THE DEVELOPING CASE LAW OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS

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INTRODUCTION

This Annual Human Rights Lecture provides a timely occasion to consider the developing case-law of the Inter-American Court of Human Rights. Established in 1979, once the 1969 American Convention on Human Rights entered into force in 1978, the Court has now attained its maturity, with the regular and ever increasing exercise of the advisory as well as contentious functions conferred upon it by the American Convention. The Court, entrusted with the interpretation and application of the Convention, has constructed a case-law which is now the juridical patrimony of the countries and peoples of the American continent. This case-law consists, to date, of 17 Advisory Opinions, and 98 Judgments (on preliminary objections, competence, merits, reparations, and interpretation of judgments) concerning 41 cases, as well as provisional measures of protection pertaining to 38 separate cases. It is my intention, in the present study, to single out some of the most significant aspects to date of the developing case-law of the Inter-American Court.

May it preliminarily be recalled that the conventional basis for the exercise of the Court’s advisory jurisdiction is distinct from that for the exercise of its contentious jurisdiction. The basis for the exercise of the former is particularly wide, given that, under Article 64 of the American Convention, all OAS member States (whether Parties to the American Convention or not) and all of the main organs mentioned in Chapter X of the OAS Charter can request advisory opinions from the Court on matters regarding ‘the interpretation of this Convention or of other treaties concerning the protection of human rights in the American states’ or, in the case of member states, ‘the compatibility of any of its domestic laws with the aforesaid international instruments’.

For the exercise of the Court’s contentious jurisdiction in cases concerning them, a declaration of acceptance is required from States Parties to the Convention under Article 62. The Court is entitled, by the American Convention itself (Article 63(2)), to order provisional measures of protection. In recent years, it has been developing a remarkable practice on such measures, disclosing the preventive dimension of its work of safeguarding the rights protected under the Convention.

It would be convenient, bearing these preliminary remarks in mind, to cover the development of the case-law of the Inter-American Court under the distinct headings

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pertaining to the functions ascribed to it by the American Convention (advisory and contentious functions, and provisional protective measures, respectively).

CASE-LAW IN THE EXERCISE OF THE ADVISORY JURISDICTION

As noted, in the exercise of its advisory jurisdiction, the Inter-American Court of Human Rights has delivered 17 Advisory Opinions so far. In the first Advisory Opinion (1982), the Court stressed the specificity of the instruments of international protection of human rights and the wide scope of its advisory faculty. The Court was of the opinion that its advisory jurisdiction could 'be exercised, in general, with regard to any provision dealing with the protection of human rights set forth in any international treaty applicable in the American States, regardless of whether it be bilateral or multilateral, whatever be the principal purpose of such a treaty, and whether or not non-Member States of the inter-American system are or have a right to become parties thereto'. In its fourth Opinion (1984), the Court reiterated the extensive interpretation of its advisory faculty. In its second Advisory Opinion (1982), the Court again emphasized the special character of the international protection of human rights and dismissed the possibility of an alleged interest on the part of reserving States in postponing the entry into force of the Convention. In its third Opinion (1983), the Court underlined the unique character of its wide advisory

2 Interpretation of the Meaning of "Other Treaties" in Article 63 of the American Convention, IACtHR Series A 1 (1982); 3 HRLJ 140 (1982).
4 It added that if one could request advisory opinions only on laws in force, such an excessively restrictive interpretation (of Article 64(2) of the Convention) would 'unduly limit' its advisory function. In its sixth Opinion, The Word “Laws” in Article 30, IACtHR Series A 6 (1986); 7 HRLJ 251, the Court clarified that the word "laws" in Article 30 of the Convention, is to be examined in accordance not only with the principle of legality but also with that of legitimacy: it "means a general legal norm tied to the general welfare, passed by democratically elected legislative bodies established by the Constitution, and formulated according to the procedures set forth by the constitutions of the States Parties for that purpose". Subsequently, in its thirteenth Advisory Opinion, Certain Attributes of the Inter-American Commission on Human Rights (Articles 41, 42, 46, 47, 50 and 51 of the American Convention), IACtHR Series A 13 (1993); 14 HRLJ 252, the Court advised that the Inter-American Commission is competent (under Articles 41-42 of the Convention) to determine whether or not a norm of domestic law of a State Party violates the obligations incumbent upon the latter under the American Convention, but is not competent to determine whether or not that norm contradicts the domestic law of that State.
5 The Effect of Reservations on the Entry into Force of the American Convention, IACtHR Series A 2 (1982); 3 HRLJ 151 (1982). In particular, the Court rejected the suggestion that the Convention did not enter into force upon ratification for a State Party that had made a reservation to it until the period for objections provide for in Article 20, Vienna Convention on the Law of Treaties had expired.
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function\(^7\) and explained the limitations imposed by the Convention as to the death penalty: according to the Court, 'the Convention imposes restrictions designed to delimit strictly its application and scope, in order to reduce the application of the penalty to bring about its gradual disappearance'.\(^8\)

In its fifth Advisory Opinion (1985),\(^9\) the Court, in pronouncing on freedom of expression (compulsory membership of journalists in an association of journalism), singled out the 'dual aspect' of that freedom (Article 13 of the Convention): it requires, first, that 'no one be arbitrarily limited or impeded' to express his own thoughts, and, second, that everyone be assured the right 'to receive any information whatsoever and to have access to the thoughts expressed by others'.\(^10\) Hence the close relationship between the right to freedom of expression and the right to receive information and ideas (right to information); the two dimensions ought to be 'guaranteed simultaneously'.\(^11\)

The Court warned in that respect that freedom of expression could in fact also be affected 'without the direct intervention of the State', when, for example, the communication and circulation of ideas are bound to be impeded by the existence of monopolies or oligopolies in the ownership of communications media. It further warned that a society which is not well informed is not truly free: freedom of expression constitutes 'the primary and basic element of the public order of a democratic society', and 'a cornerstone upon which the very existence of a democratic society rests'.\(^12\) It added that 'there must be a plurality of means of communication, the barring of all monopolies thereof, in whatever form, and guarantees for the protection of the freedom and independence of journalists'.\(^13\) And it concluded that compulsory licensing of journalists is incompatible with Article 13 of the Convention by denying access for persons to the 'full use of the news media as a means of expressing opinions or imparting information'.\(^14\)

Shortly afterwards, in its seventh Advisory Opinion (1986),\(^15\) the Court acknowledged the close relationship between freedom of expression and the right of

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\(^7\) In fact, only on one occasion so far (twelfth Advisory Opinion, Compatabilidad of Draft Legislation with Article 8(2) of the American Convention on Human Rights, Series A 12 (1991); 13 HRLJ 149 (1992), has the Court decided not to answer the request, as in its view it could undermine the contentious jurisdiction and negatively affect the human rights of those who had formulated complaints before the Inter-American Commission.

\(^8\) Ibid., supra note 6, para. 57. The Court advised that a State Party may 'apply the death penalty to crimes for which such a penalty was not previously provided for under its domestic law' and that it may not make a reservation to Article 4(4) to allow it to do so.

\(^9\) Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism, IACtHR Series A 5 (1985); 7 HRLJ 74 (1986).

\(^10\) Ibid., para. 30.

\(^11\) Ibid., para. 33. The Court also considered that the question whether a limitation on freedom of expression is 'necessary to ensure' one of the objectives listed in Article 13(2)(a) and (b) of the American Convention must be judged 'by reference to the legitimate needs of democratic societies and institutions' (para. 42).

\(^12\) Ibid., paras. 69-70.

\(^13\) Ibid., para. 56.

\(^14\) Ibid., para. 85.

\(^15\) Character and Scope of the Right to Reply or Correction Recognized in the American Convention, IACtHR Series A 7 (1986); 7 HRLJ 238 (1986).
reply or correction for inaccurate or offensive statements disseminated to the public in general. It interpreted Article 14(1) of the American Convention as recognizing an 'internationally enforceable' right of reply or correction; when this latter is not enforceable under domestic law, the State at issue is under the obligation (under Article 2 of the Convention) to adopt the legislative or other measures that may be necessary to give effect to that right. The Court further sustained that the fact that an Article of the Convention refers itself to the law is not sufficient to lose direct applicability, and observed that Article 14(1) of the Convention is directly applicable per se.

In its eighth Advisory Opinion (1987), the Court advised that the remedies of amparo and habeas corpus could not be suspended in accordance with Article 27(2) of the Convention, as they constituted 'indispensable judicial guarantees' to the protection of rights and freedoms which likewise could not be suspended according to the same provision. The Court, moreover, warned that the constitutional and legal provisions of the States Parties which authorize, explicitly or implicitly, the suspension of the remedies of amparo or habeas corpus in situations of emergency are to be regarded as incompatible with the international obligations which the Convention imposes upon those States, given that the writs of habeas corpus and amparo are among those judicial remedies which are essential for the protection of non-derogable rights and for the preservation of legality in a democratic society.

Directly related to that Opinion is the following - the ninth - Advisory Opinion of the Court (1987), in which it expressed the opinion that the remedies were provided for by domestic law or were formally accessible was not sufficient: they should also be effective and adequate. In its view, Article 8 of the Convention does not contain a judicial remedy itself, but rather recognizes that due process is applicable essentially to all judicial guarantees referred to in the Convention. It added that 'essential' judicial guarantees, not subject to derogation (Article 27(2)), include, besides habeas corpus and amparo, any other effective remedy before judges or competent tribunals (Article 25(1)) designed to guarantee respect of the rights whose suspension is not permitted by the Convention. Moreover, 'essential' judicial guarantees, not subject to suspension, include judicial procedures inherent in representative democracy as a form of government (Article 29(c)), designed to guarantee the full exercise of non-derogable rights, whose suppression or restriction entails the lack of protection of such rights. Those judicial guarantees, the Court

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16 Ibid., paras. 23, 25
17 Ibid., paras. 33, 35.
18 Ibid., para. 33.
20 In the understanding of the Court, the question of the suspension of guarantees cannot be detached from the 'effective exercise of representative democracy', to which Article 3 of the OAS Charter refers.
22 Even under the regime of suspension regulated by its Article 27.
concluded in its ninth Opinion, should be exercised within the framework and the principles of the due process of law (laid down in Article 8); and the measures taken by a government in a situation of emergency ought to count on judicial guarantees and be subject to a control of legality, so as to preserve the rule of law. In this way, in its eighth and ninth Advisory Opinions, the Court developed in its reasoning a realistic approach, taking into account the reality of the American continent, and insisting on the intangibility and prevalence of the judicial guarantees.23

In the tenth Advisory Opinion (1989),24 the Court stated that it was authorized by Article 64(1) of the American Convention to render advisory opinions on the interpretation of the 1948 American Declaration, in the framework and within the limits of its competence in relation to the OAS Charter and the American Convention and other treaties concerning the protection of human rights in the American States.25 In the fourteenth Opinion (1994),26 the Court sustained that the adoption, as well as the application, of a domestic law contrary to the obligations under the Convention is a violation of the latter, entailing the international responsibility of the State at issue; if an act pursuant to the application of such a law is an international crime, it generates the international responsibility not only of the State but also of the officials or agents who executed that act.27

In the eleventh Advisory Opinion (1990),28 the Court examined the question of the circumstances surrounding the requirement of the exhaustion of local remedies (under Article 46 of the American Convention). This requirement was to be approached in a more flexible way than in other contexts, in the light of the specificity of the international protection of human rights, with the presumptions operating in favour of the alleged victims. The requirement of exhaustion, in this way, according to the Court, does not apply if, by reason of indigence or generalized fear of lawyers to represent him or her legally, a complainant before the Commission is rendered unable to exhaust or utilize local remedies necessary to protect a right guaranteed by the Convention.

Meanwhile, the doctrinal debate proceeds as to the desirable enlargement de lege ferenda of the nucleus of non-derogable rights, and the equally desirable precise regulation and control of states of emergency.

Interpretation of the American Declaration on the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights, IACtHR Series A 10 (1989); 11 HRLJ 118 (1990).

This was so because, according to the Court, the American Declaration contains and defines the human rights which the OAS Charter refers to, in such a way that one cannot interpret and apply the OAS Charter in the field of human rights without integrating its pertinent norms with the corresponding provisions of the Declaration, as results from the practice followed by the OAS organs.


It remains to determine, as a step to be taken in the future, the individual responsibility (besides that of the State) in cases of violation of non-derogable rights (for example, the right to life, the right not to be subjected to torture or slavery, the right not to be incriminated by means of retroactive application of penalties).

In its fifteenth Advisory Opinion (1997), concerning the interpretation of Article 51 of the American Convention, the Court advised that the Inter-American Commission is not entitled to modify the opinions, conclusions and recommendations that the Commission has sent to the State at issue, except in exceptional circumstances, and that under no circumstances can a third report be rendered by the Commission (as the American Convention contemplates only the reports under its Articles 50 and 51, respectively). Most significant was the Court’s delivery of this Opinion despite the fact that the requesting State, Chile, had later withdrawn its request: the Court rightly found that this in no way affected its jurisdiction over the matter of which it had already been seized, and which had already been notified to all OAS member States and all organs mentioned in Chapter X of the OAS Charter. This fifteenth Advisory Opinion thus touched the very foundations of the Court’s advisory jurisdiction. Despite the oscillations in the position of the requesting State, the Court decided to retain jurisdiction over the matter it had been seized of, and delivered the Opinion. The Court’s advisory jurisdiction - exercised to the benefit of all actors in the inter-American system of protection as a whole - was thus greatly enhanced by this memorable fifteenth Advisory Opinion.

In its recent sixteenth Advisory Opinion (1999), a most important one, the Court advised that Article 36 of the 1963 Vienna Convention on Consular Relations recognizes to a foreigner in detention individual rights, among which is the right to information on consular assistance, to which correspond duties incumbent upon the receiving State (irrespective of its federal or unitary structure). The Court pointed out that the evolutive interpretation and application of the corpus juris of the International Law of Human Rights have had ‘a positive impact on International Law in affirming and developing the aptitude of this latter to regulate the relations between States and human beings under their respective jurisdictions’; the Court thus adopted the ‘proper approach’ in considering the matter submitted to it in the framework of ‘the evolution of the fundamental rights of the human person in contemporary International Law’.

The Court expressed the view that, for the due process of law to be preserved, ‘a defendant must be able to exercise his rights and defend his interests effectively and in full procedural equality with other defendants’. In order to attain its objectives, ‘the judicial process must recognize and correct any real disadvantages’ of those brought to court, ‘thus observing the principle of equality before the law and the courts’. Accordingly, the notification to persons deprived of their liberty abroad of

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30. These are pointed out in paras. 54-59 of the Opinion.
31. Compare also, in that Advisory Opinion, the Concurring Opinion of Judge Canfado Trindade, and the Dissenting Opinion of Judge Pacheco Gómez.
33. Ibid., paras. 84, 140.
34. Ibid., paras. 114-5.
35. Ibid., para. 117.
36. Ibid., para. 119.
their right to communicate with their consul contributes to the safeguard of their
defence and their procedural rights.\[37\] Thus, the individual right to information under
Article 36(1)(b) of the Vienna Convention on Consular Relations renders effective
the right to the due process of law.\[38\] The non-observance or obstruction of the
exercise of this right affects the guarantees to be secured in the judicial process.\[39\]
The Court in this way linked the right at issue to the evolving guarantees of due
process of law, and added that its non-observance in cases of the imposition and
execution of the death penalty amounts to an arbitrary deprivation of the right to life
itself (in the terms of Article 4 of the American Convention on Human Rights and
Article 6 of the International Covenant on Civil and Political Rights), with all the
juridical consequences inherent in a violation of this kind, that is, those pertaining to
the international responsibility of the State and to the duty to afford reparation.\[40\]

This truly pioneering, sixteenth Advisory Opinion of the Court has served as
inspiration for the emerging international case-law, in statu nascendi, on the matter;\[41\]

\[37\] Ibid., paras. 121-2.
\[38\] Ibid., para. 124.
\[39\] Ibid., para. 129.
\[40\] Ibid., para. 137. Compare also the Concurring Opinions of Judges Cançado Trindade and
García Ramírez, and the partially Dissenting Opinion of Judge Jackman.
\[41\] As promptly acknowledged by expert writing, for example, in referring to the more recent
la lumière notamment de l’avis de la Cour Interaméricaine des Droits de l’Homme du 1er
has also been pointed out, as to the Inter-American Court’s sixteenth Advisory Opinion, “le
soin mis par la Cour à démontrer que son approche est conforme au droit international”.
Moreover, “pour la juridiction régionale il n’est donc pas question de reconnaitre à la Cour de
la Haye une prééminence fondée sur la nécessité de maintenir l’unité du droit au sein du
système international. Autonome, la juridiction est également unique. (...) La Cour
Interaméricaine des Droits de l’Homme rejette fermement toute idée d’autolimitation de sa
compétence en faveur de la Cour mondiale fondamentalement parce que cette dernière ne
serait pas en mesure de remplir la fonction qui est la sienne”. Weckel, Helali and Sastre,
“Chronique de jurisprudence internationale”, 104 Revue générale de droit international
public (2000), 794 and 791. It has further been pointed out that the Inter-American Court’s
Advisory Opinion of 1999 contrasts with “la position restrictive prise par la Cour de La
Haye” in its decision of 2001 in the LaGrand case: “La juridiction régionale avait exprimé
son opinion dans l’exercice de sa compétence consultative. Or, statuant sur un différend
entre États, la juridiction universelle ne disposait pas de la même liberté, parce qu’elle devait faire
prévaloir les restrictions imposées à sa juridiction pour le défendeur”. Weckel, “Chronique de
And, furthermore: “La Cour Interaméricaine avait examiné dans quelle mesure la violation
du droit d’être informé de l’assistance consulaire pouvait être considérée comme une violation
de la règle fondamentale du procès équitable et si, par voie de conséquence, une telle irrégularité
de procédure dans le cas d’une condamnation à mort constituait aussi une atteinte illicite à la
vie humaine protégée par l’article 6 du Pacte relatif aux droits civils et politiques. (...) La CIJ
ne s’est pas prononcée sur ces questions qui ont trait à l’application de deux principes du droit
international (la règle du procès équitable et la droit à la vie)”. Ibid., p. 770. Compare also, in
further acknowledgement of the pioneering contribution of the sixteenth Advisory Opinion
of the Inter-American Court: Mennecke, “Towards the Humanization of the Vienna Convention
of Consular Rights - The LaGrand Case before the International Court of Justice”, 44
German Yearbook of International Law/Jahrbuch für internationales Recht (2001), 430-2, 453-5, 459-460 and 467-8; Mennecke and Tams, “The LaGrand Case”, 51 International
and is having a noticeable impact on the practice of the States\textsuperscript{42} of the region on the issue. It was the Advisory Opinion which has achieved the greatest level of intervention in its advisory proceedings (with eight intervening States, besides several non-governmental and individuals) in the whole history of the Court to date.\textsuperscript{43}

Most recently, the Inter-American Court has delivered its seventeenth Advisory Opinion (2002), on the \textit{Juridical Condition and the Human Rights of the Child}\textsuperscript{44}. The Court clarified the juridical personality that is ineluctably recognised by law to every human being (whether a child or an adolescent), irrespectively of his existential condition or the extent of his legal capacity to exercise his rights for himself (capacity of exercise). In fact, the recognition and the consolidation of the position of the human being as a full subject of the International Law of Human Rights constitutes, in our days, an unequivocal and eloquent manifestation of the advances of the current process of humanization of International Law itself (\textit{jus gentium}).

As it can be seen, the Court's Advisory Opinions have helped to shed light on some central issues, of the utmost importance, concerning both the determination of the wide scope of the protected rights under the American Convention, and the operation of the inter-American system of human rights protection.

**CASE-LAW IN THE EXERCISE OF THE CONTENTIOUS JURISDICTION**

The development of the case-law of the Inter-American Court in the exercise of its jurisdiction in contentious matters can be conveniently considered in relation to its most significant substantive, as well as procedural, aspects. As to the former, attention will be focussed on the emerging case-law as to the meaning of the rights protected under the American Convention, and the reparation that is due as a consequence of their violation. In respect of the latter, attention will be turned to the key questions of access to justice at the international level, the basis of international jurisdiction, and the State’s recognition of responsibility under the American Convention.

\textsuperscript{42} An examination of which goes beyond the purposes of the present paper.

\textsuperscript{43} In the public hearings (on this sixteenth Advisory Opinion) before the Court, apart from the eight intervening States, several individuals took the floor, namely: seven individuals representatives of four national and international non-governmental organizations (active in the field of human rights), two individuals of a non-governmental organization working for the abolition of the death penalty, two representatives of a (national) entity of lawyers, four University Professors in their individual capacity, and three individuals in representation of a person condemned to death. Earlier on, in the proceedings pertaining to the fourth (1984) and the fifth (1985) Advisory Opinions, some individuals presented their viewpoints in the respective public hearings before the Court, in representation of institutions (public as well as of the press, respectively); the proceedings pertaining to the thirteenth Advisory Opinion resulted in the participation of four representatives of three non-governmental organizations; in the proceedings concerning the fourteenth Advisory Opinion, two members of non-governmental organizations intervened; and those relating to the fifteenth Advisory Opinion led to the participation of the representatives of two non-governmental organizations.

\textsuperscript{44} IACtHR Series A 17 (2002).
Substantive Aspects

The Wide Scope of the Fundamental Right to Life (Article 4 of the Convention)

The first contentious cases in which the Inter-American Court established a violation of the right to life were those concerning disappearances in Honduras, viz. the Velásquez Rodríguez (1988)45 and Godínez Cruz (1989)46 cases. The contribution of the two Judgments of the Court on the merits in those cases consisted in having elaborated on the triple duty of the States Parties to prevent, investigate and punish the human rights violations, and to provide reparation for the consequences of the breaches, as well as in having linked the substantive provisions on the violated rights with the general duty, under Article 1(1) of the Convention, to respect and to ensure respect for the exercise of the rights set forth in the American Convention. This link has been systematically invoked ever since in other cases, by both the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights.

In Aloeboetoe v Suriname (1993),47 in which the respondent State had recognized its international responsibility (in 1991), the Court proceeded to the determination of the amount of reparations to be paid to the relatives of the murdered victims or their heirs; furthermore, it ordered the establishment of two trust funds and the creation of a foundation, as well as the reopening of a school located in Gujaba and the functioning of the medical dispensary already in place. The contribution of that Judgment consisted in having determined the reparations due for human rights violations in the social context in which the conventional norms of protection apply, taking sensibly in due account the cultural practices (such as polygamy) in the community of the maroons (saramacas) in Suriname, to which the seven murdered victims belonged.

Violations of the right to life were also found by the Court in the cases Neira Alegria v Peru (1995),48 Caballero Delgado and Santana v Colombia (1995),49 and Durand and Ugarte v Peru (2000).50 Such violations were established too in Paniagua Morales and Others v Guatemala (1998).51 The case is also important because of the Court’s expressions of concern about the prevailing situation of impunity surrounding the acts of the cas d’espèce. The Court characterized impunity as ‘the total lack of investigation, prosecution, capture, trial and conviction of those responsible for violations of the rights protected by the American Convention, in view of the fact that the State has the obligation to use all the legal means at its disposal to combat that situation, since

45 IACtHR Series C 4; 9 HRLJ 212 (1988).
46 IACtHR Series C 5.
47 IACtHR Series C 15; 13 HRLJ 413 (1993); 1–1 IHRR 208 (1994).
49 IACtHR Series C 22; 17 HKLJ 24 (1996); 3 IHRR 548 (1996) (disappearances in an area of army and guerrilla activity).
51 IACtHR Series C 37; 6 IHRR 1067 (1999).
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impunity fosters chronic recidivism of human rights violations, and total defencelessness of victims and their relatives.\(^{52}\) It should not pass unnoticed in this connection that in Blake v Guatemala (reparations, 1999)\(^ {53}\) the first resolutory point of the Court’s Judgment consisted in ordering the respondent State to investigate the facts and to identify and punish those responsible and to adopt the necessary measures of domestic law to assure compliance with that obligation. On the same theme, in its historic Judgment in the case concerning Peru of the massacre of Barrios Altos (2001),\(^ {54}\) the Court warned that provisions of amnesty, of prescription and of factors excluding responsibility intended to impede the investigation and punishment of those responsible for grave violations of human rights (such as torture, summary, extra-legal or arbitrary executions, and forced disappearances) are inadmissible; they violate non-derogable rights recognized by the international law of human rights. Laws of self-amnesty, the Court proceeded, impede knowledge of the truth and obstruct access to justice (and the obtaining of reparation), leading to the perpetuation of impunity and rendering the victims defenceless, being thus manifestly incompatible with the letter and spirit of the American Convention.\(^ {55}\) As a consequence of such manifest incompatibility, the Court concluded significantly, those laws have no legal effects and can no longer continue to represent an obstacle to the investigation of the facts and the punishment of those responsible for the human rights violations.\(^ {56}\)

Last but not least, in the paradigmatic case of Villagrán Morales and Others v Guatemala (merits, 1999)\(^ {57}\) (the so-called Street Children case), the Court, in establishing a violation of the right to life under Article 4 of the American Convention, to the detriment of the five murdered adolescents, expressed the opinion that ‘owing to the fundamental nature of the right to life, restrictive approaches to it are inadmissible. In essence, the fundamental right to life includes not only the right of every human being not to be deprived of his life arbitrarily, but also the right that he will not be prevented from having access to the conditions that guarantee a dignified existence’. In a Joint Concurring Opinion in that case, it was pointed out that ‘the

\(^{52}\) Ibid., para. 173. In another case, that of Carrido and Baigorria v Argentina (reparations, 1998), IACtHR Series C 39; 7 IHRR 70 (2000), in which the respondent State accepted responsibility for the facts, the Court devoted a whole section (section IX) of the Judgment to the State’s duty to take action at domestic level to render the Conventional obligations of protection effective.

\(^{53}\) IACtHR Series C 48; 7 IHRR 661 (2000).

\(^{54}\) IACtHR Series C 75 para. 41.

\(^{55}\) Ibid., para. 44. Compare also the Concurring Opinions of Judges Cançado Trindade and García Ramírez. Subsequently, in the same Barrios Altos case (interpretation of sentence) IACtHR Series C 83 (2001), the Court added that, given the nature of the violation constituted by the Peruvian self-amnesty laws, the decision it reached in the Judgment on the merits in the cas d’espèce (supra) had “general effects” (resolutory point n. 2). For the immediate repercussions of the case in Peru, cf. Judge Cançado Trindade, “[Interview:] Presidente de Corte Interamericana Reafirma que Amnistía a Violadores de DD.HH. es Ilegal”, in Liberación, Lima/Peru, 13 September 2001, p. 8.

\(^{56}\) IACtHR Series C 63; 7 IHRR 1136 (2000) para. 144.
duty of the State to take positive measures is stressed precisely in relation to the protection of life of vulnerable and defenceless persons, in situation of risk, such as the children in the streets'; ‘the needs of protection of the weaker, such as the children in the streets, require definitively an interpretation of the right to life so as to comprise the minimum conditions of life with dignity’.58

**The Right to Personal Integrity (Article 5 of the Convention)**

In its Judgment on the merits in *Cantoral Benavides v Peru* (2000),59 the Court, in establishing a violation of Article 5 of the American Convention, stated that certain acts which, in the past, were qualified as ‘inhuman and degrading treatment’, could, later on, with the passing of time, come to be considered as torture, given that the growing demands for protection ‘must be accompanied by a more vigorous response in dealing with infractions of the basic values of democratic societies’.60

Moreover, in both the *Cantoral Benavides* case and *Bámaca Velásquez v Guatemala* (merits, 2000),61 besides the tortures inflicted on the direct victims (Mr. Cantoral Benavides and Mr. Bámaca Velásquez, respectively), the prohibition of cruel, inhuman or degrading treatment was considered to extend (under Article 5(2) of the American Convention) to the sufferings undergone by their close relatives (indirect victims). That absolute prohibition thus had its scope ratione materiae enlarged. In cases of forced disappearance of persons, the Court added in the *Bámaca Velásquez* case,62 the victims are both the disappeared person and his close relatives. In other Judgments on the merits, as in *Blake v Guatemala* (1998)63 (and also reparations, 1999, supra), and in *Villagrán Morales and Others v Guatemala*, (1999, supra), the Court established the juridical foundations of this enlargement of the notion of victim, comprising also the close relatives of the direct victims. This understanding nowadays forms part of its jurisprudence constante.

The observance of the right to humane treatment (Article 5) becomes crucial when the individuals at issue are in detention, as illustrated by the Court’s decisions in the *Loayza Tamayo* and the *Sudrez Rosero* cases (cf. infra).

**The Right to a Fair Trial (Article 8 of the Convention)**

The Inter-American Court was first faced with an alleged breach of the right to a fair trial in *Maqueda v Argentina* (1995),64 but, as the parties reached a friendly settlement and the detainee was granted conditional liberty, the Court, upon request, allowed

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58 Joint Concurring Opinion of Judges Cançado Trindade and Abreu Burelli, paras. 4, 7.  
59 IACtHR Series C 99 (2000).  
60 Ibid., para. 99; 8 IHRR 1049 (2001).  
61 IACtHR Series C 70 (2000); 9 IHRR 80 (2002).  
62 Ibid., para. 158.  
63 IACtHR Series C 36; 6 IHRR 1028 (1999).  
64 IACtHR Series C 18; 3 IHRR 355 (1996).
the discontinuance of the case. Subsequently, the Court had the occasion to reflect upon the right to a fair trial under the American Convention in its Judgments on the merits in the cases of Loayza Tamayo v Peru (1997) and Suárez Rosero v Ecuador (1997).

In the Loayza Tamayo case, the Court declared that the Peruvian decrees-laws which defined the crimes of terrorism and 'traición a la patria' were incompatible with Article 8(4) of the Convention, in that they were in breach of the principle of non bis in idem set forth therein. This was the first time that the Court held in a contentious case that provisions of domestic law were incompatible with the American Convention. Some days after the Judgment, the respondent State complied with the Court's order to release the prisoner (Mrs. María Elena Loayza Tamayo) and, moreover, announced its decision to put an end to the so-called tribunals of 'faceless judges' ('jueces sin rostro') in Peru. Subsequently, in its Judgment in Castillo Petruzzi and Others v Peru (1999), the Court found that the proceedings conducted against the four persons concerned were invalid, as they were incompatible with the American Convention, and, furthermore, ordered that the four imprisoned persons be guaranteed a new trial, in which the guarantees of the due process of law were ensured.

In its Judgment in the Suárez Rosero case, the Court found the respondent State in breach of the judicial guarantees enshrined in Article 8(1) and (2) of the Convention. Moreover, it declared that Article 114 bis of the Ecuadorean Penal Code, which deprived all persons in detention under the Anti-Drug Law of certain judicial guarantees (as to the length of detention), violated per se Article 2 of the American Convention, irrespective of whether that norm of the Penal Code had been applied in the present case. This was the first time that the Court established a violation of Article 2 of the Convention by the existence per se of a provision of domestic law. The Court's Judgment in the Suárez Rosero case significantly devoted a whole section (section XIV) to the establishment of the violation of Article 2 of the

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65 It reserved the faculty to reopen and continue hearing the case, if there occurred a change in the circumstances which led to its settlement.
66 IACHR Series C 33; 6 IHRR 683 (1999).
68 For antecedents in the Court's case-law in support of the need to determine the incompatibility of domestic laws per se with the American Convention, and urging the Court to proceed to such determination within the context of concrete cases, cf. the Dissenting Opinions of Judge Cançado Trindade in the following cases: El Amparo v Venezuela, Judgment (on reparations) of 14 September 1996, IACHR Series C 28, and Resolution (on interpretation of judgement) of 16 April 1997, IACHR Series C 46; Caballero Delgado and Santana v Colombia, Judgement (on reparations) of 29 January 1997 IACHR Series C 31; and Genie Lacayo v Nicaragua, Resolution (on request for revision of judgment) of 13 September 1997, IACHR Series C 45.
69 This decision was announced by the Peruvian government in October 1997, shortly after the release of the prisoner on October 16th, communicated to the Court on October 20th.
70 IACHR Series C 52; 7 IHRR 690 (2000).
71 The Court did so on the basis that Ecuador, by the existence of Article 114 bis of its Penal Code, had not taken adequate measures of domestic law in order to render effective the right contemplated in Article 7(5) of the Convention.
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Convention (the general duty to harmonize national legislation with the norms of the American Convention). Shortly afterwards (on 24 December 1997), the Supreme Court of Ecuador decided to strike down the provision of the Ecuadorian Anti-Drug Law at issue, declaring it unconstitutional.\textsuperscript{72} This was the first time that a provision of national law was promptly modified as a result of a decision of the Inter-American Court.

The Right to an Effective Domestic Remedy (Article 25 of the Convention)

In its Judgment in Castillo Paez v Peru (1997),\textsuperscript{73} the Court, in contrast with its earlier approach\textsuperscript{74} to the right to an effective remedy under the Convention, for the first time elaborated on that right, set forth under Article 25 of the Convention. In its own words, the provision of Article 25, ‘on the right to an effective remedy before the competent national judges or tribunals, constitutes one of the basic pillars, not only


\textsuperscript{73} IACHR Series C 34; 6 IHRR 711 (1999).

\textsuperscript{74} In earlier cases, such as the decisions on the merits in Caballero Delgado and Santana v Colombia (1995), supra note 49, and Genie Lacayo v Nicaragua (1997) IACHR Series C 30; 6 IHRR 410 (1999), the Court had summarily disposed of the matter, on the basis of the test of the availability, rather than of the adequacy and effectiveness, of domestic remedies. In this way, no violation was established in those earlier cases of the State’s duty to provide effective local remedies under Article 25 of the Convention. This view, however, did not pass unchallenged. A Dissenting Opinion was expressed to the effect that Article 25 embodied a fundamental judicial guarantee far more important than one might prima facie assume, as the right to an effective remedy before competent national tribunals constituted a basic pillar not only of the Convention but of the rule of law itself in a democratic society, and its correct application had the sense of improving the administration of justice at national level. The dissent further recalled the Latin American origin of that judicial guarantee: from its insertion originally in the American Declaration of the Rights and Duties of Man (of April 1948), it was transplanted to the Universal Declaration of Human Rights (of December 1948), and from there to the European and American Conventions on Human Rights (Articles 13 and 25, respectively), as well as to the U.N. Covenant on Civil and Political Rights (Article 2(3)). In fact, the insertion of that guarantee into the 1948 American Declaration took place at a moment when, in parallel, the Commission on Human Rights of the United Nations was still preparing the Draft Universal Declaration (from May 1947 until June 1948), as recalled, in a fragment of memory, by the rapporteur of the Commission (René Cassin); in turn, the insertion of the provision on the right to an effective remedy before national jurisdictions was inspired in the corresponding provision of the American Declaration (Article XVIII), took place in the subsequent debates (of 1948) of the Third Committee of the General Assembly of the United Nations (compare also Cassin, “Quelques souvenirs sur la Déclaration Universelle de 1948”, 15 Revue de droit contemporain (1968) n. 1, p. 10. Compare also Verdoodt, Naissance et signification de la Déclaration Universelle des Droits de l’Homme, Nauwelaerst (ed), (Paris: Louvain, 1963), 116-9); Genie Lacayo v Nicaragua (revision of sentence, 1997); IACHR Series C 45, Dissenting Opinion of Judge Cançado Trindade (paras. 18-21); and Caballero Delgado and Santana v Colombia (reparations, 1997). IACHR Series C 31; 6 IHRR 430 (1999). Dissenting Opinion of Judge Cançado Trindade (paras. 2-3).
of the American Convention, but of the rule of law (État de Droit, Estado de Derecho) itself in a democratic society in the sense of the Convention.\textsuperscript{75} The Court added, in the Castillo Pérez case, that ‘Article 25 is intimately linked with the general obligation of Article 1(1) of the American Convention, in conferring functions of protection upon the domestic law of States Parties. The remedy of habeas corpus has the purpose of not only guaranteeing personal freedom and integrity, but also preventing the disappearance on indetermination of the place of detention and, ultimately, securing the right to life itself.\textsuperscript{76} Ever since, this has been the position of the Court: in subsequent Judgments,\textsuperscript{77} the Court reiterated its significant obiter dictum - now jurisprudence constante - to the effect that Article 25 constitutes one of the basic pillars not only of the American Convention but of the rule of law itself in a democratic society in the sense of the Convention, and is intimately linked to the general obligation of Article 1(1) of the Convention in attributing functions of protection to the domestic law of States Parties.

\textit{Freedom of Expression (Article 13 of the Convention)}

In the Court’s case-law to date, the leading case on freedom of expression is the Court’s Judgment on the prohibition in Chile (based on a constitutional provision) of the exhibition of the movie ‘The Last Temptation of Christ’ (2001).\textsuperscript{78} The Court, recalling the individual and social dimensions of the freedom of expression, pointed out that ‘the expression and dissemination of thought and information are indivisible’, so that a restriction on the possibilities of dissemination represents directly a limitation to the right to freedom of expression,\textsuperscript{79} respect for which is essential to the extension of ideas and information among persons.\textsuperscript{80} The individual and social dimensions of that right, the Court added, ‘have equal importance’ and ought to be simultaneously guaranteed; ‘freedom of expression, as a cornerstone of a democratic society, is an essential condition for this latter to be sufficiently informed’.\textsuperscript{81} In finding a violation of Article 13 of the Convention, the Court upheld the objective international responsibility of the State, for any act or omission on the part of any of its powers or

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{75} Ibid., para. 82. For the antecedent of this significant obiter dictum of the Court, compare also the Dissenting Opinion (para. 18) of Judge Cançado Trindade in \textit{Genie Lacayo v Nicaragua}, Resolution (on appeal for revision of judgement) of 13 September 1997.
\item \textsuperscript{76} Ibid., para. 83. On the interrelationship between Articles 25 and 1(1) of the American Convention, compare, again, the antecedent of the Dissenting Opinion (paras. 20-21) of Judge Cançado Trindade in the \textit{Genie Lacayo v Nicaragua} case, Resolution (on appeal for revision of judgement) of 13 September 1997.
\item \textsuperscript{77} For example, its Judgments on the merits in the cases \textit{Sudrez Rosero v Ecuador} (1997), supra note 67. and of \textit{Paniagua Morales and Others v Guatemala} (1998) supra note 51, \textit{Blake v Guatemala} (1998), supra note 63.
\item \textsuperscript{78} IACtHR Series C 73; 10 IHRR 130 (2003).
\item \textsuperscript{79} Ibid., paras. 64-5.
\item \textsuperscript{80} Ibid., para. 66.
\item \textsuperscript{81} Ibid., paras. 67-8.
\end{itemize}
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organs, irrespective of its hierarchy. The Court, inter alia, determined that the respondent State should, within a reasonable time, modify its domestic law, so as to put an end to prior censorship and allow the exhibition of the movie ‘The Last Temptation of Christ’ (resolutory point n. 4).

The Right to Property (Article 21 of the Convention)

In its Judgment on the merits in an unprecedented case, that of the Community Mayagna Awas Tingni v Nicaragua (merits, 2001), the Court’s decision protected a whole indigenous community (as the complaining party), and its right to communal property of its lands (under Article 21 of the Convention). The public hearings of the case before the Court were particularly illuminating with regard to the customary law of the indigenous Mayagna Awas Tingni community. In the light of Article 21 of the Convention, the Court determined that the delimitation, demarcation and issuing of the title to the lands of the indigenous Mayagna Awas Tingni community should be undertaken in conformity with its customary law, its uses and its habits.

In reaching this significant decision, the Court took into account the fact that ‘among the indigenous persons there exists a communitarian tradition about a communal form of the collective property of the land, in the sense that the ownership of this latter is not centred in an individual but rather in the group and his community...’. The Court also stressed that to ‘the indigenous communities the relationship with the land is not merely a question of possession and production but rather a material and spiritual element that they ought to enjoy fully, so as to preserve their cultural legacy and transmit it to future generations’.

Reparations: The Concept of the ‘Project of Life’

Article 63(1) of the American Convention opens a wide horizon in respect of reparations for violations of the rights protected by it, in referring to other forms of reparation, as well as compensation. The Inter-American Court, accordingly, in its jurisprudence constante, has ordered distinct kinds of reparations, stressing the respondent States’ obligations to take positive measures (obligaciones de hacer)
also in that regard. In several recent cases, the Court has drawn attention to the importance of non-pecuniary reparations and has paid due attention to the rehabilitation of the surviving victims and their relatives.

One aspect of its rich case-law in this regard, which deserves to be singled out, is the Court's jurisprudential construction of the concept of the 'project of life' (proyecto de vida). In its Judgment in Loayza Tamayo v Peru (reparations, 1998), the Court for the first time pronounced on the concept of the project of life, linked to that of satisfaction, among other measures of reparation. The Court noted that the complaint of damage to the project of life 'is definitely not the same as the immediate and direct harm to a victim's assets', but rather seeks to fulfil 'the full self-actualisation of the person concerned'. The Court found that the circumstances in which the detention of the victim had taken place caused a damage to her project of life.

To the Court, the project of life 'is akin to the concept of personal fulfilment, which in turn is based on the options that an individual may have for leading his life and achieving the goal that he sets for himself. Strictly speaking, those options are the manifestation and guarantee of freedom. An individual can hardly be described as truly free if he does not have options to pursue in life and to carry that life to its natural conclusion. Those options, in themselves, have an important existential value. Hence, their elimination or curtailment objectively abridges freedom and constitutes the loss of a valuable asset, a loss that this Court cannot disregard'. The Court returned to its consideration of the concept of the project of life in its Judgment on the merits in the 'Street Children' case (Villagráñ Morales and Others v Guatemala, 1999). More recently, in Cantoral Benavides v Peru (reparations, 2001), the Court, inter alia, decided (resolutory point n. 6) that the State ought to grant the complainant - a victim of torture - the means to undertake and conclude his (interrupted) studies of university or superior level in a centre of recognised academic quality. This determination by the Court of the damage to the project of life of the complainant, as well as of the need to provide reparation for it, constitutes a form of satisfaction, conducive to the rehabilitation of the victim.

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87 Ibid., para. 147.
88 Ibid., paras. 147-54.
89 Ibid., para. 148. In a Joint Concurring Opinion in the Loayza Tamayo case (reparations, 1998) supra note 86, it was noted that "the project of life encompasses fully the ideal of the American Declaration [of Human Rights] of 1948 of proclaiming the spiritual development as the supreme end and the highest expression of human existence. The damage to the project of life threatens, ultimately, the very meaning which each human person attributes to her existence. When this occurs, a damage is caused to what is most intimate in the human being: this is a damage endowed with an autonomy of its own, which affects the spiritual meaning of life". Joint Concurring Opinion of Judges Cançado Trindade and Abreu Burelli, para. 16, and compare also para. 10.
90 Supra note 57.
91 IACtHR Series C 88.
92 The emphasis given by the Court, in the cas d'espece, to the formation of the victim, to his education, places this form of reparation in an adequate perspective, from the angle of the integrity of the personality of the victim, bearing in mind his self-accomplishment as a human being and the reconstruction of his project of life. Separate Opinion of Judge Cançado Trindade, paras. 8 and 10.
Procedural Aspects

Access to Justice at the International Level

The central question of the individual’s access to justice at the international level has been the object of attention in the case-law of the Inter-American Court, with regard both to the importance of the right of individual petition under the American Convention, as well as the conditions of admissibility of individual complaints. In its Judgment in *Castillo Petruzzi and Others v Peru* (preliminary objections, 1998), the Court upheld the integrity of the right of individual petition (challenged by the respondent State) under the American Convention (Article 44) in the circumstances of the case. It drew attention to the importance of that right, observing that the broad faculty ‘to make a complaint is a characteristic feature of the system for the international protection of human rights’. In a Concurring Opinion, it was observed that ‘without the right of individual petition, and the consequent access to justice at international level, the rights enshrined into the American Convention would be reduced to a little more than dead letter’; thus, the right of individual petition - rendering the protected rights effective - constituted ‘a fundamental clause upon which was erected ‘the juridical mechanism of emancipation of the human being vis-à-vis his own State for the protection of his rights in the ambit of the International Law of Human Rights’.

The other aspect of the question of the access of the individual to justice at international level that is dealt with in the case-law of the Court pertains to the conditions of admissibility of individual complaints.

In its earlier case-law, the Court used to admit the re-opening and re-examination by the Court of an objection of pure admissibility, favouring the respondent party, when this should have been definitively resolved by the Inter-American Commission. Just as the Commission’s decisions of inadmissibility are final, so should its decisions of admissibility be: either all decisions - of admissibility or otherwise - should be allowed to be reopened before the Court, or they should all be kept exclusive to the Commission. To allow for a reopening or review by the Court of a decision on admissibility by the Commission created an unbalance between the parties, favouring the respondent States. In *Gangaram Panday v Suriname* (preliminary objections, 1991) the Court came to admit that, if an objection of non-exhaustion of local remedies is not raised in limine litis, it is tacitly waived. But it was necessary for the Court to go further than that, since, if the respondent State waived the objection of non-exhaustion of local remedies by not raising it in limine litis, it is tacitly waived. But it was necessary for the Court to go further than that, since, if the respondent State waived the objection of non-exhaustion of local remedies by not raising it in limine litis, in the prior procedure...
before the Commission, it would be inconceivable that it could freely withdraw that waiver in the subsequent procedure before the Court (estoppel/foreclosure) by raising the objection again. This is precisely what happened in the Loayza Tamayo and Castillo Páez cases (preliminary objections, 1996), concerning Peru, where the Court, reorienting its case-law, took the important step of rightly determining that, if the respondent State failed to invoke the preliminary objection of non-exhaustion of local remedies in the proceedings on admissibility before the Commission, it was precluded from invoking it subsequently before the Court (estoppel). In this way, the Court redressed the earlier unbalance to the detriment of the complainants, fostering the procedural position of the individuals in the proceedings under the American Convention.

**The Basis of International Jurisdiction**

Shortly after the Court’s Judgment in Castillo Petruzzi and Others v Peru, the respondent State (under the Presidency of Mr. Alberto Fujimori) announced the ‘withdrawal’ of its instrument of acceptance of the Court’s compulsory jurisdiction, with ‘immediate effects’. In its two Judgments on competence of 24 September 1999, in the Constitutional Court case and the case of Ivcher Bronstein v Peru, the Inter-American Court, in asserting its competence to adjudicate on those cases, declared inadmissible the intended ‘withdrawal’ by the respondent State of its contentious jurisdiction with ‘immediate effects’. The Court warned that its competence could not be conditioned by acts distinct from those of its own. It added that, in recognising its contentious jurisdiction, a State accepts the prerogative of the Court to decide on any question affecting its competence, being unable, later on, to attempt to withdraw suddenly from it, as that would undermine the whole international mechanism of protection.

The Court observed that there exist unilateral acts of the States which are completed by themselves, in an autonomous way (such as the recognition of a State or government, diplomatic protest, promise, renunciation), and unilateral acts performed in the ambit of the law of treaties, governed and conditioned by the latter (such as ratification, reservations, acceptance of the clause of contentious jurisdiction of an international tribunal). The unilateral act under consideration in the present case fell within the latter category. The American Convention cannot be at the mercy of limitations not provided for by it, imposed suddenly by a State Party for reasons of domestic order. The American Convention does not foresee the unilateral withdrawal of a clause, and even less of a clause of the importance of the one which provides for the acceptance of the contentious jurisdiction of the Court. The sole

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99 IACtHR Series C 25.
100 IACtHR Series C 24.
101 Compare also, on this point, in both cases, the Separate Opinions of Judge Cançado Trindade.
103 Supra note 93.
104 IACtHR Series C 55.
105 IACtHR Series C 54.
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possibility which the American Convention foresees is that of the denunciation (of the Convention as a whole), with the observance of a 12-month lapse of time, and without comprising facts prior to the denunciation. This is the same lapse of time set forth in the Vienna Convention on the Law of Treaties of 1969. This is an imperative of juridical security, which ought to be rigorously observed in the interest of all States Parties.

The Court proceeded, thus, with its examination of the pending contentious cases against the Peruvian State, and it could not have been otherwise: this is a duty incumbent upon it, under the American Convention, as an autonomous judicial organ of the international protection of human rights. The respondent State had undertaken an international engagement from which it could not, all of a sudden, withdraw in its own terms. The purported unilateral ‘withdrawal’ with ‘immediate effects’ of the respondent State had no juridical foundation, neither in the American Convention, nor in the law of treaties, nor in general international law. The intended ‘withdrawal’, besides being unfounded, would have brought about the ruin, to the detriment of all States Parties to the American Convention, of the inter-American system of protection as a whole, constructed with so much effort along the last decades. The Court then decided, in conclusion, that the intended ‘withdrawal’ of the respondent State was ‘inadmissible’.

With its important decision in those cases, the Court safeguarded the integrity of the American Convention, which, as the other human rights treaties, bases its application on the collective guarantee in the operation of the international mechanism of protection. The Court’s aforementioned Judgments, in the Constitutional Court case and the case of Ivcher Bronstein v Peru, contributed ultimately to enhance the foundation of its jurisdiction in contentious matters. With the subsequent change in government in the country, the Peruvian State rendered ‘without effects’ the earlier purported ‘withdrawal’ from the Court’s competence, and ‘normalised’ its relations with the latter (on 9 February 2001), complying with the Court’s Judgments. In that regard, also deserving of special mention are the Judgments of the Court in Blake v Guatemala case (preliminary objections, 1996, IACtHR Series C 27; merits, 1998 supra note 63; and reparations, 1999 supra note 53): its decision on the legal issue raised therein, in relation to the alleged limitation ratione temporis of the Court’s competence, touched the very basis of its jurisdiction in contentious matters.

On that date, the Minister of Justice of Peru visited the headquarters of the Court in San José, Costa Rica, and handed to the Court’s President two notes, whereby the Peruvian State expressly recognized its international responsibility for the violation of the rights of the three dismissed Judges of the Constitutional Court, as well as of Mr. Baruch Ivcher Bronstein (with regard to the Court’s Judgments, on the merits, of 31 January 2001, and 6 February 2001, respectively), and informed the Court of the measures the Peruvian State was taking in order to re-establish the rights of those persons. Inter-American Court of Human Rights, Press Release CDH-CP2/01, of 9 February 2001, pp. 1-2.

The basis of the Court's jurisdiction in contentious matters came also to the fore in *Hilaire, Benjamin, and Constantine v. Trinidad and Tobago* (preliminary objections, 2001). The respondent State had interposed a preliminary objection, of a kind not expressly foreseen in Article 62 of the American Convention, which, in the Court's assessment, 'would lead to a situation in which the Court would have as first parameter of reference the Constitution of the State and only subsidiarily the American Convention, a situation which would bring about a fragmentation of the international legal order of protection of human rights and would render illusory the object and purpose of the American Convention'.

This was clearly unacceptable. As the Court, furthermore, observed, 'the instrument of acceptance on the part of Trinidad and Tobago, of the contentious jurisdiction of the Tribunal, does not fit into the hypotheses foreseen in Article 62(2) of the Convention. It has a general scope, which ends up by subordinating totally the application of the American Convention to the domestic law of Trinidad and Tobago pursuant to what its national tribunals decide. All this implies that this instrument of acceptance is manifestly incompatible with the object and purpose of the Convention' (para. 88). On the basis of this conclusion as to the rationale of Article 62(2) of the American Convention (*numerus clausus*), the Court retained jurisdiction to adjudicate on the *Hilaire, Benjamin, and Constantine* cases, and safeguarded the integrity of its own jurisdictional basis in particular, and of the mechanism of protection under the American Convention as a whole.

**The State's Recognition of International Responsibility**

Last but not least, as a positive development in the Court's experience to date, there have been cases in which the respondent States have recognised before the Court their international responsibility under the American Convention. Such recognition (*allanamiento*) has had the effect of putting an end to controversies as to the facts of the respective cases, and has enabled the Court to move on more expeditiously to the reparations stage. The first time this happened was in *Aloeboetoe and Others v Suriname* (1991-1993). Subsequently, it also happened in the cases of *El Amparo v Venezuela* (1994-1995), *Garrido and Baigorria v Argentina* (1996), *El Caracazo* at Corte Interamericana de Derechos Humanos on September 22, 2015.
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v Venezuela (1999),\textsuperscript{114} Trujillo Oroza v Bolivia (1999-2000),\textsuperscript{115} and Barrios Altos v Peru (2001).\textsuperscript{116} It took place as well in Benavides Cevallos v Ecuador (1998),\textsuperscript{117} where a significant friendly settlement was reached before the Court, satisfactory to all concerned.

CASE-LAW PERTAINING TO PROVISIONAL MEASURES OF PROTECTION

Under Article 63(2) of the American Convention, the Inter-American Court can also order the Provisional Measures of Protection that it may deem pertinent, in cases of extreme gravity and urgency and in order to avoid irreparable damage to persons. It may do so - and it has in fact done so - in relation both to pending cases and to cases which have not yet been submitted to it, upon request of the Commission. Such measures have gained a growing importance in the case-law of the Court in recent years; they disclose the preventive dimension of the international protection of human rights, and represent a true jurisdictional guarantee of preventive character in the international safeguard of the fundamental rights of the human person.

The great majority of the petitions for provisional measures have been admitted and ordered by the Inter-American Court, in relation both to cases pending before itself, as well as to cases not yet submitted to it, at the request of the Commission.\textsuperscript{118} Before ordering provisional measures of protection, the Court always verifies if the State at issue has recognised (under Article 62(2) of the Convention) as obligatory its competence in contentious matters. The Provisional Measures of Protection have been ordered in practice in cases implying mainly an imminent threat to the life or the integrity of the person.\textsuperscript{119} In various requests for such measures on the part of the Commission in cases not yet pending before the Court, the latter has deemed applicable the presumption that such measures of protection are necessary. The Court has, in practice, not required from the Commission substantial evidence that the facts are true, but proceeded rather on the basis of the reasonable presumption (prima facie evidence) that this is the case.

\textsuperscript{114} IACHR Series C 58.
\textsuperscript{115} IACHR Series C 64.
\textsuperscript{116} Supra note 54.
\textsuperscript{117} IACHR Series C 38.
\textsuperscript{118} All Provisional Measures of Protection ordered by the Court (only on very rare occasions has it decided not to order them) until the end of 2001, are now systematized, in the three volumes published to date, of its new Series E of official publications.
\textsuperscript{119} One example, among many, is afforded by the case of Loayza Tamayo (1996, Peru), where the Court ordered Provisional Measures of Protection pertaining to the conditions of detention of Mrs. M.E. Loayza Tamayo, so as to safeguard her physical, psychological and moral integrity.
Until recently, the Provisional Measures ordered by the Inter-American Court, or the Urgent Measures dictated by its President, have effectively protected fundamental rights, essentially the right to life and the right to personal (physical, mental and moral) integrity. But now other rights are being protected as well; this is not surprising, as all human rights are interrelated and indivisible, there being, juridically and epistemologically, no impediment for them to be ordered so as to safeguard other human rights, whenever the pre-conditions of the extreme gravity and urgency and of the prevention of irreparable damages to persons, set forth in Article 63(2) of the American Convention, are met.

More than 1500 persons (petitioners or witnesses) have been protected to date by the measures ordered by the Inter-American Court, or its President, which reveals their extraordinary importance. On one occasion, in *James and Others v Trinidad and Tobago* (1999), the measures ordered by the Court (for suspension of the execution of sentences imposing the death penalty) gave rise to significant considerations of a doctrinal order. On another occasion, in the case of the newspaper “*La Nación*” v *Costa Rica* (2001), on freedom of expression, the Court ordered the suspension of the execution of a sentence of a national tribunal against a journalist. In its resolutions on Provisional Measures, the Inter-American Court, besides the adoption of such measures, has also required the State to report to it periodically with information on their implementation, and the Commission to present to the Court its observations on the State reports. This has enabled the Court itself to exert a continuous monitoring of the compliance, on the part of the States at issue, with its own Provisional Measures of Protection.

Recently, a significant new development has taken place in two cases concerning collectivities of people. In the first one, that of *Haitians and Dominicans of Haitian Origin in the Dominican Republic* (2000), the Court adopted Provisional Measures intended, inter alia, to protect the lives and personal integrity of five individuals, to avoid the deportation or expulsion of two of them, to allow the immediate return to the Dominican Republic of two others, and the family reunification of two of them with their children, besides the investigation of the facts. By means of this Provisional Measure, which represents the embryo of an international habeas corpus, the Court for the first time thus extended protection to new rights (in addition to the fundamental rights to life and personal integrity) under the American Convention.

Shortly afterwards, in the case of the *Community of Peace of San José of Apartadó v Colombia* (2000), the full Court ratified the Urgent Measures ordered by its President in favour of the members of a ‘Community of Peace’ in Colombia, and required the State, inter alia, to secure the necessary conditions for the displaced members of that community to return to their homes.

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120 Order of the President, 11 May 1999, Series E. No 2, p.323.
121 Court Order, 23 May 2001, Series E. No 3, p.283.
122 Court Orders, 7 and 18 August 2000, 12 November 2000, Ibid., pp.81, 87, 133.
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The Provisional Measures of Protection ordered by the Court in those two cases, in the course of the year 2000, are of particular importance, as they greatly enlarge the circle of protected persons. Recently (resolution of 18 June 2002), the Court, in expanding the Measures of Protection in the Community case, extending them also to persons who render services to that Community, pointed out the duty of the State to protect the life and personal integrity of all persons under protection of the measures vis-à-vis third parties (notably clandestine groups and paramilitary). In this way, the Inter-American Court, it is submitted, acknowledged the pressing need of developing the obligations *erga omnes* of protection in the framework of the American Convention on Human Rights.

The position of individuals seeking protection has been lately strengthened by means of another development. In the Constitutional Court case (2000), concerning Peru, one of the three Judges dismissed from that Court lodged directly with the Inter-American Court a request for Interim Measures of Protection. As the case was pending before the Inter-American Court (which was then not in session), its President adopted Urgent Measures, ex officio (on 7 April 2000), for the first time in the Court's history, in order to avoid irreparable damage to the petitioner. The same situation occurred in the case *Loayza Tamayo v Perú* (2000, then under supervision for execution of the Sentence). In both cases (Constitutional Court and Loayza Tamayo), the full Court ratified the Urgent Measures ordered by its President. These two recent episodes illustrate the importance of the *direct access* of the petitioners to the Court, even more forcefully in a situation of extreme gravity and urgency.

CONCLUDING OBSERVATIONS

In the case-law of the Inter-American Court, as in the domain of the International Law of Human Rights as a whole, there has been a clear emphasis, in the process of interpretation of human rights treaties, on the element of the object and purpose of such treaties, so as to ensure an effective protection (*effet utile*) of the guaranteed rights. Early in its history, the Inter-American Court stressed the special character of human rights treaties (as distinguished from multilateral treaties of the traditional type), and further emphasised the objective character of the obligations set forth in the American Convention. The findings of the Court reinforce the necessarily

125 In its Second Advisory Opinion, supra note 5.
127 Compare also, moreover, the Court’s Seventh Advisory Opinion, supra note 15.
restrictive interpretation of restrictions (limitations and derogations) to the exercise of guaranteed rights.\textsuperscript{128}

Furthermore, the Court’s interpretation of the American Convention has been evolutive or dynamic, so as to respond to the new needs of protection. Thus, in its historical sixteenth Advisory Opinion on the Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law (1999),\textsuperscript{129} for example, the Court stated that ‘human rights treaties are living instruments, whose interpretation ought to follow the evolution of times and the current conditions of life’.\textsuperscript{130} In that Opinion, the Court made it clear that in its interpretation of the norms of the Convention it should aim at extending protection in new situations on the basis of pre-existing rights. The same line of evolutive or dynamic interpretation was followed by the Court in, for example, its Judgment on the merits in Cantoral Benavides v Peru (2000).\textsuperscript{131}

Of great importance is the Inter-American Court’s firm position in tackling key issues of interpretation and application of the American Convention, such as the right of individual petition\textsuperscript{132} and the basis of its own jurisdiction in contentious matters.\textsuperscript{133} The Court pointed out that these issues pertained to conventional clauses of fundamental relevance (cláusulas pétreas) of the international protection of human rights, and warned that any attempt to undermine them would threaten the functioning of the whole mechanism of protection under the American Convention, being thus inadmissible.

The aforementioned Court’s decisions regarded those provisions (on the right of individual petition and on the recognition of its compulsory jurisdiction) as constituting the basic pillars of the mechanism whereby the emancipation of the individual vis-à-vis his own State is achieved.\textsuperscript{134} The case-law of the Inter-American Court designed
classification of cases by country:

\textsuperscript{128} It should not pass unnoticed that those restrictions must not be inconsistent with the other obligations under international law incumbent upon the State concerned. Limitations, when permitted, remain exceptional, and are thereby to be interpreted restrictively; they are not meant to confer a wide margin of action upon the respondent State, but rather to secure an effective enforcement of protected human rights. The gradual evolution from a single and general clause on limitations (as found only in the 1948 Universal Declaration of Human Rights) into several particular formulas in relation to certain rights (as found in several human rights treaties, including the American Convention on Human Rights) had a purpose: that of tailoring limitations to the extent strictly necessary so as to secure the most effective protection to the individuals. Kiss, “Permissible Limitations on Rights”, The International Bill of Rights - The Covenant on Civil and Political Rights Henkin (ed.) (New York: Columbia University Press, 1981) 291 and 308-310.

\textsuperscript{129} Supra note 32.

\textsuperscript{130} Ibid., para. 114.

\textsuperscript{131} Supra note 59.

\textsuperscript{132} See Castillo Petruzzi and Others v Peru (preliminary objections, 1998), supra note 93 and 94.

\textsuperscript{133} See the Constitutional Court and Ivcher Bronstein v Peru cases, competence, 1999, supra notes 103, 104, and the cases of Hilaire, Benjamin and Constantine v Trinidad and Tobago (preliminary objections, 2001) supra note 108.

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Court has thus rightly set limits to State voluntarism, has safeguarded the integrity of the American Convention and the primacy of considerations of ordre public over the will of individual States, has set higher standards of State behaviour and established some degree of control over the interposition of undue behaviour by States, and has reassuringly enhanced the position of individuals as subjects of the International Law of Human Rights, with full procedural capacity. In a continent troubled by uncertainties and constant threats to human rights, the evolving case-law of the Inter-American Court of Human Rights is nowadays, as already indicated, the juridical patrimony of all States and peoples of that part of the world.

Furthermore, the case-law of the Inter-American Court has indeed contributed to the creation of an international ordre public in the region, based upon the respect for human rights in all circumstances. In that connection, there remains in our days a pressing need for the adoption of national measures of implementation of the American Convention on Human Rights so as to ensure the direct applicability of its norms in the domestic law of States Parties as well as the full compliance with the Inter-American Court’s decisions, along with a clearer understanding of the wide scope of the conventional obligations of protection undertaken by States Parties, engaging all powers and agents of the State, irrespective of hierarchy, at all levels.

A last point ought to be made: the evolution of the International Law of Human Rights in general, and the jurisprudence constante of the Inter-American Court in particular, have helped to develop the capacity of International Law to regulate efficiently relations which have a specificity of their own - at intra-State, rather than inter-State, level - opposing States to individuals under their respective jurisdictions. In so doing, the Inter-American Court\footnote{Like its sister Institution in Strasbourg, the European Court of Human Rights.} has been contributing to the enrichment and humanisation of contemporary Public International Law. It has done so as from an essentially and necessarily anthropocentric (rather than State-centric) outlook, as aptly foreshown, since the XVIth century, by the so-called founding fathers of the law of nations (droit des gens). In the present domain of protection, International Law has indeed been made use of, in order to improve and strengthen, and never to weaken or undermine, the protection of the recognised rights inherent to all human beings.\footnote{Cançado Trindade, “Co-Existence and Co-ordination of Mechanisms of International Protection of Human Rights (At Global and Regional Levels)”, 202 Recueil des Cours de l’Académie de Droit International de La Haye (1987) 91-112 and 401; Cançado Trindade, Tratado de Direito Internacional dos Direitos Humanos, vol. II, Porto Alegre/Brazil, S.A. Fabris Ed., 1999, chapter XI, 23-200.}