional responses to the pandemic concerning the right to health. Hence, this article aims to fill that scholarship gap by answering the following question: how have regional bodies responded to COVID-19 concerning the right to health in Latin America? It is overall argued and found herein that: (1) there is a regional system on the right to health in pandemics such as COVID-19, about which a human rights-based approach provides a unifying standard; and (2) this system is embedded within the Organization of American States' three-pillar

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framework, consisting of the Pan-American Health Organization, the Inter-American Commission on Human Rights, and the Inter-American Court of Human Rights. A human rights-based approach to health, which relies on international human rights law on the right to health, is considered a key component of the conceptual general framework herein. The Article analyzes the COVID-19 related practices of the three above-mentioned bodies. A central part of this Article's methodology utilizes findings of convergences, synergies, and divergences between those bodies regarding the right to health during pandemics like COVID-19.

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Introduction

The COVID-19 pandemic has challenged international law and its health institutions. Latin America (including the Caribbean) has been the most affected region by the COVID-19 pandemic.[4] Authors have examined the COVID-19 pandemic under international law,[5] yet there is virtually no academic publication on the Latin American regional institutional response to COVID-19's challenges and its impact on public health.[6] Thus, this Article addresses the following question: how have regional bodies responded to COVID-19 concerning the right to health in Latin America? It is argued herein that: (1) there is a regional system on the right to health in pandemics like COVID-19, about which a human rights-based approach provides a unifying standard; and (2) this system is embedded within the Organization of American States' (OAS) three-pillar framework, consisting of the Pan-American Health Organization (PAHO), the Inter-American Commission on Human Rights (IACmHR), and the Inter-American Court of Human Rights (IACtHR).

In light of COVID-19 related practice, this Article reaches two main findings. First, the three institutions considered—namely the PAHO, IACmHR, and IACtHR—act as a system in practice: its three pillars operate within a legal and institutional framework that respects,

4. World Health Organization [WHO] June 16, 2023 data.who.int, WHO Coronavirus (COVID-19) dashboard > Cases [Dashboard]. https://data.who.int/dashboards/covid19/cases; Jose Yepez, *Legal issues of the institutional framework in Latin-America concerning the Covid-19 Pandemic*, in Epidemics and International Law (Murase and Zhou eds., 2021); Pedro A. Villarreal, *Health Law and Pandemics in Latin America, in* Latin American International Law in the Twenty-First Century 609 (Alejandro Chehtman, Alexandra Huneeus & Sergio Puig eds., 2025) ("By March 2022, the region had reported 28 percent of all worldwide deaths despite having 8 percent of the global population").

5. *E.g.*, Matthias Hartwig, *The Coronavirus Challenges the International Order*, 80 Heidelberg J. Int'l L. 281 (2020); Covid 19 and Human Rights (Kjaerum et al. eds., 2021); Sherwet H. Witherington et al., *Special Issue-Pandemics and International Law*, 36 Am. U. Int'l L. Rev. 969–1104 (2021); Julinda Beqiraj et al., *Special Issue-COVID-19 and International Organizations*, 18 Int'l Org. L. Rev. 293–506 (2021); Epidemics and International Law (Murase and Zhou eds., 2021); Von Bogdandy and Villarreal, *The Role of International Law in Vaccinating Against COVID-19: Appraising the COVAX-Initiative*, 81 Heidelberg J. Int'l L. 89 (2021); Yuval Shany, *The COVID-19 Pandemic Crisis and International Law, in* Crisis Narratives in International Law 100–108 (Moïse Mbengue and D'Aspremont eds., 2021); Sebastián Guidi and Nahuel Maisley , *Who should pay for Covid-19?*, 96 N.Y.U. L. Rev. 375 (2021); Giulia Pinzauti and Philippa Webb, *Litigation Before the International Court of Justice During the Pandemic*, 34 Leiden J. Int'l L. 787 (2021); Anne Peters, *International Law Between Covid-19 and the Next Pandemic*, Max Planck Inst. for Compar. Pub. L. & Int'l L. Research Paper 2022–18 (2022); Routledge Handbook of Law and the COVID-19 Pandemic (Grogan and Donald eds., 2022); Bueno de Mesquita et al., *Lodestar in the Time of Coronavirus? Interpreting International Obligations to Realise the Right to Health During the COVID-19 Pandemic*, 23 Hum. Rts. L. Rev. 1–25 (2023).

6. To a *certain* extent, the following publications deal with *some* of the contents examined in the present article: Yepez, *supra* note 4; and Villarreal, *supra* note 4.

protects, and fulfills the right to health in pandemics. Second, that system's response should be enhanced to better respect, protect, and fulfill the right to health in pandemics under a human rights-based approach by building on the convergences and divergences between the three bodies considered.

Related to these findings, it should be noted that the system also stems from these bodies' engagement in regional institutional responses—often through their own mandates—to health issues closely related to the COVID-19 pandemic. Moreover, some actual and potential convergences, synergies, and interactions between these three organs are identified in the aforementioned context. Furthermore, these three organs have to a greater or lesser extent adopted a human rights-based approach to health during the COVID-19 pandemic.

The paper aims to contribute to the existing academic literature at two levels. First, it aims to see whether and to what extent the institutions considered have aligned in their valuation of right to health issues in Latin America in the COVID-19 context. This involves not only human rights institutions (such as the IACmHR and the IACtHR) but also the PAHO. As indicated in some practices of these institutions,[7] Latin America presented structural challenges and obstacles from the right to health and public health perspectives that led to the regional COVID-19 crisis. This was expressed through particularly high rates of COVID-19 deaths and patients, which involved violations of the right to health and other related rights such as the right to life.[8] This underlies this Article's use of a human rights-based framework to better assess whether and to what extent the use of human rights by regional institutions was prominent. As later illustrated,[9] IHRL standards and a human rights-based approach have featured in the PAHO's mandate vis-à-vis COVID-19 and pandemics in general.

Second, no academic article has comparatively analyzed these entities focused on health-related issues in the COVID-19 pandemic context. Moreover, legal scholarship on PAHO is almost nonexistent, and PAHO-related legal sources are unsystematized. Importantly, this is the very first English publication on the topic of human rights, including

7. *E.g.*, Pandemic and Human Rights, Inter-Am. Comm'n H.R., OEA/Ser.L/V/II.Doc.396 ¶¶ 13, 20 (Sep. 9, 2022) [hereinafter Pandemic and Human Rights], https://www.oas.org/en/iachr/reports/pdfs/2023/pandemiaddhh_en.pdf.

8. Organization of American States [OAS], American Convention on Human Rights art. 4, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123, art 4.

9. *See infra* Subparts I.A, II.A, III.B.4.

the right to health and COVID-19 in the region, further highlighting the originality of the present piece.

Concerning research methods, this Article legally analyzes the most important COVID-19 documents or legal sources that constituted relevant practices of the three institutions considered. Attention was primarily attuned to documents or sources such as resolutions, reports, guidelines, and jurisprudence. This was complemented by an analysis of applicable regional and international treaties or regulations, accompanied by general scholarship. This Article looks at all the key relevant documents and sources that constitute the COVID-19 practices of the organs examined.

Other OAS bodies have acted in the COVID-19 scenario.[10] However, this Article focuses on the PAHO, IACmHR, and IACtHR as the main pillars of Latin America's regional institutional and systemic response to the COVID-19 pandemic. This Article focuses on the PAHO, IACmHR, and IACtHR because they have issued diverse mandates that involve general scope and/or case-based functions leading to diverse legal outcomes. Furthermore, they possess mandates that should and have been synergistically combined to provide better solutions to health-related issues in the context of COVID-19 and other pandemic contexts.

Latin America was chosen as the regional focus of this Article because it has been the most affected region as measured in numbers of COVID-19 reported fatalities and hospitalized patients per million.[11] Some Latin American countries have presented the highest ratio of fatalities to total country inhabitants worldwide.[12] Analyzing the institutional pillars of the Latin American systemic response to COVID-19 through a human rights lens, therefore, can provide lessons for other regions when tackling pandemics.

10. *E.g.*, The Permanent Council of the Org. of Am. States, The OAS Response to the COVID-19 Pandemic, OEA/Ser.GCP/RES. 1151 (2280/20) (Apr. 17, 2020). https://www.oas.org/es/cim/docs/CP42233S06-ES.pdf.

11. World Bank Grp, COVID-19 (Coronavirus) Response, https://www.worldbank.org/en/region/lac/coronavirus; OECD, COVID-19 in Latin America and the Caribbean-An overview of government responses to the crisis (Nov. 11, 2020), https://www.oecd.org/content/dam/oecd/en/publications/reports/2020/04/covid-19-in-latin-america-and-the-caribbean-an-overview-of-government-responses-to-the-crisis_b7678034/0a2dee41-en.pdf; WHO June 16, 2023 data.who.int, WHO Coronavirus (COVID-19) dashboard > Cases [Dashboard] https://covid19.who.int/?mapFilter=deaths; *see also* Cong. Rsch. Serv., Lat. Am. and the Caribbean-Impact of COVID-19 (Dec. 6, 2020), https://sgp.fas.org/crs/row/IF11581.pdf; Alvaro Schwalb et al., *COVID-19 in Latin America and the Caribbean*, 292 J. Internal Med. 409–27 (2022).

12. Maja Pašović et al., *Countries Hit Hardest by COVID-19*, Think Glob. Health (Nov. 17, 2021), https://www.thinkglobalhealth.org/article/countries-hit-hardest-covid-19.

An in-depth analysis of the right to health at the center of COVID-19 related discussion is needed, which this Article aims to provide. This can also be observed in other COVID-19 related publications focused on the right to health.[13] While the pandemic's peak and its major impacts have passed in Latin America (and elsewhere), there are new COVID-19 strains[14] and related ongoing vaccination rounds in the region.[15] As of May 2025, the total number of deaths due to COVID-19 amount to hundreds of thousands in many Latin America countries,[16] and, still, persons continue to be hospitalized and die because of COVID-19. Additionally, the period at which this Article is being researched and drafted provides a vantage point to examine the "before," "during," and—to an important extent—"after" stages of the COVID-19 pandemic.

This Article has four sections. Part I provides this Article's conceptual framework by examining a human rights-based approach—including both UN and regional human rights law standards—to health in pandemics, focused on COVID-19. Part II provides an analytical overview of the PAHO's, IACmHR's, and IACtHR's practices concerning the right to health in the COVID-19 context. Part III—central to this Article—comparatively discusses the convergences, synergies, and divergences of these bodies, identifying actual and potential institutional avenues to better systemically respect, protect, and fulfill the right to health in pandemics by remarking on the strengths and limitations of those organs. This Article ends with a general conclusion.

I. A Human Rights-Based Approach to Health

A. Human Rights-Based Approach to Health in Pandemics, Focusing on COVID-19

A human rights-based approach to health involves applying international human rights law (IHRL) to "a wide range of health-related issues, including access to medical services, medicines and medical aids, [and] infectious disease control."[17] Under a human rights-based

13. *E.g.*, Von Bogdandy and Villarreal, *supra* note 5; Bueno de Mesquita et al., *supra* note 5.

14. Kathy Katela, *What to Know About EG.5 (Eris)-the Latest Coronavirus Strain*, Yale Med. (Feb. 24, 2021. Updated Oct. 5, 2023), https://www.yalemedicine.org/news/covid-eg5-eris-latest-coronavirus-strain.

15. PAHO, *Vaccination Week in the Americas 2023*, https://www.paho.org/en/campaigns/vaccination-week-americas-2023 [https://perma.cc/SCR7-VNWC] (last visited Jan. 19, 2026).

16. *Number of deaths due to the novel coronavirus (COVID-19) in Latin America and the Caribbean as of May 11, 2023, by country,* Statista (May 11, 2025), https://www.statista.com/statistics/1103965/latin-america-caribbean-coronavirus-deaths/.

17. Brigit Toebes, *Introducing Health and Human Rights: Global and European*

approach, IHRL should inform other legal areas "that engage with health issues, including international and domestic health law."[18] The adoption of a human rights-based approach means that: (1) policies, programs, and actions should further realize human rights; (2) human rights principles and standards should orient actions, programs, and cooperation in all sectors; and (3) actions, programs, and policies should contribute to develop duty-bearers' capacities to meet their obligations and enhance persons' capacities to claim their rights.[19]

Concerning COVID-19, an IHRL-based approach has become a fundamental part of the global order and addresses state and non-state actors,[20] including international organizations and their organs. This approach protects human rights as indivisible and interdependent and, in a deadly pandemic such as COVID-19, pays special attention to the right to life and closely related rights like the right to health.[21] A human rights-based approach to health applies to emerging health concerns like infectious diseases.[22] Since pandemics such as COVID-19 affect the right to health, IHRL is a crucial legal framework to assess state responses to pandemics,[23] which can plausibly *mutatis mutandis* apply to the UN and international organizations such as the World Health Organization (WHO) and the Pan-American Health Organization (PAHO),[24] as well as regional bodies.

The PAHO has adopted a human rights-based approach to health. The first PAHO instrument addressing human rights standards was the Caracas Declaration, adopted in 1990,[25] which provides the principles of

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Perspectives, in Health and Human Rights: Global and European Perspectives 3 (Brigit Toebes et al. eds., 2022).

18. *Id.*

19. U.N. Sustainable Dev. Grp.-Hum. Rts. Working Grp., The Human Rights-Based Approach to Development Cooperation Towards a Common Understanding among the United Nations Agencies (Sep. 2003); Katharina O. Cathaoir, *UN Institutions and Health and Human Rights*, *in* Health and Human Rights: Global and European Perspectives 93 (Brigit Toebes et al. eds., 2022).

20. Karima Bennoune, "*Lest We Should Sleep": COVID-19 and Human Rights*, 114 Am. J. Int'l L. 666 (2020)

21. Martin Scheinin and Helga Molbæk-Steensig, *Human Rights-Based Versus Populist Responses to the Pandemic*, in Kjaerum et al., *supra* note 5, at 22–24.

22. Toebes, *supra* note 17, at 12; Mason et al., *Rights-Based Approaches to Preventing, Detecting, and Responding to Infectious Disease in* Infectious Diseases in the New Millennium (Eccleston-Turner and Brassington eds., 2020).

23. *See* Antonio Coco and Talita Dias, *Prevent, Respond, Cooperate-States' Due Diligence Duties vis-à-vis the Covid-19 Pandemic*, 11 J. Int'l Humanitarian Legal Stud. 218 (2020).

24. *See* Gian Luca Burci and Jennifer Hasselgård-Rowe, *Through the Rule of Law Looking Glass–The World Health Organization's Role in Health Emergencies and Its Response to COVID-19*, 18 Int'l Org. L. Rev. 307 (2021).

25. Pan Am. Health Org. [PAHO]/WHO (1990) Caracas Declaration, conference on the

public health as a human rights issue. The Caracas Declaration resulted from the participation of multiple actors beyond the PAHO, including professional bars, associations, and the Inter-American Commission on Human Rights (IACmHR).[26] In its human rights-based approach to health, the PAHO has hence taken into account regional complexities.

Indeed, the PAHO's mandate, in accordance with article 1 of its constitution,[27] addresses combating disease and promoting physical and mental health. Within that scope, the PAHO's COVID-19 related actions have considered vulnerable groups such as the elderly, migrants, and indigenous peoples under a human rights-based approach.[28] In such actions, the PAHO has mentioned that specific obligations towards those groups are part of IHRL and, therefore, binding.[29] Regarding ethnic groups, the PAHO in the COVID-19 scenario, for example, has collaborated with local indigenous organizations to efficiently vaccinate indigenous populations living in remote areas.[30] When applying the human rights-based approach to health in pandemics, the PAHO has not explicitly established whether its actions were adopted as a WHO regional office or as an Organization of American States' (OAS) body.[31] However, in exercising its mandate, the PAHO has referenced many IHRL covenants, conventions, and declarations.[32]

restructuring of psychiatric care in Latin America within the Local Health Systems, Venezuela.

26. La Reforma de los Servicios de Salud Mental: 15 Años Después de la Declaración de Caracas (Rodriguez et al. eds., 2007).

27. PAHO Constitution art. 1.

28. PAHO, Series on Human Rights and Health-Ethnicity (2022) [hereinafter Series on Human Rights and Health-Ethnicity], https://iris.paho.org/bitstream/handle/10665.2/55798/PAHOLEGDHdhs1210001_eng.pdf?sequence=1&isAllowed=y; PAHO, Series on Human Rights and Health-Migration (2022) [hereinafter Series on Human Rights and Health-Migration], https://iris.paho.org/bitstream/handle/10665.2/55795/PAHOLEGDHdhs4210001_eng.pdf?sequence=1&isAllowed=y ; PAHO, Series on Human Rights and Health-Older Persons [hereinafter Series on Human Rights and Health-Older Persons], https://iris.paho.org/bitstream/handle/10665.2/55793/PAHOLEGDHdhs5210001_eng.pdf?sequence=1&isAllowed=y .

29. Series on Human Rights and Health-Ethnicity, *supra* note 28; Series on Human Rights and Health-Migration, *supra* note 28; Series on Human Rights and Health-Older Persons, *supra* note 28.

30. PAHO, *Protecting indigenous communities from COVID-19*, https://www.paho.org/en/stories/protecting-indigenous-communities-covid-19 [https://perma.cc/TS9G-99G8] (last visited Jan. 19, 2026).

31. *See, e.g.*, *id.*

32. These instruments correspond to: the International Covenant on Civil and Political Rights; International Covenant on Economic, Social, and Cultural Human Rights; Convention on the Elimination of All Forms of Discrimination Against Women; Convention on the Rights of the Child; Convention against Torture and other Ill-Treatments; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; Convention on the Rights of Persons with Disabilities; Universal Declaration of Human Rights; and the Committee on Economic, Social, and Cultural Human Rights' General Comment 14. PAHO, *Health and Human Rights*, Concept Paper CD50/12 (Aug. 31, 2010) [hereinafter *Health and*

Moreover, there are important links between IHRL and other international standards protecting health,[33] evidenced by the recognition of human rights in WHO and PAHO instruments.[34] The International Health Regulations (IHR), binding international law regulations that 'establish rights and obligations for countries, including the requirement to . . . establish and maintain core capacities for surveillance and response,"[35] are part of the PAHO's legal instruments as the WHO's regional office in Latin America and are regarded as complementary to human rights treaties.[36] Scholars have adopted approaches favoring systemic integration of fragmented IHRL and global health law to clarify IHRL standards and use them in global health governance.[37] The COVID-19 pandemic underscored "the importance of governmental attention to public health."[38] Governmental attention to public health is directly connected to the implementation of "the right to health as a norm that also encapsulates global and domestic public health."[39] Specialized bodies such as the PAHO must comply with their human rights-related responsibilities stemming from customary IHRL.[40] IHRL and its international mechanisms are particularly relevant for the efforts of the international community towards the adoption of an international treaty on pandemics or epidemics.[41] Nevertheless, the PAHO has not enacted a general framework that would crystallize its understanding of the human rights-based approach and that would more formally and explicitly concur with those of the IACmHR and Inter-American Court of Human Rights (IACtHR). Thus, the PAHO should more effectively employ its standard-setting capabilities.[42]

Human Rights].

33. *See* Toebes, *supra* note 17, at 4.

34. Cathaoir, *supra* note 19, at 111.

35. WHO, *International Health Regulations*, https://www.who.int/health-topics/international-health-regulations#tab=tab [https://perma.cc/T2HU-DMG7] (last visited Jan. 19, 2026).

36. Toebes and Cathaoir, *Public Health and Human Rights, Perspectives, in* Health and Human Rights: Global and European Perspectives 373 (Brigit Toebes et al. eds., 2022).

37. Brigit Toebes et al., *Toward Human Rights-Consistent Responses to Health Emergencies*, 22 Health & Hum. Rts. 99 (2020); Bueno de Mesquita et al., *supra* note 5, at 5.

38. Toebes and Cathaoir, *supra* note 36, at 388.

39. *Id.*

40. Behrendt & Müller, *The Far-Reaching US Proposals to Amend the International Health Regulations at the Upcoming 75th World Health Assembly*, EJIL: Talk! (May 5, 2022), https://www.ejiltalk.org/the-far-reaching-us-proposals-to-amend-the-international-health-regulations-at-the-upcoming-75th-world-health-assembly-a-call-for-attention/.

41. Diego Rodriguez-Pinzon, *Selected Issues Related to the Interaction of International Human Rights Conventions with a Proposed Treaty on Pandemics*, 36 Am. U. Int'l L. Rev. 1087 (2021).

42. *See* Brigit Toebes, *International Health Law: An Emerging Field of Public International*

Due to its nature as a WHO regional office, a legal instrument of the PAHO is the WHO Constitution, which contains the following principle: "the enjoyment of the highest attainable standard of health is one of the fundamental rights."[43] The WHO has remarked that a human rights-based approach aims to progressively improve the right to health of all persons, based on non-discrimination, availability, accessibility, acceptability, quality, accountability, and universality.[44] The PAHO has relied on a human rights-based approach, including in its COVID-19 related practice. In its two latest Health Agendas for the Americas, the PAHO remarked that the health ministers or secretaries recognized human rights as Health Agenda values, committing themselves to the above-mentioned principle of the WHO Constitution.[45] The PAHO has recognized that the UN and inter-American human rights systems are useful for the progress of PAHO Member States towards achieving Millennium Development Goals and urged PAHO Member States to implement health-related IHRL instruments.[46]

Under Article 23 of the WHO Constitution, the WHO has enacted recommendations on state obligations regarding the right to health,[47] which are applicable *mutatis mutandis* to the PAHO. To strengthen human rights protections, PAHO Member States agreed on the *Health Agenda for the Americas (2008–2017)*,[48] which included the human rights-based approach obliging PAHO Member States to provide universal, accessible, and inclusive healthcare systems. This Agenda was enhanced by the *Sustainable Health Agenda for the Americas 2018–2030*, incorporating a more comprehensive human rights-based approach.[49]

As part of a contextualized human rights-based approach, the PAHO's practice has considered Latin America's multi-ethnic and multicultural heritage alongside the complexities that it suffers from regarding

Law, 55 Indian J. Int'l L. 299 (2015).

43. Const. of the WHO pmbl., July 22, 1946, 14 U.N.T.S. 186.

44. WHO, *Human rights and Health* (Dec. 29, 2017), https://www.who.int/en/news-room/fact-sheets/detail/human-rights-and-health.

45. PAHO, Health Agenda for the Americas (2008–2017) (July 3, 2007), https://www.paho.org/sites/default/files/Health-Agenda-for-the-Americas-2008–2017.pdf; PAHO, *Sustainable Health Agenda for the Americas 2018–2030*, 69th Sess, CSP29/6, Rev.3 (2017) [hereinafter PAHO, *Sustainable Health Agenda*].

46. 50th Directing Council, Res CD50.R8, Pan Am. Health Org., 62nd Sess. 2 (Sep. 29, 2010).

47. Lawrence Gostin and Devi Sridhar, *Global Health and the Law*, 370 New Eng. J. Med. 1732, 1733 (2014).

48. *Health and Human Rights*, *supra* note 32.

49. PAHO, The Sustainable Health Agenda for the Americas 2018–2030 (Sep. 2017), https://iris.paho.org/bitstream/handle/10665.2/49170/CSP296-eng.pdf?sequence=1&isAllowed=y.

its structural inequalities, poverty, and exclusion.[50] This has enabled the PAHO to apply measures concerning the right to health and other rights, especially regarding minorities, which is consistent with a human rights-based approach. Thus, the PAHO issued the document Considerations on Indigenous Peoples, Afro-Descendants, and Other Ethnic Groups During the COVID-19 Pandemic, which addressed the health inequalities ethnic groups suffering from discrimination and exclusion face—inequalities which ultimately resulted in higher numbers of COVID-19 cases among those groups—and authored numerous recommendations regarding ethnic groups, community leaders, health workers, and governments.[51]

The PAHO was already aware of the regional context and had enacted its Plan of Action for Disaster Risk Reduction 2016–2021,[52] recognizing that "it is important to ensure that . . . human rights approaches are effectively integrated into policies, plans, and projects for disaster risk management."[53] Furthermore, in 2017, it rendered the document *Policy on Ethnicity and Health*,[54] highlighting the need for the recognition of differences and the consideration of individual, indigenous, and collective rights.[55]

Concerning COVID-19, the PAHO's practice has also relied on a human rights-based approach when it, for example, invoked integrated health services networks with a rights-based emphasis,[56] or when it announced its support of PAHO Member States introducing COVID-19 vaccines "to preserve the right to the enjoyment of the highest attainable standard of health."[57] Still, some of the PAHO's COVID-19 related practice has not explicitly invoked the human rights-based approach.[58] Thus, the PAHO has not elaborated a coordinated plan between its members in global pandemic contexts, nor has it constructed a legal framework for states with significant economic differences. Since the

50. *Id.*

51. PAHO, Considerations on Indigenous Peoples, Afro-Descendants, and Other Ethnic Groups During the COVID-19 Pandemic (2020), https://iris.paho.org/bitstream/handle/10665.2/52251/PAHOIMSPHECOVID-19200030_eng.pdf?sequence=1&isAllowed=y.

52. 55th Directing Council, Plan of Action for Disaster Risk Reduction 2016–2021, PAHO, 68th Sess., CD55/17, Rev. 1* (Aug. 31, 2016), https://www.paho.org/hq/dmdocuments/2016/CD55–17-e.pdf.

53. *Id.* at 4.

54. 29th Pan Am. Sanitary Conference, Policy on Ethnicity and Health, PAHO, 69th Sess., CSP29/7, Rev. 1 (Sep. 28, 2017), https://iris.paho.org/bitstream/handle/10665.2/34447/CSP29–7-e.pdf?sequence=1&isAllowed=y.

55. *Id.* at 1.

56. 58th Directing Council, *Provisional Agenda* CD58/6, PAHO, 72d Sess. annex B, at 1 (Aug. 12, 2020).

57. Directing Council, Res. CDSS1.R1, PAHO, Special Sess. ¶ 2(a) (Dec. 10, 2020).

58. *E.g.*, 58th Directing Council, Res. CD58.R9, PAHO, 72nd Sess. (Sep. 29, 2020).

documents on the right to health of vulnerable groups during pandemics issued by the PAHO and some of the equivalent WHO documents are dispersed and fragmented,[59] the adoption of a single legal instrument would be useful to better implement the human rights-based approach to health in pandemics affecting Latin America.

There are two strengths in the PAHO's adoption of the human rights-based approach. First, such an approach works as a foundation of a uniform and solid system that allows or should allow the protection and fulfillment of the right to health in pandemics. Since the main regional human rights organs in Latin America are the IACmHR and IACtHR, regional human rights standards are primarily set by the above-mentioned two bodies. Nevertheless, the medical practices that implement those standards are necessarily set by the PAHO since it is the technical and scientific body of the regional system on health in pandemics. Thus, while the IACmHR and IACtHR can set normative standards clarifying state obligations regarding the right to health in pandemics, the PAHO clarifies how to implement measures to respect, protect, and fulfill the right to health from scientific and medical perspectives. Hence, it becomes an essential pillar of the regional system on the right to health in a highly contagious outbreak.

Second, PAHO's adoption of a human rights-based approach enables states, which face pandemics such as COVID-19, to be much better informed and thus accept public health measures synchronously and systematically, in accordance with the best interests of public health and respect for other human rights involved. The PAHO serves as the regional authority that can enact technical guidelines that are consistent with regional human rights institutions' standards.[60] The state's non-compliance with certain PAHO guidelines or measures potentially breaches its due diligence obligation.[61]

Nevertheless, the human rights-based approach at the PAHO could also present some disadvantages. First, the PAHO is not a human rights body. Thus, its institutional structure may not always be adapted to a human rights-based approach. As its professional teams consist of health experts rather than human rights lawyers, the mindset of its

59. *E.g.*, WHO, *Considerations for Implementing and Adjusting Public Health and Social Measures in the Context of COVID-19: Interim Guidance* (Mar. 30, 2023).

60. *See generally*, *Who We Are,* Pan American Health Organization, https://www.paho.org/en/who-we-are (describing the PAHO's role in the region as the preeminent institution for issuing technical guidelines).

61. Antonio Coco and Talita de Souza Dias, *Part I: Due Diligence and COVID-19: States' Duties to Prevent and Halt the Coronavirus Outbreak*, EJIL Talk! (Mar. 24, 2020), https://www.ejiltalk.org/part-i-due-diligence-and-covid-19-states-duties-to-prevent-and-halt-the-coronavirus-outbreak/.

decision-makers is different. Furthermore, IHRL instruments are general and not specifically designed for protecting and ensuring the right to health in pandemics. Consequently, their legal construction has not yet crystallized in detail. By the same token, it could be argued that the PAHO's constitutive instrument (the Pan American Sanitary Code) and the IHR were not designed in accordance with a human rights-based approach. Thus, that approach is not harmonized with the PAHO's main legal instruments and is primarily based on its practice.

Second, the PAHO has not yet established more formal and institutionalized channels of communication between itself and the IACmHR and IACtHR, the two human rights bodies that serve as the other pillars of the regional system on the right to health in pandemics like COVID-19. This could be a basis for cross-fertilization: mutual influence or interaction between two or more supranational organs.

In balance, however, the advantages outweigh the disadvantages. A human rights-based approach at the PAHO is essential for the consolidation and maintenance of the three-pillar regional human rights-based approach to the right of health in pandemics. The PAHO is the cornerstone of the scientific and medical regional protection of the right to health within pandemic scenarios. Furthermore, the disadvantages can be overcome by providing further human rights expertise within the PAHO, updating the main instruments that the PAHO applies, and institutionalizing channels of communication between the three bodies.

Due to their function, supranational human rights bodies like UN human rights organs have followed a human rights-based approach to the right to health in pandemics such as COVID-19.[62] Likewise, the IACmHR and IACtHR have followed a human rights-based approach in the COVID-19 context and have asked Latin American states to follow that approach, as illustrated or detailed throughout this article. This has resulted in an important contribution towards the improvement of Latin American states' fulfillment of their right to health-related obligations, substantially benefiting, among others, indigenous communities during COVID-19.[63]

The following examples illustrate the human rights-based approach in the IACmHR's and IACtHR's COVID-19 practices. The

62. Off. of the High Comm'r for Hum. Rts., *COVID-19 and Special Procedures*, https://www.ohchr.org/en/special-procedures-human-rights-council/covid-19-and-special-procedures; Francesca Ippolito, Re-Evaluating Triage in International Justice during COVID-19, 18 Int'l Org. L. Rev. 448, 478 (2021).

63. Maria Antonia Tigre, COVID-19 and Amazonia: Rights-Based Approaches for the Pandemic Response, 30 Rev. Eur. & Comp. Int'l Env. L., 162, 168 (2021).

IACmHR's Rapid and Integrated Response Coordination Unit for the COVID-19 Pandemic Crisis (SACROI COVID-19), inter alia, seeks to provide technical advice to states to promote public protection policies with a human rights focus in pandemic contexts and identify opportunities to technically assist states' policies and actions with a focus on human rights.[64] The IACmHR's COVID-19 resolutions have underscored the need for a human rights-based approach to health grounded in both inter-American and international standards, emphasizing that state policies should adopt a human rights-based approach that considers the universality, indivisibility, and inalienability of human rights—on top of equality and non-discrimination principles.[65]

An IACtHR statement remarked that the COVID-19 pandemic must be handled with a human rights-based approach under international obligations regarding the right to health, specifying that international organizations should utilize that approach to jointly cooperate with and assist states to face current COVID-19 issues.[66] These remarks express a clear institutional position that states should implement a human rights-based approach in their policies, programs, and actions—prioritizing respect for, protection of, and fulfillment of the right to health in challenging pandemic scenarios like COVID-19. Furthermore, the IACtHR not only addressed states and their corresponding traditional IHRL obligations, but also soundly invoked the need for cooperation between international organizations and states regarding COVID-19.[67] This aligns with the WHO and PAHO's pivotal role in international and regional efforts in addressing COVID-19 related health issues.

What the IACtHR should have additionally indicated, however, is the advisability of complementing their human rights-based approach with other approaches to public health during pandemics, such as global common goods.[68] Indeed, IACtHR's jurisprudence on health and HIV/

64. OAS, Initiatives and Responses by Organizations of the Joint Summits Working Group (GTCC) Facing the Covid-19 Crisis in the Region (Apr. 20, 2020) http://www.summit-americas.org/jswg/meetings/GTCC_COVID19_TEXrev.3.pdf.

65. Inter-Am. Comm'n H.R., *Pandemic and Human Rights in the Americas*, Res. No. 1/2020, at 6–7 (Apr. 10, 2020) [hereinafter *Pandemic and Human Rights in the Americas*]; Inter-Am. Comm'n H.R., *Human Rights of Persons with COVID-19*, Res. No. 4–20 ¶ 3 (July 27, 2020) [hereinafter *Human Rights of Persons with COVID-19*].

66. COVID-19 and Human Rights: The Problems and Challenges Must Be Addressed from a Human Rights Perspective and With Respect for International Obligations, Statement 1/20, Inter-Am. Ct. H.R. (ser. E) (Apr. 9, 2020).

67. *See id.*

68. D. Vito et al., The COVID-19 Pandemic: Reshaping Public Health Policy Response Envisioning Health as a Common Good, 19 Int'l J. of Env. Rsch. and Pub. Health 9985, 9986 (2022).

AIDS has established health as a public good,[69] which is consistent with a relevant reference in the Additional Protocol to the American Convention on Human Rights (ACHR) in the Area of Economic, Social, and Cultural Rights (San Salvador Protocol).[70] The above-mentioned IACtHR's remarks have been invoked in IACtHR jurisprudence on COVID-19 related measures.[71]

B. The International Human Rights Law Framework of the Right to Health

This sub-section provides a general IHRL framework of the right to health in pandemics. Aside from inter-American standards representing this Article's regional approach, UN standards are considered because of their common appearance in the standards of the inter-American organs, the PAHO's regional and international dual nature, and the high number of Latin American and Caribbean state parties to the International Covenant on Economic, Social, and Cultural Rights (ICESCR).[72]

First, on the right to health and pandemics, Article 10(1) of the San Salvador Protocol establishes that "Everyone shall have the right to health, understood to mean the enjoyment of the highest level of physical, mental and social well-being."[73] Article 10(2) contains the state's obligation "to ensure the exercise of the right to health . . . [and] agree to recognize health as a public good," adopting inter alia, universal immunization protocols against principal infectious diseases, comprehensive plans for the prevention and treatment of endemic, occupational and other diseases, and the satisfaction of the health needs of the highest risk groups, including the particularly vulnerable impoverished population.[74] Similarly, Article 12(1) of the ICESCR recognizes the right to "the highest attainable standard of physical and mental health."[75] Concerning infectious diseases, Article 12(2)(c) through 12(2)(d) of the ICESCR include states' obligations related to the "prevention, treatment and control of epidemic, endemic, occupational and other diseases," the creation

69. Cuscul-Pivaral v. Guatemala, Judgment, Inter-Am. Ct. H.R., (ser. C) No. 359, at 36, ¶ 103 (Aug. 23, 2018).

70. Protocol of San Salvador art. 10(2), Nov. 17, 1988, O.A.S.T.S. No. 69, 28 I.L.M. 1641.

71. *E.g.*, Vélez-Loor v. Panamá, Provisional Measures Resolution, Inter-Am. Ct. H.R., (ser. C) No. 218, at 11, "Considering That," ¶ 23 (July 29, 2020).

72. Twenty-six states are party to the ICESCR as of April 2024. United Nations, *UN Treaty Body Database*, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/treaty.aspx?treaty=cescr&lang=en.

73. Protocol of San Salvador, *supra* note 70, at art. 10(1).

74. *Id.* at art. 10(2).

75. International Covenant on Economic, Social, and Cultural Rights art. 12(1), Dec. 16, 1966, 6 I.L.M. 360, 993 U.N.T.S. 3.

of conditions to guarantee medical service/attention, and the "right to prevention, treatment, and control of diseases."[76] The Committee on Economic, Social, and Cultural Human Rights (CESCHR) has referred to the states' obligations involving preventive and instructive programs, individual and joint efforts, available relevant technologies, and enhanced immunization programs.[77] However, compared to the San Salvador Protocol, the ICESCR lacks explicit provisions on universal immunization against major infectious diseases and healthcare for the most vulnerable, especially the highest-risk groups and persons living in extreme poverty. Thus, in this specific point, the Inter-American human rights treaty framework is, arguably, stronger than the ICESCR.

Second, concerning the interrelated and essential elements of the right to health, IACmHR's and IACtHR's practices on pandemics and epidemics like COVID-19[78] and HIV/AIDS[79] have followed the CESCHR's General Comment 14. Those elements are: (1) availability—healthcare facilities, goods, services, and programs should be available in sufficient quantity; (2) accessibility—health facilities, goods, services, and information about the aforementioned need to be physically and economically accessible to everyone without discrimination; (3) acceptability—health facilities, goods, and services must respect medical ethics and be culturally appropriate; and (4) quality—health facilities, goods, and services need to be scientifically and medically appropriate and of high quality.[80]

Third, the right to health as a human right imposes three types of state legal obligations: respect, protection, and fulfillment of the right to health, under the auspices of the IACmHR[81] and IACtHR's[82] practice on pandemics and epidemics as well as the CESCHR's General Comment 14.[83] Regarding the obligation to respect—that is state's non-interference with the enjoyment of the right to health[84]—the IACtHR and CESCHR have particularly considered "vulnerable and marginalized groups,"[85] namely in their refrain from "denying or limiting equal

76. *Id.* at art. 12(2)(c)-(d).

77. Comm. on Econ., Soc. and Cultural Rts. [CESCR], CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12), ¶ 16, U.N. Doc. E/C.12/2000/4 (2000) [hereinafter CESCR General Comment No. 14].

78. *See, e.g.*, Pandemic and Human Rights, *supra* note 7, ¶ 138.

79. *See, e..g.*, Cuscul-Pivaral, *supra* note 69, at 37–38, ¶¶ 106–107.

80. CESCR General Comment No. 14, *supra* note 77, ¶ 12.

81. Pandemic and Human Rights, *supra* note 7, ¶ 140.

82. *See* Cuscul-Pivaral, *supra* note 69, at 38, ¶ 107.

83. *See* CESCR General Comment No. 14, *supra* note 77.

84. *Id.* ¶ 33.

85. Cuscul-Pivaral, *supra* note 69, at 38, ¶ 107.

access for all persons, including prisoners or detainees, minorities, asylum-seekers and illegal immigrants, to preventive, curative and palliative health services."[86]

As to the obligation to protect, the IACtHR and CESCHR have adopted similar interpretations. Pursuant to the IACtHR's jurisprudence on health and pandemics, the obligation requires states "to ensure access to essential health services, guaranteeing good quality and efficient medical care, and to promote the improvement of the health of the population."[87] The IACtHR invoked a regulatory duty, affirming that states shall regulate the provision of public/private services by referring to the need for national programs that continuously provide good quality services.[88] Furthermore, the IACmHR's COVID-19 related practice highlighted the importance of transparency and detailed information in the adoption of adequate measures and policies to protect the population's health.[89] In turn, the CESCHR understands the obligation of states to prevent third parties from interfering with ICESCR guarantees.[90] This includes legislation or other measures guaranteeing equal access to healthcare and health-related services provided by third parties, in addition to an obligation that the private healthcare sector does not threaten available, accessible, acceptable, and good quality healthcare facilities, goods, and services.[91]

According to the CESCHR, the obligation to fulfill involves states utilizing their appropriate legislative, administrative, budgetary, and judicial powers to fully realize the right to health.[92] This encompasses "health care, including immunization programmes against the major infectious diseases," affordable health insurance, information campaigns, and measures against other epidemiological threats.[93] Under the IACtHR's jurisprudence on health and pandemics, the obligation to fulfill involves the enactment of progressive healthcare provisions under available resources and national laws. Examples of progressive healthcare provisions include provisions for: (1) the distribution of infection-related diagnostic tests; (2) the diagnosis and treatment of

86. CESCR General Comment No. 14, *supra* note 77, ¶ 34.
87. Cuscul-Pivaral, *supra* note 69, at 37, ¶ 105.
88. *Id.* ¶ 106.
89. Pandemic and Human Rights, *supra* note 7, ¶ 140.
90. CESCR General Comment No. 14, *supra* note 77, ¶ 33.
91. *Id.* ¶ 35.
92. *Id.* ¶ 33.
93. *Id.* ¶ 36.

opportunistic infections/conditions; and (3) the necessary regulations for a state to fulfill its duty to protect infected people's health.[94]

Finally, regarding equality and non-discrimination, the IACtHR finds that the right to health includes ensuring access to healthcare facilities, services, and goods for the most vulnerable and marginalized groups, obliging states to guarantee access within those groups' financial and geographic reach.[95] Equality and non-discrimination, therefore, have a negative dimension, the prohibition of arbitrary differentiated treatment, and a positive dimension, the state's obligation to create real equality conditions for historically excluded or especially vulnerable groups.[96] For example, the IACmHR called to guarantee fair and equitable access to COVID-19 vaccines.[97] It also emphasized that equality must factor the differential impact on diverse income countries, especially with respect to vulnerable or historically excluded groups.[98] Likewise, the CESCHR has highlighted equal and timely access to health services under the non-discrimination and equal treatment principle.[99] It made providing those lacking sufficient means with healthcare and providing culturally appropriate healthcare to indigenous peoples necessities.[100] Furthermore, it stressed the importance of international cooperation through international economic and technical assistance and the WHO's role in coordinating the right to health at international, national, and regional levels.[101]

II. THREE REGIONAL INSTITUTIONAL PILLARS

A. The Pan American Health Organization

During the 19th and early 20th centuries, transmissible diseases were problematic in Latin America, which prompted states to develop protocols and apply quarantines.[102] Then, Latin American states constituted a specialized organization in international health affairs: the Pan American Sanitary Bureau.[103] Established in 1946, the World Heath

94. Cuscul-Pivaral, *supra* note 69, at 38, 40–41, ¶¶ 107, 111, 115.
95. *Id.* ¶¶ 124, 129.
96. *Id.* ¶ 130.
97. Pandemic and Human Rights, *supra* note 7, ¶ 145.
98. ` *Id.* ¶¶ 145–146.
99. CESCR General Comment No. 14, *supra* note 77, ¶¶ 17–18.
100. *Id.* ¶¶ 19, 27.
101. *Id.* ¶¶ 38–39, 57, 63–65.
102. Dias, João Carlos Pinto, *Human Chagas Disease and Migration in the Context of Globalization: Some Particular Aspects*, J. Trop. Med., 1, 1 (2013).
103. *History of the Pan American Health Organization (PAHO)*, Pan American Health Organization, https://www.paho.org/en/who-we-are/history-pan-american-health-organization-paho [https://perma.cc/GJG6-QVQP] (last visited Jan. 19, 2026).

Organization (WHO) integrated the Pan American Sanitary Bureau within its structure.[104] In 1947, the Pan American Health Organization (PAHO) succeeded the Pan American Sanitary Bureau, remaining subject to the Pan American Sanitary Code as it was adopted by the same member states and the treaty was never repealed.

Importantly, the PAHO is also an Organization of American States (OAS) specialized organization and, under Article 100 of the OAS Charter, it "shall preserve [its] identity and [its] status as [an] integral part[] of the Organization of American States, even when they perform regional functions of international agencies."[105] As both a WHO regional office and an OAS specialized body, the PAHO has a "dual" organizational status.

Besides the PAHO Constitution, the main PAHO legal sources are the aforementioned Pan American Sanitary Code and its Protocols, the International Health Regulations (IHR), and the WHO Constitution, all of which are binding. The Pan American Sanitary Code (1924) was the first international sanitary instrument in force.[106] Its first objective, memorialized in Article 1, is to prevent "the international spread of communicable infections of human beings."[107]

The IHR have been modified since its introduction in 1969, the current version remaining in force since 2007.[108] Their purpose, memorialized in Article 2 is "to prevent, protect against, control and provide a public health response to the international spread of disease."[109] The PAHO's role as the WHO's regional office is legally recognized,[110] meaning the IHR acknowledge and reinforce the Pan-American Sanitary Code.[111]

104. Agreement Between the World Health Organization and the Pan American Health Organization, WHO-PAHO, May 19, 1949, https://apps.who.int/gb/bd/pdf/bd47/en/agreements-with-other-inter-en.pdf.

105. Organization of American States [OAS] Charter art 100.

106. *See* PAHO, *The Pan American Sanitary Code: 100 Years of Health Collaboration*, https://www.paho.org/en/pan-american-sanitary-code-100-years-health-collaboration#:~:text=The%20Pan%20American%20Sanitary%20Code%2C%20signed%20ad%20referendum%20by%2018,-of%20America%2C%20Uruguay%20and%20Venezuela [https://perma.cc/PK5H-WR3L] (last visited Jan. 19, 2026).

107. Pan American Sanitary Code art. 1

108. WHO, *International Health Regulations Enter into Force*, https://www.who.int/news/item/14–06–2007-international-health-regulations-enter-into-force [https://perma.cc/8VQS-4D32] (last visited Jan. 19, 2026).

109. WHO, *International Health Regulations*, at art. 2, A/77/A/CONF./14 (2005).

110. *Id.* art. 44.

111. *Id.* art. 58.

The PAHO has a well-established practice of combating transmissible diseases such as HIV/AIDS, malaria, yellow fever, and tuberculosis.[112] In the COVID-19 context, the PAHO has issued technical documents, including situation reports, technical guidelines, epidemiological alerts, response strategies, recommendations, and press releases based on medical and scientific evidence to assist the PAHO Member States in guiding their strategic and political control of the pandemic.[113] Thus, if states did not follow PAHO's recommendations, they may breach their due diligence obligation to protect the right to health in international law.

Precisely, concerning the PAHO's established practice in disease control, it should be noted that the due diligence obligation is contained in the duty to protect the right to health, which was especially relevant in the COVID-19 context.[114] It requires a state to employ "its best efforts to address certain risks, threats or harms"[115] by doing "what was reasonably expected of it when responding to a harm or danger."[116] Due diligence is a continuing obligation that operates (1) ex ante to identify and minimize risks of harm; (2) during the outbreak, to monitor and mitigate the consequences, and (3) ex post, to ensure continuous access to remedies and reparations.[117]

As the entity in charge of supervising the implementation of the IHR criteria, the PAHO has provided responses to and recommendations for states, especially in pandemics.[118] Since those recommendations are benchmarks to evaluate national responses, their inobservance could generate accountability concerns.[119] Moreover, the PAHO's normative force and effectiveness are based on the universal acceptance of their recommendations, which depends on it being perceived as legitimate and credible.[120] Nevertheless, in practice, states have not always followed the PAHO's recommendations, owing to states' differing levels

112. Meier and Ayala, *The Pan American Health Organization and the Mainstreaming of Human Rights in Regional Health Governance*, 42 J. L. Med. & Ethics 356, 357, 360 (2014).

113. *See* PAHO, COVID-19 Situation Reports, https://www.paho.org/en/covid-19-situation-reports?topic=All&d%5Bmin%5D=&d%5Bmax%5D=&page=4.

114. Coco and Souza Dias, *supra* note 61.

115. *Id.*

116. *Id.*

117. Campbell et al., *Due Diligence Obligations of International Organizations under International Law*, 50 N.Y.U. J. Int'l L. & Pol. 541, 559 (2018).

118. Gian Luca Burci., *The Outbreak of COVID-19 Coronavirus-Are the International Health Regulations fit for purpose?*, EJIL:Talk! (Feb.27, 2020), https://www.ejiltalk.org/the-outbreak-of-covid-19-coronavirus-are-the-international-health-regulations-fit-for-purpose .

119. Gian Luca Burci, *The Legal Response to Pandemics: The Strengths and Weaknesses of the International Health Regulations*,11 J. Int'l Humanitarian Legal Stud. 204, 206 (2020)

120. *Id.* at 204.

of capacity,[121] which poses challenges to their observance of their due diligence obligation.

B. The Inter-American Commission on Human Rights

As an OAS and American Convention on Human Rights (ACHR) organ, the Inter-American Commission on Human Rights's (IACmHR) diverse functions—such as thematic and country reports, individual case-based decisions, and on-site visits[122]—apply to the right to health recognized under Article XI of the American Declaration of the Rights and Duties of Man , Article 26—concerning "progressive development" of socio-economic rights—of the ACHR, and Article 10 of the San Salvador Protocol. The IACmHR has decided on some individual cases related to pandemics and endemics, issuing recommendations to states.[123]

Regarding COVID-19, the IACmHR adopted the following right to health-related actions. First, it established SACROI COVID-19 as a unit for integrating and coordinating the IACmHR's functions, enhancing the IACmHR's institutional capacity for human rights protection, especially the right to health.[124] SACROI COVID-19 has identified issues leading the IACmHR to prioritize health-related cases.[125] The unit's functions involve monitoring, resolution drafting, evidence gathering, recommendation follow-up, precautionary measures, action proposals, reporting on individual cases, and identification of technical assistance opportunities.[126]

Secondly, during the COVID-19 crisis and within its mandate under Article 106 of the OAS Charter, Article 41(b) of the ACHR, and Article 18(b) of the IACmHR Statute, the IACmHR adopted some important resolutions. In Resolution 1–20, titled *Pandemic and Human Rights in the Americas*, the IACmHR recommended OAS Member States to take diligent and immediate steps to (1) prevent harm to

121. Morten Broberg, *A Critical Appraisal of the World Health Organization's International Health Regulations (2005) in Times of Pandemic: It is Time for Revision*, 11 Eur. J. Risk Reg. 202, 209–10 (2020).

122. Charter of the OAS, art. 106, Apr 30, 1948, 2 U.S.T. 2416, T.I.A.S. No. 2361, 199 U.N.T.S. 3, as amended by Protocol of Amendment. Feb. 23, 1967, 21 U.S.T. 607, T.I.A.S. No. 6847; OAS, *supra* note 8, at arts. 34–43.

123. *E.g.*, Ache' Indians v. Paraguay, Case 1802, Inter-Am. Comm'n H.R., OEA/Ser.L/V/II.43, doc. 21, corr. 1 (1977); Coulter v. Brail, Case 7615, Inter-Am. Ct. H.R., Report No. 12/85, OEA/Ser.L/V/II.66, doc. 10 rev. 1 (1984–1985).

124. OAS, *Initiatives and Responses by Organizations of the Joint Summits Working Group (GTCC) Facing the COVID-19 Crisis in the Region*, (June 24, 2020), http://www.summit-americas.org/jswg/meetings/GTCC_COVID19_TEXrev.3.pdf.

125. Inter-Am. Comm'n H.R., *Annual Report 2021*, OEA/Ser.L/V/II.Doc.64rev.1, at 117, (May 26, 2022).

126. *Id.*

health, especially contagion prevention and treatment; (2) adopt measures addressing the pandemic; (3) protect higher-risk workers' rights; (4) ensure non-discriminatory and equitable access to public and private health facilities, services, and goods, especially for vulnerable groups; (5) guarantee access to pandemic-related medication and health technologies; and (6) ensure biosecurity materials, medical equipment, and pandemic management training for healthcare personnel.[127]

Subsequently, the IACmHR rendered Resolution 4–20, titled *Inter-American Guidelines for Protecting the Human Rights of Persons with COVID-19*, recommending OAS Member States to "adopt immediate measures to guarantee sustained, egalitarian, and affordable access to—and the provision of—high-quality supplies, services, and information" for prevention and treatment.[128] It also adopted Resolution 1/2021, titled *COVID-19 Vaccines and inter-American Human Rights Obligations*, contributing to states' non-discriminatory fulfillment of their vaccination obligations to guarantee the right to health and life.[129]

Third, under Article 25 of the IACmHR Rules, the IACmHR issued precautionary and necessary measures granted in serious and urgent situations to avoid irreparable harm during the COVID-19 pandemic. Regarding precautionary measures for the Yanomami, Ye'kwana, Guajajara, and Awá indigenous peoples of Brazil, the IACmHR determined that these groups were in a serious and urgent situation because their rights to life, health, and personal integrity were at high risk—particularly due to their lack of healthcare and their history of contact with unauthorized external individuals.[130] The IACmHR requested that Brazil adopt necessary measures to protect said rights of these persons through measures to prevent the spread of COVID-19 and to provide available, accessible, acceptable, and good quality healthcare under international standards and a culturally appropriate perspective.[131]

It must be added that, under Article 25(8) of the IACmHR Rules, the IACmHR clarified that precautionary measures do not prejudge violations of human rights treaties and that, in cases involving

127. *Pandemic and Human Rights in the Americas*, *supra* note 65, at 7–9.

128. *Human Rights of Persons with COVID*-19, *supra* note 65, at 4.

129. Inter-Am. Comm'n H.R., *COVID-19 Vaccines and Inter-American Human Rights Obligations*, Res. No. 1/2021 (Apr. 6, 2021).

130. Inter-Am. Comm'n H.R., Precautionary Measure No. 563–20, Res. No. 35/2020 (July 17, 2020) [hereinafter Precautionary Measure No. 563–20].; Inter-Am. Comm'n H.R., Precautionary Measure 754–20, Res. No. 1/2021 (Jan. 4, 2021) [hereinafter Precautionary Measure 754–20].

131. Precautionary Measure No. 562–20, *supra* note 130; Precautionary Measure No. 754–20, *supra* note 130.

indigenous peoples, the IACmHR found COVID-19 related risks like deficient access to healthcare and groups' immunological vulnerability.[132] Precautionary measures were applied by the IACmHR because of this situation's urgency, due, in part, to the virus's spread and death rate. Without enforcement of these measures, probable breaches of the rights to life, personal integrity, and health, were likely to result in irreparable harm.

The IACmHR's COVID-19 practice has overall been consistent—subject to some caveats—with the human rights-based approach, including IHRL standards. In turn, this has generally contributed to the Latin American states' fulfillment of their right to health-related obligations in the COVID-19 context. As this pandemic affected large sectors of the region's population, the IACmHR's general documents were necessary to instill among states the need for a human rights-based approach to health during the COVID-19 pandemic. This has crucially been complemented by the IACmHR's decisions on individual cases to further develop those standards and provide justice to specific groups of victims. Not only has the IACmHR explicitly invoked the need for states and other actors to follow a human rights-based approach to the right to health in the COVID-19 context, but it has also emphasized that state actions, policies, and programs should be coherent with the human rights principles of universality, indivisibility, inalienability, and non-discrimination. Furthermore, the IACmHR's COVID-19 related practice has been generally consistent with IHRL as to its emphasis on: (1) the right to the highest attainable standard of health; (2) the prevention, treatment, and control of epidemics; (3) the creation of conditions assuring medical service and medical attention; (4) the states meeting their right to health core obligations; (5) respect for the non-discrimination principle; and (6) the need for protecting vulnerable groups like indigenous peoples. In turn, IACmHR's actions on the right to health during the COVID-19 pandemic have to an important extent interpreted and clarified the normative contents of the rights contained in the San Salvador Protocol.

Yet some deficits of the IACmHR's COVID-19 related practice on the right to health may be identified under a human rights-based approach. First, references to the important links between IHRL and other international standards protecting health (e.g., WHO and PAHO instruments) should have been invoked more often or in more detail in the IACmHR's practice. This could have given the sense of a better

132. Precautionary Measure No. 563–20, *supra* note 130, ¶¶ 41–53; Precautionary Measure 754–20, *supra* note 130, ¶¶ 29–50.

integrated regional system concerning the right to health in pandemics. Indeed, the IACmHR has done so regarding other pandemics.[133] Furthermore, the IACmHR should have better remarked on the need for or advised reliance on IHRL standards to inform other legal areas engaging with health issues, such as national and international health law.

Second, the IACmHR's COVID-19 related practice should have further emphasized the need for international cooperation to fully realize the right to health in pandemics such as COVID-19. International cooperation is necessary because Latin America consists of developing countries. Additionally, IACmHR's COVID-19 related practice should have further advised on the connection of a human rights-based approach for the right to health in pandemics to related notions such as health as a public good. The latter is included in the San Salvador Protocol.[134]

Third, the IACmHR should have more often and more explicitly invoked UN standards and application thereof in pandemics. It should hence have better integrated, in a multi-layered normative framework, UN and regional human rights standards concerning the right to health in COVID-19.

C. The Inter-American Court of Human Rights

The Inter-American Court of Human Rights (IACtHR), which was created through the ACHR, has the mandate to: (1) find states party to the ACHR who have accepted IACtHR's jurisdiction responsible for violations of, for example, the right to health, and (2) issue advisory opinions and provisional measures.[135] It has developed important jurisprudential standards on, for example, the right to health in HIV/AIDS cases.[136]

Regarding COVID-19, the IACtHR has mainly issued provisional measures. As of April 2024, no IACtHR merits proceedings concerning COVID-19 were conducted.[137] Under Article 63(2) of the ACHR, the IACtHR can adopt provisional measures "in cases of extreme gravity and urgency, and when necessary to avoid irreparable damage

133. *See*, *e.g.*, Miranda Cortez v. El Salvador, Case 12.249, Inter-Am. Ct. H.R., Report No. 27/09, OEA/Ser.L/V/II., doc. 51, corr. 1, ¶ 103 (2009).

134. Protocol of San Salvador, *supra* note 70, at art. 10(2).

135. OAS, *supra* note 8, at arts. 62–65.

136. *See, e.g.*, Cuscul-Pivaral, *supra* note 69.

137. *See* Inter-Am. Comm'n H.R., *Merits*, https://www.oas.org/en/iachr/decisions/merits.asp#:~:text=The%20merits%20stage%20is%20where,in%20the%20case%20being%20analyzed [https://perma.cc/Q247-NND9] (last visited Jan. 19, 2026).

to persons."[138] In *Vélez-Loor v. Panama*, provisional measures were granted to protect the health, life, and integrity of persons detained in migrant reception stations during COVID-19: the IACtHR's President granted provisional measures[139] that the IACtHR ratified.[140] Panama was ordered to take measures to effectively protect the rights of persons in migration reception stations.[141] Moreover, Panama was ordered to guarantee immediate and effective access to essential healthcare services, including COVID-19 early diagnosis and treatment, without discrimination, to those persons and to provide implementation reports.[142] Victims were asked to provide their observations.[143]

The IACtHR found that the requirements—including extreme gravity and urgency and unavoidable irreparable damage—to order provisional measures were met prima facie.[144] It determined that the infrastructure and goods of the migration reception stations, the COVID-19 context, and resulting restrictions on the movement of persons in transit exceeding the migratory management capacity jeopardized migrants' health, personal integrity, and life—meeting the requirements of extreme gravity and urgency.[145] This merited immediate state actions like prevention of COVID-19 spread and medical attention for vulnerable persons, including migrants.[146] The final requirement was met due to the potential irreparable damages to the above-mentioned rights.[147]

In supervising the implementation of provisional measures, the IACtHR positively assessed the closure of a migration reception station, improved sanitary conditions, and ended the overcrowding of the stations, all for COVID-19 prevention.[148] However, the Court was given insufficient information to determine whether there were isolation areas for COVID-19 patients.[149] Therefore, it ordered Panama to keep

138. OAS, *supra* note 8, at art. 63(2).

139. *See* Vélez-Loor v. Panamá, *Provisional Measures, Order of the President*, Inter-Am. Ct. H.R., (ser. C) No. 218 (May 26, 2020).

140. Vélez-Loor, *supra* note 71, at 19, "Decides," ¶ 1.

141. Vélez-Loor, *supra* note 139, at 16, "Decides," ¶ 1; Vélez-Loor, *supra* note 71, at 19, "Decides," ¶ 2.

142. Vélez-Loor, *supra* note 139, at 16, "Decides," ¶¶ 2–4; Vélez-Loor, *supra* note 71, at 19, "Decides," ¶¶ 3–4.

143. Vélez-Loor, *supra* note 139, at 16, "Decides" ¶¶ 2–4; Vélez-Loor, *supra* note 71, at 19, "Decides," ¶¶ 3–4.

144. Vélez-Loor, *supra* note 71, at 11–16, "Considering That," ¶¶ 22–34.

145. *Id.* at 11, "Considering That," ¶ 22.

146. *Id.* at 11, "Considering That," ¶¶ 22–23.

147. *Id.* at 15–16, "Considering That," ¶ 32.

148. Vélez-Loor v. Panamá, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. (ser. E) No. 218, at 9, "Considering That," ¶ 16 (June 24, 2021).

149. *Id.* at 13, "Considering That," ¶ 29.

the provisional measures, guarantee immediate and effective access to essential healthcare services—including early COVID-19 diagnosis and treatment—and continue reporting to the Court.[150] The Court lifted the provisional measures only when the underlying reasons for these measures ceased to exist.[151]

The provisional measures rendered in *Vélez-Loor* illustrate how the IACtHR exercised its mandate to efficiently address COVID-19's impact on health.[152] Such measures were necessary and urgent during the COVID-19 pandemic.[153] When the Court is not in session, the IACtHR's President alone can grant provisional measures, which the IACtHR can confirm later. These provisional measures were granted in this case where a judgment had already been rendered. The procedure used to grant them in *Vélez-Loor* is consistent with IACtHR's practice.[154]

Finally, the IACtHR's statement on COVID-19 and human rights urged the states party to the ACHR to adopt measures involving life and public health consistent with the Inter-American human rights instruments and IACtHR's jurisprudence.[155] It also invoked its status as a human rights protection organ.[156] However, there is no explicit reference to the ACHR or other IACtHR instruments as legal bases for this statement. Indeed, this document contains general and non-mandatory recommendations. Nevertheless, it applies the inter-American human rights framework to the COVID-19 context, reminding states of their ACHR obligations, and that the said document may generally guide future IACtHR's contentious jurisdiction jurisprudence and IACtHR's advisory opinions on COVID-19 and other pandemics. For legal certainty and predictability, the IACtHR should have better delimited the exact nature of that statement. Furthermore, it should have explicitly invoked inter-American regional human rights law and practice underlying or supporting this statement and referred to

150. *Id.* at 28, "Decides," ¶¶ 1–5.

151. Vélez-Loor v. Panamá, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. (ser. E) No. 218, ¶¶ 55, 59–61 (May 25, 2022).

152. Fachin and Nowak, *Pandemic Rulings: Between Dialogues and Shortcuts at the Inter-American Court of Human Rights,* Int'l J. Const. L. Blog (July 9, 2020), https://www.iconnectblog.com/pandemic-rulings-between-dialogues-and-shortcuts-at-the-inter-american-court-of-human-rights/.

153. *Id.*

154. Jo M. Pasqualucci, The Practice and Procedure of the Inter-American Court of Human Rights, 251–98 (2d ed., 2013); Cecilia Medina & Víctor David-Contreras, The American Convention on Human Rights-Crucial Rights and Their Theory and Practice 171–72 (3d ed., 2022).

155. *COVID-19 and Human Rights: The Problems and Challenges Must Be Addressed From a Human Rights Perspective and with Respect for International Obligations,* Statement No. 1/20, Inter-Am. Ct. Hum. Rts. at 1 (Apr. 9, 2020).

156. *Id.*

in UN, WHO, and PAHO sources. These references could enhance the IACtHR's legitimacy in Latin America in challenging contexts, like the COVID-19 scenario.

The IACtHR has explicitly invoked the human rights-based approach to the right to health in the COVID-19 scenario when addressing Latin American states so that they can adopt programs, actions, and policies that are consistent with the protection of, respect for, and fulfillment of the right to health when facing COVID-19. By being consistent with a human rights-based approach, the IACtHR focused on the rights of migrants and other persons in a situation of mobility. Such emphasis is congruent with the need to protect the rights of the most vulnerable populations.

Second, the IACtHR's practice on the right to health during COVID-19 has considered the potentially irreparable harm inflicted on the right to health and related rights. This is congruent with principles of interdependence and indivisibility of human rights. Additionally, the practice is consistent with the IACtHR's recent jurisprudence that has increasingly embraced the justiciability of socio-economic rights under Article 26 of the ACHR.[157]

Third, the IACtHR has remarked on state obligations to ensure immediate and effective access to essential healthcare services such as early COVID-19 diagnosis and treatment and to cooperate between states and international organizations. These elements are consistent with IHRL standards on the right to health.

However, unlike other human rights issues or situations, the IACtHR's COVID-19 related practice has primarily or almost exclusively referred to the regional human rights standards at the expense of more frequent references to UN human rights standards. While the IACtHR is a regional human rights court, it should have more often invoked the UN standards on the right to health that also bind states party to the ACHR. Since those standards are very detailed in terms of interrelated and essential elements of the right to health and the typology of state legal obligations, the IACtHR could further benefit from them when directing states to meet their international obligations on the right to health during pandemics.

Furthermore, the IACtHR should have invoked WHO and PAHO sources more frequently, which could foster better systematic interpretation and integration as well as the application of the multi-layered normative framework on the right to health during pandemics. This is

157. *See infra* Subpart III.A.1.

consistent with a human rights-based approach to the right to health in pandemics because there are important links between IHRL and other international standards on healthcare—such as the IHR—which may complement human rights treaties.

Finally, the IACtHR should have complemented the human rights-based approach with other linked approaches to public health such as global public goods in pandemics. This is consistent with the San Salvador Protocol's explicit reference to health as a public good.[158]

III. Comparative Discussion

The comparative discussion herein provides a system-wide view of several important interactions between the three organs when exercising their respective mandate or jurisdiction. This finding is normatively important because it can demonstrate that the three institutions are in fact part of a system that seeks to respect, protect, and fulfill the right to health in pandemics. Despite their different mandates and functional or jurisdictional limits, they should collaborate and develop similar standards consistent with a human rights-based approach so that these organs themselves and Latin American states subject to their jurisdiction can better guarantee the right to health in pandemics like COVID-19.

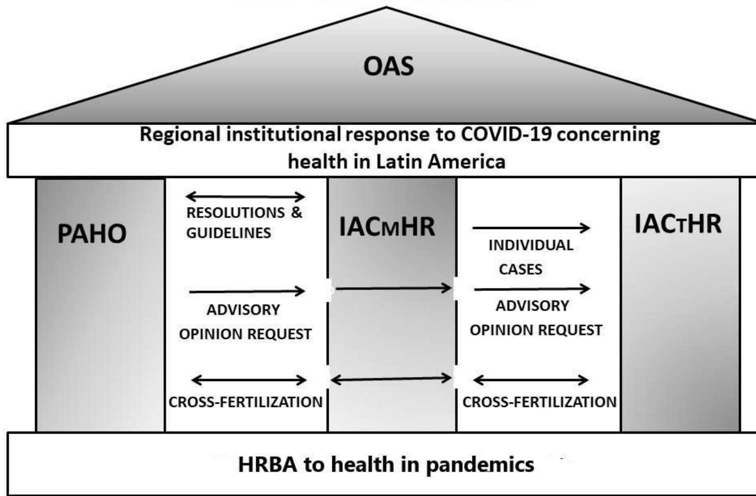
A. Convergences and Synergies

Despite divergences, fragmentation, and diversification of international law and its institutions,[159] convergent or unifying trends can be identified to enhance coherence in international law and promote synergies and coordination among diverse international organs and, thus, better answer global problems.[160] Actual and potential convergences and synergies can be found across the three regional bodies considered, in their (1) interpretation and application of substantive law, and (2) exercise of their respective mandate and/or jurisdiction. This figure illustrates the main relationships between the organs considered:

158. Protocol of San Salvador, *supra* note 70, at art. 10(2).

159. *See* U.N. Int'l L. Comm'n, *Fragmentation of International Law-Difficulties arising from the Diversification and Expansion of International Law*, 58th Sess., U.N. Doc. A/CN.4/L.682 (2006).

160. *A Farewell to Fragmentation-Reassertion and Convergence in International Law* (Andenas and Bjørge eds., 2015).



1. Substantive Law

Regarding substantive law in previous pandemics or epidemics,[161] there has been cross-fertilization in the COVID-19 related practices of the PAHO, IACmHR, and IACtHR. The PAHO addresses the intersection between health and human rights concerning, among other things, mental health, sexual health, adolescent health, aging, tobacco, and infectious diseases.[162] The IACmHR has requested the PAHO's guidance on technical matters.[163] For example, in implementing the right to health contained in the San Salvador Protocol, the IACmHR's guidelines were developed following the PAHO's methodology and standards.[164] The PAHO's expertise has also influenced the IACtHR.[165] Concerning a human rights-based approach to pandemics/epidemics at the PAHO, Meier and Ayala have remarked:

> [F]ocus on human rights in the rhetoric of the organization did not immediately translate into rights-based [Pan American Sanitary Bureau] PASB programming. Where PAHO legal officers saw 'no direct link' between the international human right to health and PAHO

161. *See, e.g.*, Cuscul-Pivaral, *supra* note 69, at 15–16, 39, ¶¶ 38–40, 109.

162. *See* Meier and Ayala, *supra* note 112.

163. *Id.* at 357.

164. Inter-Am. Comm'n H.R., *Guidelines for Preparation of Progress Indicators in the Area of Economic, Social and Cultural Rights*, AG/RES. 2666 (XLI-O/11) (July 19, 2018)

165. *E.g.*, Artavia-Murillo et al. v. Costa Rica, Judgment, Inter-Am. Ct Hum. Rts. (ser. C) No. 257 (Nov. 28, 2012)

> policies, the Bureau did not seek regional standards to clarify or implement the human right to health . . . This neglect of a right-based approach to health in PASB programming would shift dramatically in the 1980s with the advent of the global HIV/AIDS response.[166]

In any event, cross-fertilization in the COVID-19 scenario is exemplified by the IACmHR's Resolution 4/2020, titled Human Rights of People with Covid-19, which considered PAHO's expertise: this instrument directly addresses the state obligations to follow the PAHO and WHO's technical recommendations when addressing public health in the COVID-19 context,[167] which is an obligation of means. Such IACmHR practice is consistent with a human rights-based approach as it systemically integrates IHRL as well as global and regional health law to enable states to better honor their obligations to respect, protect, and fulfill the right to health in pandemics.

In turn, the IACmHR's SACROI COVID-19 invoked IACmHR and IACtHR standards.[168] Regarding the right to health and pandemics, the IACtHR's judgment in *Cuscul-Pivaral v. Guatemala* is pivotal. This case concerned persons with HIV/AIDS,[169] and, in it, the IACtHR found that the right to health: (1) is an autonomous and justiciable right; (2) consists of enjoying the highest attainable physical, mental, and social well-being; (3) involves appropriate and prompt healthcare consistent with availability, accessibility, acceptability and quality principles; and (4) includes access to prevention technologies, diagnostic tests, drugs, effective vaccines, microbicides, a healthy diet, social and psychological support, including family, community, and home-based care.[170]

These jurisprudential principles are important because the Court not only found that the state failed to provide accessible, available, and quality healthcare to victims but also failed to meet the specific needs of patients in pandemics and epidemics.[171] In the COVID-19 context, such principles have been relevant since the pandemic has more greatly affected populations of higher socio-economic vulnerability. Indeed, this jurisprudence on the right to health and pandemics is sensitive to victims' experience, including their diverse vulnerabilities and serious

166. Meier and Ayala, *supra* note 112, at 360.

167. Inter-Am. Comm'n H.R., *Human Rights of People with Covid-19*, Res. No. 4/20 (July 27, 2020), http://www.oas.org/es/cidh/decisiones/pdf/Resolucion-4–20-es.pdf.

168. OAS, *Initiatives and Responses by Organizations of the Joint Summits Working Group (GTCC) Facing the COVID-19 Crisis in the Region* (June 24, 2020), http://www.summit-americas.org/jswg/meetings/GTCC_COVID19_TEXrev.3.pdf.

169. Cuscul-Pivaral, *supra* note 69, at 18–19, ¶¶ 55, 58.

170. *Id.* ¶¶ 98–117.

171. Medina & David-Contreras, *supra* note 154, at 22.

socio-economic disadvantages.[172] Furthermore, the case law has been considered influential.[173]

The above-invoked jurisprudence should be used when COVID-19 cases or cases related to other pandemics are adjudicated on merits by the IACtHR. In doing so, the IACtHR will be able to continue its monitoring of whether and to what extent Latin American states have adopted human rights-based policies and decisions on the right to health, including policies that respect the essential elements of the right to health, namely availability, accessibility, acceptability, quality, equality, and non-discrimination. Nevertheless, while the IACtHR has found health as an autonomously justiciable right, this may be perceived as being a partial expense of the interdependence and indivisibility of human rights, particularly the right to life in a deadly pandemic like COVID-19. This may cause some confusion for, or even manipulation by, Latin American states when they apply a human rights-based approach. However, this scenario is less likely to occur when the application of measures by the states is also based on the PAHO's recommendations, because a supranational body of such technical and scientific character would be setting scientific standards and measures adopted by all PAHO Member States.

Under Article 19(6) of the San Salvador Protocol, the system of individual petitions does not apply to the right to health. Nevertheless, the IACtHR under Article 26 of the ACHR—concerning the progressive development of socio-economic rights—has deemed the right to health, including in pandemic scenarios, a justiciable right,[174] based on the principles of indivisibility and interdependence of all human rights.[175] However, it may be questioned whether the principles necessarily demand the direct justiciability of socio-economic rights because those principles should also be observed when international or national courts do not have jurisdiction to adjudicate these rights directly.[176] In any event, the IACtHR has found international state responsibility violations of the right to health under Article 26 of the ACHR through the exercise of its contentious jurisdiction in proceedings by individuals against a state.[177] The IACtHR's recent jurisprudence on the right to health related to pandemics such as HIV/AIDS and on Article 26 has

172. *Id.*

173. *Id.*

174. Cuscul-Pivaral, *supra* note 69, at 34–36, ¶¶ 98–102.

175. *Id.* ¶¶ 86, 97.

176. Medina & David-Contreras, *supra* note 154, at 22.

177. Cuscul-Pivaral, *supra* note 69, at 80, ¶ 251.

emphasized the state's failure to effectively adopt measures to protect the right to health of pandemic patients, holding that state inactivity is prohibited.[178] Additionally, since the IACtHR has invoked WHO and PAHO practices or standards, the Court has indirectly—to some extent—enforced the latter.[179]

In its COVID-19 related Resolutions, the IACmHR has indicated that states should: (1) adopt urgent measures based on "the best scientific evidence" consistent with the IHR and the recommendations of the WHO and PAHO;[180] (2) protect persons with COVID-19 through measures consistent with WHO and PAHO technical guidelines;[181] and (3) consider the WHO Strategic Advisory Group of Experts on Immunization Principles' criteria on the distribution and prioritization of vaccine doses delivered to healthcare workers, elderly persons, disabled persons, persons with pre-existing medical conditions, and indigenous peoples.[182] This IACmHR practice is consistent with a human rights-based approach in terms of not only systemic integration of IHRL and health law but also in principles of accessibility, joint efforts for immunization, state obligations to protect the right to health, and equality and non-discrimination at the global, national, and regional levels. Due to its technical and medical expertise, the PAHO is the body that sets the underlying scientific standards for certain obligations, such as immunization practicalities.

In ordering, keeping, and lifting provisional measures, the IACtHR invoked inter alia the WHO and the PAHO's findings on the evolution of the COVID-19 pandemic and vaccination, the criteria to access COVID-19 vaccines based on risk considerations, the vulnerable groups and their medical needs, and the WHO-associated COVAX67 for access to COVID-19 vaccines.[183] This IACtHR's practice is thus congruent with a human rights-based approach, as it integrates, through cross-fertilization, IHRL and global, national, and regional health law. In turn, it encourages Latin American states to adopt a human rights-based approach to the right to health in pandemics, especially as to equality and non-discrimination.

178. Medina & David-Contreras, *supra* note 154, at 21.

179. *See supra* Subpart II.C.

180. *Pandemic and Human Rights in the Americas*, *supra* note 65, at 7 n.1.

181. *Human Rights of Persons with COVID-19*, *supra* note 65, at 4 n.3.

182. Inter-Am. Comm'n H.R., *Resolution 1–21: COVID-19 Vaccines and Inter-American Human Rights Obligations*, (Apr. 6, 2021), at 7 n.7.

183. Vélez-Loor, *supra* note 71, at 11, "Considering That," ¶ 23; Vélez-Loor, *supra* note 148, ¶¶ 47–48; Vélez-Loor, *supra* note 151, ¶ 53.

Unlike the IACtHR's provisional measures, however, the IACmHR has not explicitly invoked the WHO and the PAHO's findings in its COVID-19 related precautionary measure decisions.[184] This is partially incongruent with a human rights-based approach because, although IHRL is traditionally expected to inform health law, cross-fertilization is mutual and should hence work in both directions. Thus, regional human rights bodies like the IACmHR should also engage with the WHO and the PAHO's practices related to pandemics, especially since the PAHO's practice has considered a human rights-based approach and related UN and regional human rights standards in the COVID-19 context. By not explicitly considering the PAHO's COVID-19 practice, the IACmHR's precautionary measures missed an opportunity to expressly integrate IHRL standards related to a major global pandemic, as interpreted by technical institutions like the WHO and the PAHO, into their analysis.

The actual and potential convergences and synergies discussed in this section between the PAHO, IACmHR, and IACtHR in terms of substantive law are arguably congruent with the human rights-based approach and the related IHRL framework presented in Part I. Overall, the work of these organs reflects and is consistent with the IHRL framework of the right to health in pandemics such as COVID-19, especially regarding the principles, contents, and state obligations related to or underlying that right. However, some of the above-examined practices should have better reflected a human rights-based approach, which could have, in turn, promoted a more consistent application of that approach by Latin American states concerning the right to health in COVID-19.

2. Exercise of Mandate and Jurisdiction

Besides substantive law, convergences and synergies can also be identified in the exercise of the mandate and the jurisdiction of the PAHO, IACmHR, and IACtHR. This includes the integration and coordination of these organs' functions so that states respect, protect, and fulfill the right to health in the COVID-19 context under a human rights-based approach.

Potential individual petitions related to state violations of the right to health in the COVID-19 context must first reach the IACmHR for factual and legal decisions as a quasi-judicial body.[185] When the state ignores

184. *See supra* Subpart II.B.

185. OAS, *supra* note 8, at arts. 44–51; Thomas M. Antkowiak and Alejandra Gonza, The American Convention on Human Rights: Essential Rights 10 (2017).

IACmHR's recommendations, the IACmHR, in principle, shall send the individual case to the IACtHR, if the states are party to the ACHR *and* have recognized the IACtHR's contentious jurisdiction: 20 States out of the 35 OAS Member States as of April 2024.[186] The previously examined cases concerning the Yanomami, Ye'kwana, Guajajara, and Awá indigenous peoples in Brazil, particularly affected by COVID-19, can provide opportunities for coordination between the IACmHR and IACtHR. This can result in enhanced protection of the right to health of the most vulnerable groups, like indigenous communities, in pandemics like COVID-19. Thus, it is consistent with a human rights-based approach, including accessibility, acceptability, equality, and non-discrimination. In turn, the ensuing proceedings and judgments can better inform Latin American states of their obligations to respect, protect, and fulfill the right to health regarding COVID-19 or other pandemics.

Concerning the IACtHR's contentious jurisdiction, only the IACmHR and the states party to the ACHR "have the right to submit a case to the Court," while alleged individual victims lack such power.[187] This is arguably not fully consistent with a human rights-based approach. Nevertheless, upon submission of the case to the IACtHR, the alleged victims acquire an autonomous *locus standi* status before IACtHR. This is consistent with the ACHR's textual recognition of human rights as only applicable to human beings[188] and, more specifically, with the fact that the litigation proceedings before the IACtHR involve humans as victims (applicant(s)) versus a state (respondent). Such victims' procedural standing is by definition consistent with a human rights-based approach, enabling victims to compel the Court to find Latin American states accountable for violations of their obligations to respect, protect, and fulfill the right to health in pandemics like COVID-19. Thus, alleged victims, the state, and the IACmHR participate as parties to the proceedings. The Commission is an "objective and impartial participant"[189] defending the "Inter-American public order of human rights,"[190] a procedural party or a judiciary's "auxiliary."[191]

186. Rules of Proc. Inter-Am. Comm'n H.R., art. 45, Annual Report of the Inter-American Court of Human Rights,, 1991, O.A.S. Doc. OEA/Ser.L/V/III.25 doc. 7 at 18 (1992), *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82, doc. 6, rev. 1, at 145 (1992).

187. OAS, *supra* note 8, at art. 61(1), Nov. 22, 1969, S. Treaty Doc. No. 95–21, 1144 U.N.T.S. 123.

188. Medina & David-Contreras, *supra* note 154, at 5.

189. Pasqualucci, *supra* note 154, at 20.

190. Inter-Am. Ct. H.R., Rules of Proc., arts. 35(1)(f), 52(3).

191. Antkowiak and Gonza, *supra* note 185, at 10–11.

Due to the nature of its mandate, the PAHO does not have contentious jurisdiction nor any direct role in a case. Nonetheless, in potential IACtHR cases related to COVID-19 or other pandemics, victims, the state, or the IACmHR could call WHO and PAHO officers or specialists as expert witnesses,[192] especially for issues concerning the pandemic's impact on the right to health and the resulting harm that must be redressed through reparations such as medical and psychological rehabilitation. That expertise is consistent with a human rights-based approach as it enables systemic convergence of IHRL and global or regional health law. In turn, the PAHO's expertise could contribute towards the IACtHR's crafting of appropriate and scientifically informed rehabilitative reparations for victims. This could enable Latin American states to fully implement their obligations to respect, protect, and fulfill the right to health regarding COVID-19's effects and ensure consistency in the definition and interrelated elements of the right to health to achieve the highest attainable level of health.

In any event, the PAHO lacks any dispute settlement mechanism, and depends on the IACtHR and IACmHR's decisions for IHRL interpretation. The PAHO mainly consists of health experts, and its legal advice depends on its Office of the Legal Counsel, which is not entitled to settle disputes.[193]

In *Vélez-Loor*, the IACmHR presented written and oral observations, which the IACtHR closely considered, arguing for the adoption of provisional measures[194] and the need to sustain them during the pandemic,[195] permitting their lift once the measures were no longer necessary.[196] Importantly, the IACtHR's COVID-19 practice was overall consistent with a human rights-based approach, particularly as to: (1) the immediate medical treatment of COVID-19 cases; (2) the creation of conditions for effective prevention of further dissemination of COVID-19; (3) the interdependence and indivisibility of human rights; and (4) equality and non-discrimination, particularly for vulnerable populations such as migrants. Under Article 63(2) of the ACHR, the Court may issue

192. Inter-Am. Ct. H.R., Rules of Proc., arts. 41(1)(c), 40(2)(c), 35(1)(f), Annual Report of the Inter-American Court of Human Rights, 1991, O.A.S. Doc. OEA/Ser.L/V/III.25 doc. 7 at 18 (1992), *reprinted in* Basic Documents Pertaining to human rights in the inter-american system, OEA/Ser.L.V/II.82 doc. 6 rev. 1 at 145 (1992).

193. PAHO, Pan American Sanitary Bureau (PASB) Functional Descriptions for organizational entities, (July 11, 2023), https://www.paho.org/en/documents/pasb-functional-descriptions-organizational-entities.

194. Vélez-Loor, *supra* note 71, at 9, "Considering That," ¶¶ 13–15.

195. Vélez-Loor, *supra* note 148, ¶ 60.

196. Vélez-Loor, *supra* note 151, ¶¶ 24–27.

provisional measures at the IACmHR's request regarding "a case not yet submitted to the Court";[197] however, this mechanism has not yet been used in the COVID-19 context. Such inaction should be criticized because the IACtHR's provisional measures could encourage states to promptly and fully satisfy their obligations to respect, protect, and fulfill the right to health in COVID-19 and other pandemics.

The IACtHR's advisory jurisdiction can provide important but unexplored avenues to foster convergence and synergy of the considered bodies in addressing major health crises such as COVID-19. Under Article 64(1) of the ACHR, besides the OAS Member States, the organs listed in the OAS Charter can "within their spheres of competence . . . consult the Court regarding the interpretation" of the ACHR and other IHRL treaties.[198] Article 53 of the OAS Charter lists the OAS organs that can request IACtHR's advisory opinions, including the IACmHR and listed "Specialized Organizations," including the PAHO.[199]

As the specialized health agency of the OAS,[200] the PAHO has standing to request advisory opinions,[201] which could concern the right to health in COVID-19 and other pandemics. Although requesting these opinions may enlighten PAHO's technical performance and make it more consistent with a human rights-based approach, a review of the public record indicates the PAHO has not yet done so. If an advisory opinion request is jointly submitted with the IACmHR to the IACtHR, it will constitute a powerful exercise of the whole regional system on the right to health in pandemics.

In practice, the IACmHR has been the only OAS organ that has submitted advisory opinion requests. The IACmHR's major role in the inter-American system and the IACtHR's broad interpretation of the IACmHR's legal status may explain this.[202] Despite this, the IACmHR has yet to submit an advisory opinion request related to the right to health or pandemics, including COVID-19. Under a human rights-based approach, this should be criticized as it has not enabled the regional organs to converge or clarify how the components of the right to health

197. OAS, *supra* note 8, at art. 63(2).

198. *Id.*

199. *See* Charter of the OAS, *supra* note 122, at art. 53.

200. *Id.* at arts. 124–30, Apr 30, 1948, 2 U.S.T. 2416, T.I.A.S. No. 2361, 199 U.N.T.S. 3, as amended by Protocol of Feb. 23, 1967, 21 U.S.T. 607, T.I.A.S. No. 6847; Javec Siddiqi, World Health and World Politics 70 (1995).

201. Thomas Buergenthal, *The Advisory Practice of the Inter-American Human Rights Court*, 79 Am. J. Int'l L. 1, at 4 (1985).

202. Laurence Burgorgue-Larsen and Amaya Úbeda de Torres, The Inter-American Court of Human Rights: Case Law and Commentary, at 89 (Rosalind Greenstein trans., 2011).

and related state obligations should be applied and specifically tailored to global pandemics like COVID-19. Though the PAHO is a medical and scientific body rather than a legal one, an advisory opinion request would allow the regional system to better synchronize legal and medical criteria of the right to health from a human rights-based perspective. The outcome of such proceedings would be of great interest to states and other actors. In turn, it would enhance the regional system on the right to health in pandemics.

An advisory opinion request jointly submitted by the IACmHR and the PAHO could enable the IACtHR to clarify state obligations concerning the right to health in contexts of serious public health crises and/or pandemics such as COVID-19, providing excellent opportunities to systemically develop a human rights-based approach when states and other actors face these crises. Additionally, this joint request could substantially increase the likelihood of admissibility of the advisory opinion request, avoiding what *mutatis mutandis* occurred when the International Court of Justice rejected a WHO advisory opinion request concerning the threat to use or the use of nuclear weapons.[203] Under ACHR and IACtHR practice,[204] an advisory opinion on pandemics and the right to health may include not only the American Human Rights Declaration, the ACHR, and San Salvador Protocol, but also the ICESCR and, potentially, human rights-related provisions of the IHR, the WHO Constitution, the PAHO Constitution, and the Pan American Sanitary Code. This would be consistent with a human rights-based approach as to systemic integration of IHRL and global and regional health law regarding the right to health in pandemics.

Advisory opinions are not legally binding.[205] In Latin America, however, states take them seriously, especially domestic systems that are open to international law and some national courts who have seemingly considered themselves bound by such opinions.[206] Advisory opinions are much less confrontational than contentious cases and are not confined to specific facts or evidence, enabling judges to express underlying legal principles and contribute to a consistent interpretation of instruments.[207] The IACmHR and the PAHO's failure to trigger their use should again be criticized under a human rights-based approach due

203. *Legality of the Use by a State of Nuclear Weapons in Armed Conflict*, Advisory Opinion, 1996 I.C.J Rep. 66 (July 8).

204. *E.g.*, Right to Information on Consular Assistance, Advisory Opinion OC-16, Inter-Am. Ct. H.R. (ser. A) No. 16 (Oct. 1, 1999).

205. Burgorgue-Larsen & Úbeda de Torres, *supra* note 202, at 90.

206. *Id.*

207. Pasqualucci, *supra* note 154, at 80.

to the strong but still unrealized potential for convergent approaches towards a more comprehensive, systemic, and better-informed legal framework of the right to health in pandemics like COVID-19.

The actual and potential convergences and synergies between the PAHO, IACmHR, and IACtHR examined in this section are overall congruent with a human rights-based approach to health in COVID-19. The three organs, within their respective mandates, have contributed towards actions to handle challenges related to the right to health in COVID-19 in Latin America. But there remains potential for better coordinated and integrated actions of the three organs, which can both reflect and enhance the human rights-based approach to the regional right to health regarding COVID-19 and other pandemics.

B. Divergences

This subsection discusses divergences among the PAHO, IACtHR, and IACmHR under six analytical comparative categories. Underlying such a comparison is that each of these three institutions possess different functions and powers, and that the COVID-19 pandemic illustrates the cross-cutting points: (1) the temporalities of pandemics; (2) the collaboration between the institutions considered in protecting the right to health in pandemics; and (3) the accountability gaps and whether they emerge. In turn, these divergences help us further appreciate the necessary complementarity between the three considered bodies of the same regional system on the right to health in pandemics like COVID-19.

1. Binding Effects of Decisions

The first analytical category consists of the extent to which states are bound by the decisions of the considered bodies. The degree of binding effect is relevant for this Article's main argument as its interaction with states can impact the strength of the regional system on the right to health in pandemics like COVID-19. In principle, the IACtHR's judgments and provisional measures, which bind states recognizing the IACtHR's contentious jurisdiction, make the IACtHR a stronger enforcement mechanism than the PAHO and IACmHR. The IACtHR is the ultimate interpreter of the ACHR, unbound by the IACmHR's decisions.[208]

The IACtHR can review the IACmHR's decisions on individual cases,[209] which can lead to potential collaboration among these

208. *Almonacid-Arellano v. Chile*, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 154 ¶ 124 (Sep. 26, 2006).

209. *19 Merchants v. Colombia*, Preliminary Objection Judgment, Inter-Am. Ct. H.R. (ser. C) No. 109 ¶ 27 (June 12, 2002).

institutions in protecting the right to health affected by the COVID-19 pandemic. In turn, this can better compel Latin American states to comply with their respective obligations to respect, protect, and fulfill the right to health. Moreover, it can partially fill accountability gaps, as the IACmHR's interpretation of the right to health in individual cases can be "overruled" by the IACtHR. Therefore, the IACmHR may be indirectly held accountable for overtly flawed decisions.

While the IACtHR is a judicial body, the IACmHR's functions are diplomatic, political, or jurisdictional.[210] Upon the IACmHR's examination of petitions, the IACtHR determines state responsibility for violations of the ACHR, the San Salvador Protocol, and other inter-American human rights instruments.[211] The IACtHR's contentious jurisdiction on individual proceedings can lead to the supranational judicial determination of breaches of the right to health in COVID-19 and other pandemic contexts and, if so, can award reparatory damages to victims, payable by the responsible state, so that the harm inflicted can be properly redressed.[212] In the IACtHR's eventual reparations for COVID-19 related violations of the right to health, rehabilitation—such as medical and psychological healthcare—should be a prominent provision, alongside compensation.

In individual cases, the Commission's mandate is limited to proposals, recommendations, and conclusions,[213] which, seemingly, are not prima facie binding[214]—or at least not to the extent of the IACtHR's judgments. Should the state ignore IACmHR's recommendations, the only primary "sanction" is the IACmHR's case referral to the Court or, exceptionally, the IACmHR's report publication.[215] However, under Article 31(1) of the Vienna Convention on the Law of Treaties, the object and purpose of the ACHR and the states' duties to comply in good faith with their ACHR commitments and cooperate with monitoring bodies suggest that the IACmHR's recommendations are not "completely without legal effect."[216] The IACtHR clarified that states party to the ACHR are obligated "to make every effort to [comply] with the recommendation of . . . the Inter-American Commission, which is, indeed, one of the

210. Dr. Faundez Ledesma, The Inter-American System for the Protection of Human Rights, 208–09 (3rd ed. 2007).

211. *Id.* at 212–13.

212. *See, e.g.*, Cuscul-Pivaral, *supra* note 69, at 34–53, 68–80, ¶¶ 98–153, 198–251.

213. OAS, *supra* note 8, at arts. 50–51.

214. Ledesma, *supra* note 210, at 475.

215. *See* OAS, *supra* note 8, at arts. 50–51.

216. *Id.* at 475–76.

principal organs of the Organization of American States."[217] Arguably, this also applies to OAS Member States that are not party to the ACHR.[218]

Such an interpretation can indeed mean better protection of the right to health in pandemics since it reinforces the degree of binding authority of the IACmHR's practice despite the divergences between the Court and Commission as to the scope of their decisions. For example, this could be important for the implementation of the IACmHR's COVID-19 reports and the precautionary measures rendered for the protection of the right to health in indigenous communities during the COVID-19 pandemic. The urgency of precautionary measures interplays with the temporality of pandemics like COVID-19. The OAS-General Assembly has encouraged OAS Members to follow up on IACmHR's recommendations, including IACmHR's precautionary measures.[219] Thus, this would also apply to precautionary measures issued for the protection of the right to health in COVID-19 and other pandemic contexts.

While the IACmHR's recommendations may present certain comparative disadvantages vis-à-vis the IACtHR's judgments, the IACmHR can consider bringing the situation to the OAS-General Assembly's attention by publishing it in the Commission's annual report.[220] This could generate political scrutiny of the state in question. It remains to be seen whether the IACmHR would do this with individual petitions regarding alleged violations of the right to health during the COVID-19 pandemic.

With regard to the PAHO, it should be remarked that the PAHO's *sui generis* nature is reflected in important differences between it and the IACmHR and IACtHR. Whereas the PAHO Constitution does not enable the PAHO to render resolutions or decisions that bind states, the PAHO's recommendations, guidelines, and requests to states carry some binding effect, arguably. This is because those measures are based on treaties (such as the Pan American Sanitary Code, the PAHO Constitution, and the WHO Constitution) or binding instruments (such as the IHR), which contain obligations for the 35 PAHO Member States, alongside a number of OAS Member States. For example, the PAHO's recommendations as the WHO's regional office under Article 18 of the IHR have binding effects.[221] The guidelines for a public

217. Loayza-Tamayo v. Peru, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 33, ¶ 80 (Sep. 17, 1997).

218. Claudia Martin and Diego Rodríguez-Pinzón, The Prohibition of Torture and Ill-Treatment in the Inter-American Human Rights System, 44 (2014).

219. *E.g.*, AG/RES. 2672, XLI-O/11, ¶ 3.b (June 7, 2011).

220. OAS, *supra* note 8, at arts. 49–51.

221. *See supra* Supbart II.A.

health response may be also considered binding under Article 13 of the IHR. Furthermore, the PAHO's recommendations during pandemics can be part of the states' due diligence obligation to protect health and related rights.

Nevertheless, whether certain materials produced by the PAHO have binding effect should be analyzed on a case-by-case basis. For instance, in a press briefing on the COVID-19 situation in the Americas, PAHO Member States were urged to "update their national dashboards regularly or share this information with the PAHO, so that we can target our efforts where they are most needed."[222] This briefing is certainly not binding per se, but one could argue otherwise if that statement is read systematically with Articles three through eight of the Pan American Sanitary Code, which obligates PAHO Member States to report on ongoing epidemics and pandemics.

It would be useful if PAHO member states agree to provide a precise legal status to these documents and establish which cases these would be binding as to obligations of means or results. This should include references to specific PAHO legal instruments and be done with a human rights-based approach in mind, so that the regional system on health in pandemics is strengthened.

Figure 2 illustrates the different scopes of the bodies considered.

Figure 2: Scope of regional institutional levels concerning health in COVID-19/other pandemics

222. PAHO, *Press Briefing on the COVID-19 Situation in the Americas* (Oct. 12, 2022), https://www.paho.org/en/media/press-briefing-covid-19-situation-americas.

2. *Ratione Temporis* Considerations

A second analytical category of comparison involves determination of the period or stage in which each body may be especially effective: before, during, or after pandemics. This relates to accessibility and equal and timely access to health services, common considerations of a human rights-based approach. Based on their mandates, COVID-19 experiences, and institutional practices, the PAHO and IACmHR overall play especially relevant roles related to health issues before and during pandemics. The PAHO and IACmHR developed expertise during COVID-19 which, due to some key preventive dimensions of their mandates, should also enable them to assist and guide states and other actors in Latin America to be better prepared for coming pandemics. In turn, the IACtHR becomes particularly relevant in addressing the post-pandemic impact on health. Through its contentious jurisdiction, the Court can find state responsibility for violations of the right to health related to pandemics and order states to provide appropriate reparations for victims, redressing physical, psychological, and material harm.[223] These post-pandemic reparations may consist of individual or collective awards, including compensation, rehabilitation, and guarantees of non-repetition.[224]

These considerations do not deny the PAHO and IACmHR's potential post-pandemic actions, however. The IACmHR can issue recommendations to OAS Member States and states party to the ACHR in post-pandemic decisions on individual cases. In turn, IACtHR provisional measures or advisory opinions can effectively face crucial health-related issues during pandemics, as demonstrated by the *Vélez-Loor* provisional measures during the COVID-19 pandemic.

More specifically, the PAHO's role is indeed important across all pandemic stages. The Pan American Sanitary Code, PAHO's cornerstone instrument, iterates that their main goal is to "prevent[] . . . the international spread of communicable infections of human beings."[225]

223. On the IACtHR's reparation jurisprudence and the right to health, see, for example, Juan-Pablo Perez-Leon-Acevedo, *Realising the Right to Health for Victims of International Crimes. The Case of Medical Rehabilitation Reparations Ordered by International Courts: Challenges, Possibilities and Ways of Improvement*, 3 Groningen J. Int'l L. 17, 19–22, 27–32 (2015); Juan-Pablo Perez-Leon-Acevedo, *Case of the Inhabitants of La Oroya v. Peru, Preliminary Objections, Merits, Reparations and Costs Judgment*, 119 Am. J. Int'l L. 659, 662, 665 (2025); Juan-Pablo Perez-Leon-Acevedo, *Green Reparations at the Inter-American Court of Human Rights: The La Oroya Judgment*, Oxford Hum. Rts. Hub (May 1, 2024), https://ohrh.law.ox.ac.uk/green-reparations-at-the-inter-american-court-of-human-rights-the-la-oroya-judgment/.

224. *See*, *e.g.,* Cuscul-Pivaral, *supra* note 69, at 68–80, ¶¶ 198–251.

225. Pan Am. Sanitary Code, art 1, Nov. 14, 1924, 56 U.N.T.S. 3.

The PAHO's mandate endorses preventive actions addressing any outbreak that can be caused by a transmissible disease. For instance, the PAHO's *Disease Elimination Initiative* seeks to eliminate "more than 30 diseases and conditions by 2030."[226] The Pan American Sanitary Code also contains state obligations during an outbreak.[227] Whereas states shall inform the PAHO under the Pan American Sanitary Code, the PAHO has an inherent role in coordinating and supervising actions taken by its Member States to control the pandemic.

The Pan American Sanitary Code includes no direct state obligations post-pandemic; nevertheless, there are provisions for the follow-up and continuous reassessment of situations prone to new outbreaks, as the Polio and HIV/AIDS pandemics illustrate in practice.[228] Since the COVID-19 pandemic still is, to some extent, in the outbreak stage, there is not yet evidence of whether the PAHO would continue the same approach. From a due diligence perspective, there should be a consistent follow-up. This is also consistent with a human rights-based approach as it would contribute to states' realization of their obligations to protect and fulfill the right to health in pandemic contexts, increasing the chances that, throughout time, the interrelated and essential elements of the right to health—especially as to quality of scientifically and medically appropriate facilities, goods, and services—will be guaranteed.

3. Adjudication over Individual Cases

A third comparative category involves examining whether the body's mandate is limited to individual cases. To address widespread pandemics such as COVID-19 and their societal impact on public health matters, bodies tackling the macro elements of pandemics—such as the PAHO—and bodies that also deal with individual cases—such as the IACmHR—may overall be fitter than bodies whose mandate is limited to individual cases—such as the IACtHR. This is especially important during pandemics. Under a human rights-based approach, however, both are complementary and, therefore, necessary.

During the COVID-19 pandemic, the PAHO has addressed the general regional situation.[229] Moreover, it may address one country,

226. PAHO, *Disease Elimination Initiative*, https://www.paho.org/en/elimination-initiative [https://perma.cc/J324–5YGC] (last visited Jan. 19, 2026).

227. Pan Am. Sanitary Code, *supra* note 225, at art 1.

228. PAHO, *Poliomelitis*, https://www.paho.org/es/temas/poliomielitis [https://perma.cc/66FT-YDX5] (last visited Jan. 19, 2026); PAHO, *HIV/AIDS*, https://www.paho.org/en/topics/hivaids [https://perma.cc/5M4W-TW74] (last visited Jan. 19, 2026).

229. PAHO, COVID-19 Pandemic in the Americas: Response Strategy and Donor Appeal April 2022–March 2023: Summary, (July 21, 2022) https://www.paho.org/en/documents/

subregion, group of people, or a specific health or healthcare issue; for instance, in the COVID-19 context, the PAHO addressed the reluctance of healthcare workers in the Caribbean to be vaccinated.[230] In the COVID-19 pandemic scenario, the PAHO has also provided technical recommendations, such as prioritizing COVID-19 vaccinations for pregnant women.[231] Because of its mandate, however, the PAHO does not refer to or engage with individual cases, unlike the IACmHR/IACtHR. But PAHO's scientific and medical recommendations can be invoked in individual litigation at the IACmHR and IACtHR and can enhance the regional system's consistency with a human rights-based approach.

The IACtHR's case law may continue developing important jurisprudential standards on health and pandemics. Under the IACtHR's conventionality control doctrine, national authorities should adopt decisions consistent with inter-American human rights instruments and IACtHR's jurisprudence.[232] However, IACtHR's decisions *stricto sensu* primarily bind only the parties to a case. Such a case-limited scope may be insufficient considering the scope of the impact of pandemics like COVID-19 on the right to health. If this is not handled appropriately, there may be inadvertent counter-productive effects to accessibility, equal treatment, and non-discrimination.

4. International Versus Regional Dimensions

A fourth analytical category of comparison requires engagement with the debates related to international versus regional dimensions. For interpretation, the IACmHR and IACtHR often consider international or universal sources—such as UN and WHO sources—in matters related to the right to health. Nevertheless, other than the IACtHR's advisory opinions, the IACmHR's and IACtHR's mandates as regional bodies require them to apply only regional human rights instruments.

Conversely, the PAHO applies not only its regional instruments—its Constitution and the Pan-American Sanitary Code—but also international or universal sources—such as the IHR and the WHO Constitution—which

covid-19-pandemic-americas-response-strategy-and-donor-appeal-april-2022-march-2023 .

230. PAHO, Policy Brief: Addressing COVID-19 Vaccine Hesitancy Among Healthcare Workers in the Caribbean (Nov. 27, 2021), https://www.paho.org/en/documents/policy-brief-addressing-covid-19-vaccine-hesitancy-among-healthcare-workers-caribbean.

231. PAHO, *PAHO Director Urges Countries to Prioritize Pregnant and Lactating Women for COVID-19 Vaccinations*, (Sep. 8, 2021), https://www.paho.org/en/news/8–9-2021-paho-director-urges-countries-prioritize-pregnant-and-lactating-women-covid-19.

232. Eduardo Ferrer Mac-Gregor Poisot, *Conventionality Control-The New Doctrine of the Inter-American Court of Human Rights*, 109 AJIL Unbound 93 (2015); *see generally* Andres González-Domínguez, The Doctrine of Conventionality Control-Between Uniformity and Legal Pluralism in the Inter-American Human Rights System (2018).

contain one dimension of the PAHO's mandate: the PAHO as a WHO regional office. Moreover, the PAHO, as a WHO dependent organ, must apply the WHO's recommendations and instructions; thus, under the IHR, the PAHO must strengthen the WHO's global alert and enhance response systems.[233] The nature of the IHR and the WHO's global scope are especially significant in the COVID-19 context.

Under a human rights-based approach, a multilayered normative framework that coherently combines UN and regional standards would be overall advisable to: (1) fully realize the interrelated and essential elements of the right to health in the COVID-19 context; and (2) help states thoroughly satisfy their UN and regional legal obligations to respect, protect, and fulfill the right to health in COVID-19.

5. Right to Health Versus Broader Public Health Considerations

A fifth analytical comparative category is determining whether the focus should be on the right to health or on more holistic public health matters in pandemic contexts. By definition, the IACmHR and IACtHR primarily focus on the right to health in pandemics. Although this is necessary, it is insufficient due to the diverse and multilayered dimensions of public health implicated in major pandemics such as COVID-19. Thus, the PAHO may be better equipped to address pandemic challenges because of its specialized nature. Moreover, the PAHO not only deals with pandemics or epidemics but also tackles chronic diseases, mental health, health systems, non-communicable diseases, and more.[234] The scope of action concerning public healthcare is thus wider for the PAHO. The PAHO has also referred to the highest possible standard for the right to health under the WHO Constitution preamble, which includes closely related rights such as integrity and life.[235] This is consistent with a human rights-based approach which seeks to procure the highest standard of the right to health, including interdependence and indivisibility of human rights and good quality healthcare services, facilities, and goods.

It should be also mentioned that the PAHO's approach to public health has traditionally led it to be regarded as a public common good.[236] However, the PAHO has adopted a human rights-based approach to public health since the HIV/AIDS pandemic emerged. In the COVID-19

233. PAHO, *International Health Regulations*, https://www.paho.org/en/topics/international-health-regulation [https://perma.cc/SG99–2PCW] (last visited Jan. 19, 2026).

234. PAHO, *Sustainable Health Agenda, supra* note 45.

235. *Id.*

236. *See* Meier and Ayala, *supra* note 112.

scenario, due to its pandemic nature, the PAHO has regarded public health as both a public good and a human right.

Under a human rights-based approach with certain UN and regional standards, the IHRL framework has benefited from the systemic integration of complementary approaches such as public goods. These complementary approaches can additionally help assess the accountability of human rights organs' practices, namely the IACmHR and IACtHR, on the right to health in COVID-19.

6. Generalist Versus Specialist Bodies

The sixth comparative category is the contrast between "generalist" and "specialist" bodies concerning health and pandemics. While the IACmHR and IACtHR are more generalist bodies in the sense that the right to health is one of many rights propagated within their mandates, the PAHO is a specialist regional body in public health. Furthermore, the PAHO's actions that further the efficient implementation of healthcare systems and appropriate health standards that allow for the realization of the right to health are technical and scientific.

Despite this, the PAHO—owing to its scientific rather than legal approach—does not refer directly to health as a human right.[237] For instance, the PAHO has recommended the usage of certain vaccines during the COVID-19 pandemic.[238]

Under a human rights-based approach, the interplay between generalist and specialist bodies in the above-detailed sense can lead to better realization of the right to health in pandemics like COVID-19. For example, while the PAHO as a specialist body is more impactful on the quality of the right to health in terms of scientific and medical appropriateness, the IACmHR and IACtHR can particularly contribute to the cultural appropriateness element of acceptability. If they collaborate, the IACmHR and IACtHR's accountability assessment of COVID-19 related practices can take into account PAHO's scientific expertise. Thus, generalist and specialist bodies should collaborate with each other for the full realization of the right to health.

Conclusion

In facing the huge health-related regional impact and challenges posed by the COVID-19 pandemic, the Latin American regional

237. *Id.*

238. PAHO, *CanSino COVID-19 Vaccine-Interim Recommendations and more Information*, (May 19, 2022), https://www.paho.org/en/documents/cansino-convidecia-r-covid-19-vaccine-interim-recommendations-and-more-information.

institutional human rights response has been primarily based on the actions of the Pan American Health Organization (PAHO), the Inter-American Commission on Human Rights (IACmHR), and the Inter-American Court of Human Rights (IACtHR).

The PAHO has served as the first regional institution in the fight against epidemics. Since its inception, it has implemented a series of technical recommendations that have established standards underpinning the right to health. Moreover, such recommendations have served as the legal basis for guiding governmental decision-making in the region. Over time, PAHO has refined its measures to better align with the specific regional context and necessities.

As a member of the Organization of American States (OAS) and an organ of the American Convention on Human Rights (ACHR), the IACmHR has exercised its diverse functions through its issuance of thematic and country reports as well as individual case-based decisions, in order to ensure that states in the Americas, especially in the Latin-American and Caribbean region, fulfill their International Human Rights Law (IHRL) obligations on the right to health in the COVID-19 context.

The IACtHR, which was established through the ACHR, has developed important and influential jurisprudential standards and principles concerning the right to health, including during pandemics. Furthermore, the Court has issued binding provisional measures in individual cases in the challenging scenario of the COVID-19 pandemic. Potentially, the IACtHR could issue an advisory opinion on the right to health (and other human rights) in major pandemic scenarios, particularly in the light of the lessons learned during the COVID-19 pandemic.

Within the OAS's institutional framework, these are the three main pillars of what can and should be understood as a regional system on the right to health in pandemics like COVID-19. To a greater or lesser extent, the respective mandates and applicable instruments of these bodies plus related adopted actions increasingly reflect a human rights-based approach to health.

Each of the three examined bodies has contributed and can continue to contribute to the adoption of a human rights-based approach to health in pandemics such as COVID-19 by Latin American states, in their different state actions, programs, and policies. While human rights bodies such as the IACmHR and IACtHR have almost always followed the human rights-based approach to health, non-human rights bodies like the PAHO and the WHO have also adopted it.

These three bodies possess different mandates and apply different instruments. Their decisions or other actions have different degrees of binding impact on the states. Moreover, the scope of their mandate actions and the scope of the states involved differ in their response to health-related matters in pandemic contexts such as COVID-19. These differences are directly related to and inform the comparative advantages of each of those bodies.

Beyond differences and comparative advantages and disadvantages, however, this Article has also identified and discussed key areas of convergences or synergies in the actions of these bodies during the COVID-19 pandemic. The Article has also identified and discussed potential unexplored areas that these bodies may and should consider in the ongoing COVID-19 context and other ongoing and future pandemics. The differences, hence, have to do less with whether a human rights-based approach to health is applicable by one or another organ but, instead, with the extent to which each approach is or should be followed. As the pillars of the regional system, the PAHO, IACmHR, and IACtHR can and should provide a more integrated and efficient regional institutional response to issues related to the right to health in pandemics.

Finally, as a matter of general suggestion, these three institutions should more proactively coordinate actions within their respective mandates *and* work (more) closely with national bodies in the Latin American region under a human rights-based approach. Indeed, the human rights-based approach to health care in the region has led to litigation in domestic courts.[239] This has included national cases related to the COVID-19 pandemic.[240]

239. Villarreal, *supra* note 5, 603.

240. *See, e.g.*, Juan-Pablo Perez-Leon-Acevedo, *The Social Rights Jurisprudence of the Constitutional Tribunal of Peru* 44 NORDIC J. HUM. RTS. 1, 21 (2026) (advance version).