

INTER-AMERICAN COURT OF HUMAN RIGHTS
ADVISORY OPINION OC-26/20
OF NOVEMBER 9, 2020
REQUESTED BY THE REPUBLIC OF COLOMBIA

**THE OBLIGATIONS IN MATTERS OF HUMAN RIGHTS OF A STATE THAT HAS
DENOUNCED THE AMERICAN CONVENTION ON HUMAN RIGHTS AND THE
CHARTER OF THE ORGANIZATION OF AMERICAN STATES**

**(Interpretation and scope of Articles 1, 2, 27, 29, 30, 31, 32, 33 to 65 and 78 of
the American Convention on Human Rights and 3(l), 17, 45, 53, 106 and 143 of
the Charter of the Organization of American States)**

the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”), composed of the following Judges:

Elizabeth Odio Benito, President;
L. Patricio Pazmiño Freire, Vice President;
Eduardo Vio Grossi, Judge;
Humberto Antonio Sierra Porto, Judge;
Eduardo Ferrer Mac-Gregor Poisot, Judge;
Eugenio Raúl Zaffaroni, Judge, and
Ricardo Pérez Manrique, Judge,

also present

Pablo Saavedra Alessandri, Secretary, and
Romina I. Sijniensky, Deputy Secretary,

pursuant to Article 64(1) of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) and to Articles 70 to 75 of the Rules of Procedure of the Court (hereinafter “the Rules”), issues this Advisory Opinion, which is structured as follows:

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I PRESENTATION OF THE REQUEST

1. On May 6, 2019, the Republic of Colombia (hereinafter “Colombia,” “the Colombian State” or the “requesting State”), presented a request for an advisory opinion, pursuant to Article 64(1) of the American Convention and the provisions of Article 70(1) and 70(2) of the Court’s Rules of Procedure, concerning “the human rights obligations of a State that denounces the American Convention on Human Rights and seeks to withdraw from the Organization of American States” (hereinafter, “the request”).¹

2. Colombia presented the considerations that motivated its request, indicating that:

Recent events in the region show that a situation may occur at any time whereby a State in the continent may pursue actions to disengage itself from its obligations in the terms of the American Convention and of the OAS Charter. If, in that State there is also a general situation of serious and systematic violations of human rights, duly documented by the organs of the Organization, including the [Commission], there arises a need to determine whether those actions produce the effect of entirely eliminating the international protection of the human rights of individuals subject to the jurisdiction of the authorities of that State.

A situation such as the one described would directly affect the protection of human rights in the Americas, a matter in which all member States of the OAS have a legitimate interest. This is the reason for the formulation of this Request.

[...]

In the above context, this request for an Advisory Opinion is intended to enable the [...] Inter-American Court to expand on its interpretation of the provisions for the protection of human rights in conventions and in customary law, having regard to the provisions of Article 64(2) of the American Convention on Human Rights, which are covered by the expression “other treaties” mentioned in that article.

[...]

Article 78 of the Convention deserves special mention, because it establishes the possibility of denouncing that international treaty. It states that denunciation shall not affect obligations concerning acts performed by the denouncing State “prior to the effective date of denunciation,” but says nothing about the obligations related to acts performed after that date.

Therefore, when there is a rupture of the democratic order in the denouncing State, and there is a situation of systematic and generalized violations of human rights, it is conceivable that the denunciation of the American Convention would leave individuals under the jurisdiction of that State without protection.

[...]

[...] Colombia considers that it is highly appropriate that the [...] Court should interpret the scope, not only of several provisions of the Charter and of the American Declaration, but also of a number of substantive articles of the Convention, as well as Article 78(2), referring to the scope and effects of denunciation of the Convention.

3. Based on the foregoing, Colombia submitted the following specific questions to the Court:

A. In the light of international, conventional and customary law, and, in particular, of the American Declaration of the Rights and Duties of Man of 1948, what obligations

¹ The full text of the request is available at the following link of the Court’s web page: http://www.Cortetidh.or.cr/docs/opiniones/sol_oc_26_esp.pdf

in matters of human rights does a Member State of the Organization of American States have when it has denounced the American Convention on Human Rights?

B. In the event that a State further denounces the Charter of the Organization of American States, and seeks to withdraw from that Organization, what effects do that denunciation and withdrawal have on the obligations referred to in the first question?

C. When a situation of serious and systematic violations of human rights arises under the jurisdiction of a State in the Americas which has denounced the American Convention and the Charter of the Organization of American States (hereinafter "OAS Charter"),

1. What obligations do the remaining member States of the OAS have in matters of human rights?
2. What mechanisms are available to Member States of the OAS to enforce those obligations?
3. To what mechanisms of international protection of human rights can persons subject to the jurisdiction of the denouncing State have recourse?

4. Colombia appointed Ambassador Juan José Quintana, Director of the Department of Human Rights and International Humanitarian Law of the Ministry of Foreign Affairs as its Agent for the purposes of this Request for an Advisory Opinion.

II PROCEEDINGS BEFORE THE COURT

5. In notes dated June 7, 2019, the Secretariat of the Court (hereinafter "the Secretariat"), pursuant to the provisions of Article 73(1) of the Rules of Procedure,² forwarded copies of the request to the other Member States of the Organization of American States (hereinafter "the OAS"), the OAS Secretary General, the President of the OAS Permanent Council, the President of the Inter-American Juridical Committee and the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission"). In these notes, the Secretariat advised that the President of the Court, in consultation with the other judges, had established September 10, 2019, as the deadline for presenting written observations related to the request. Also, following the instructions of the President and as established in Article 73(3) of the said Rules,³ the Secretariat, in notes dated June 18, 2019, invited various international and civil society organizations and academic institutions of the region to forward their written opinion on the matters submitted to the Court within the aforementioned time frame. Lastly, an open invitation was issued on the Inter-American Court's website to all those interested in presenting their written opinion on the questions submitted to the Court. The original time limit was extended to December 16, 2019; thus, the interested parties had approximately six months to forward their submissions.

6. At the expiry of the time limit, the Secretariat had received the following briefs containing observations:⁴

² Article 73(1) of the Rules establishes the following: "Upon receipt of a request for an advisory opinion, the Secretary shall transmit copies thereof to all Member States, the Commission, and the Permanent Council through its Presidency, the Secretary General, and, if applicable, to the OAS organs whose sphere of competence is referred to in the request."

³ Article 73(3) of the Rules states the following: "The Presidency may invite or authorize any interested party to submit a written opinion on the issues covered by the request. If the request is governed by Article 64(2) of the Convention, the Presidency may do so after prior consultation with the Agent."

⁴ The Request for an Advisory Opinion presented by Colombia, together with the written observations and oral interventions of the States, the Inter-American Commission, and various academic institutions, non-governmental

- a. *Written observations submitted by Member States of the OAS*⁵: 1) Plurinational State of Bolivia; 2) Federative Republic of Brazil; 3) Republic of Colombia; 4) United States of America; 5) United Mexican States; 6) Republic of Nicaragua, and 7) Republic of Panama.
- b. *Written observations submitted by organs of the OAS*: Inter-American Commission on Human Rights;
- c. *Written observations submitted by academic institutions, non-governmental organizations and members of civil society*: 1) Coalition of organizations *Foro por la Vida*; 2) Pro Bono Foundation of Colombia; 3) *Instituto Autónomo de Occidente*, Center for Corporate Law, Human Rights and Peace; 4) Human Rights Center of the Universidad Católica Andrés Bello, Center for Justice and Peace, *Defiende Venezuela* and the Inter-American Institute for Social Responsibility and Human Rights; 5) Human Rights Center of the Faculty of Jurisprudence of the Pontificia Universidad Católica of Ecuador; 6) Centro Universitario Antonio Eufrásio de Toledo de Presidente Prudente; 7) Human Rights Clinic of the Postgraduate Law Program at the Pontificia Universidad Católica of Paraná and Study Group on Human Rights Systems of the Universidad Federal of Paraná; 8) Human Rights and Environmental Law Clinic of Amazonas State University and the Human Rights Research Group of Amazonia; 9) Strategic Litigation Clinic of the Ponciano Arriaga Law School and the Civil Association "*Humanismo & Legalidad*"; 10) Inter-American Human Rights Clinic of the National Law School at the Federal University of Rio de Janeiro; 11) Latin American Council of International and Comparative Law Scholars, Dominican Republic chapter; 12) Escuela Libre de Derecho, Mexico; 13) Law School of the Universidad Sergio Arboleda, Colombia; 14) Public Action Group of the Faculty of Jurisprudence at the Universidad del Rosario; 15) Research Group on International Law and Public Interest and Human Rights Clinic of the Faculty of Law and Political Science of the Universidad de La Sabana; 16) Research Group on Justice, Human Rights and Democracy and Seedbed for Human Rights Research of the Universidad Francisco de Paula Santander; 17) Faculty of Legal Sciences of the Universidad Centroamericana de Nicaragua; 18) Universidad de Congreso Law School; 19) Master's Program in Defense of Human Rights and International Humanitarian Law before International Courts and Tribunals of the Universidad Santo Tomás; 20) International Humanitarian Law Observatory of the Law Faculty at the Universidad de Buenos Aires and Human Rights Study Center of the Law Faculty at the Universidad Nacional del Centro, Buenos Aires Province; 21) Litigation Group in International Human Rights Systems of the Faculty of Law and Political Science at the Universidad de Antioquia; 22) University College London "Public International Law Pro Bono Project"; 23) Ángel Iván González Rodríguez; 24) Claudia Regina de Oliveira Magalhães da Silva Loureiro; 25) Eduardo Meier García; 26) Elí Rodríguez Martínez and Juan Pablo Vásquez Calvo; 27) Federico Ariel Vaschetto, Marcela Cecilia Rivera Basulto and Elkin Eduardo Gallego Giraldo; 28) Fernando Emmanuel Arlettaz; 29) Harold Bertot Triana; 30) Ivonei Souza Trinidad; 31) Johan Sebastián Lozano Parra, Lindsay Tatiana Cediel Ribero, Dayan Stiven Chacón Campo and Carlos Fernando Morantes Franco; 32) Jorge Alberto Pérez Tolentino; 33) José Manuel Pérez Guerra; 34) Keyla Marily Salgado Andreus, Ariel Edgardo Díaz and Carlos Maximiliano Leiva Chirinos; 35)

and civil society organizations and individuals, are available on the Court's website at the following link: http://www.corteidh.or.cr/cf/jurisprudencia2/observaciones_oc.cfm?lang=es&lang_oc=es&nId_oc=2069

⁵ The written observations submitted by the Republic of Honduras were received on January 20, 2020. The President of the Court noted that these observations were submitted 36 days after the expiry of the established deadline and were therefore inadmissible because they were time-barred.

Laurence R. Helfer; 36) Lorena Monteiro de Lima and Layana Peixoto Ferreira do Nascimento; 37) Luis Peraza Parga; 38) María Paulina Pérez Londoño; 39) Miguel Ángel Antemate Mendoza; 40) Muhammad Muzahidul Islam; 41) Olivia del Carmen Chávez Uscanga, Samaria Alba Carretero, Elisa Matilde Ceballos Díaz, Porfirio Aldana Mota, José Alfredo Corona Lizarraga and Arturo Miguel Chipuli Castillo; 42) Paulina Arango Velásquez, Stefanía Castro Carmona, Sara Ferrer Buriticá, Juan Luis Orozco Echeverría, Sara María Roldán Concha, María Fernanda Upegui Marín, Eduardo Andrés Zurek Peñaloza and José Alberto Toro Valencia; 43) Ricardo Abello Galvis and Walter Arévalo Ramírez; 44) Roberto Hung Cavalieri; 45) Shirley Llain Arenilla and Silvana Milena Insignares Cera; 46) Valentina Ospina Arcila; 47) Víctor Mosquera Marín; 48) Xochithl Guadalupe Rangel Romero; and 49) Yamid Enrique Cotrina Gulfo.

7. Following the conclusion of the written procedure, and pursuant to Article 73(4) of the Rules of Procedure,⁶ on February 5, 2020, the President of the Court issued an order⁷ calling for a public hearing, and invited the requesting State, other OAS Member States, the Inter-American Commission on Human Rights and all those organizations and individuals who had submitted written observations, to present their oral comments on the request made to the Court.

8. The public hearing took place on June 15, 16 and 17, 2020, during the 135th Regular Session of the Inter-American Court of Human Rights, held virtually.⁸

9. The following persons appeared before the Court:

- 1) For the Republic of Colombia (requesting State): Juan José Quintana Aranguren, Colombia's Ambassador in Costa Rica and the State's Agent before the Court; and María del Pilar Gutiérrez, Adviser to the National Legal Defense Agency;
- 2) For the Federative Republic of Brazil: Antônio Francisco Da Costa de Silva Neto, Brazil's Ambassador to Costa Rica, and George Rodrigo Bandeira Galindo, Legal Counsel of the Ministry of Foreign Relations of Brazil;
- 3) For the United States of America: Thomas Weatherall and Oliver M. Lewis, of the Office of the Legal Adviser of the State Department;
- 4) For the Republic of Honduras: Nelson Gerardo Molina Flores, National Director for Human Rights and International Litigation, and Edgardo Andrés Molina Ortiz, National Power of Attorney for Judicial Matters;
- 5) For the Republic of Nicaragua: Iván Lara Palacios, Vice Minister of Foreign Relations for Legal Affairs, and Claudia Núñez Ramírez, Special Prosecutor of the Attorney General's Office;
- 6) For the Inter-American Commission on Human Rights: Joel Hernández García, President, and Esmeralda Arosemena de Troitiño, Commissioner.
- 7) For University College London "Public International Law Pro Bono Project": Alex Mills, Joseph Crampin and Sonia Anwar-Ahmed Martínez;
- 8) For the Human Rights and Environmental Law Clinic of the Universidad del State of Amazonas and the Human Rights Investigation Group in Amazonia: Emily Silva Assad and Lucimar Prata Dos Santos;
- 9) For the Pro Bono Foundation of Colombia: María Elvira Padilla;
- 10) For the Human Rights Center of the Universidad Católica Andrés Bello, Center for Justice and Peace, *Defiende Venezuela* and the Inter-American Institute for Social Responsibility and Human Rights: Marianna Romero and Roxanne Cabrera, and Simón Gómez;
- 11) For the Instituto Autónomo de Occidente. Center for Corporate Law, Human Rights and Peace: Judith Ponce Ruelas, and José Benjamín González Mauricio;

⁶ Article 73(4) of the Court's Rules of Procedure states that: "[a]t the conclusion of the written proceedings, the Court shall decide whether oral proceedings should take place and shall establish the date for a hearing, unless it delegates the latter task to the Presidency. Prior consultation with the Agent is required in cases governed by Article 64(2) of the Convention."

⁷ Cf. Request for Advisory Opinion OC-26. Summons to a hearing. Order of the President of the Court of February 5, 2020. Available at the following link: http://www.corteidh.or.cr/docs/asuntos/solicitud_5_02_2020_spa.pdf

⁸ In notes dated March 11, 2020, the Secretariat of the Court informed the accredited delegations that the public hearing scheduled for March 17 and 18, 2020, would be suspended owing to the exceptional circumstances of the health emergency caused by COVID-19. On May 14, 2020, the Secretariat of the Court advised that the Plenary had decided to resume the oral proceedings and that the hearing had been reprogrammed to take place virtually on June 15, 16 and 17, 2020.

- 12) For the Human Rights Center of the Law School at the Pontificia Universidad Católica of Ecuador: Efrén Guerrero and Francisco Cevallos;
- 13) For the Strategic Litigation Clinic of the Ponciano Arriaga Law School and the Civil Association "*Humanismo & Legalidad*:" Marlene Rodríguez Atriano, and Norma Celia Bautista Romero;
- 14) For the Latin American Council of International and Comparative Law Scholars, Dominican Republic chapter: Nataly Santana and Tamara Aquino;
- 15) For the Escuela Libre de Derecho of Mexico: Eugenia Paola Carmona Díaz de León and Arturo Ramos Sobarzo;
- 16) For the Research Group on International Law and the Public Interest and Human Rights Law Clinic of the Faculty of Law and Political Science of Universidad de La Sabana: Cindy Vanessa Espitia Murcia and Ana María Idárraga Martínez;
- 17) For the Research Group on Justice, Human Rights and Democracy and Research Group on Human Rights of the Universidad Francisco de Paula Santander: Liany Yetzira Hernández Granados and Eduardo Gabriel Osorio Sánchez;
- 18) For the Master's Program on Defense of Human Rights and International Humanitarian Law before International Organizations, Courts and Tribunals of the Universidad de Santo Tomás: Carlos Rodríguez Mejía;
- 19) For the Litigation Group in International Human Rights Systems of the Faculty of Law and Political Science at the Universidad de Antioquia: Angela Patricia Benavides Cerón, and Alejandro Gómez Restrepo;
- 20) For the Legal Research Institute of the Universidad Veracruzana: Arturo Chipuli Castillo and Porfirio Aldana Mota;
- 21) For the Public Action Group of the Faculty of Jurisprudence at the Universidad del Rosario: Anamaría Sánchez Quintero and Angie Daniela Yepes García;
- 22) For the Inter-American Human Rights Clinic of the National Law School at the Universidad Federal of Rio de Janeiro: Siddharta Legale and Matheus Zanon;
- 23) Ángel Iván González Rodríguez;
- 24) Claudia Regina de Oliveira Magalhães da Silva Loureiro;
- 25) Eli Rodríguez Martínez and Juan Pablo Vásquez Calvo;
- 26) Federico Ariel Vaschetto, and Marcela Cecilia Rivera Basulto;
- 27) Lorena Monteiro de Lima and Lãyana Peixoto Ferreira do Nascimento;
- 28) Miguel Ángel Antemate Mendoza;
- 29) Víctor Mosquera Marín, and
- 30) Sara María Roldán Concha and Eduardo Andrés Zurek Peñaloza.

10. In response to this request for an advisory opinion, the Court examined and took into account fifty-seven briefs containing observations, together with thirty interventions during the hearing from States, the Inter-American Commission, non-governmental organizations, academic institutions and members of civil society (*supra* paras. 6 and 9). The Court expresses its appreciation for these valuable contributions which provided it with insight on the different matters raised when issuing this Advisory Opinion.

11. The Court began deliberation of this Advisory Opinion on November 2, 2020, during a virtual session.⁹

III JURISDICTION AND ADMISSIBILITY

12. Article 64(1) of the American Convention states the following with regard to the Inter-American Court's advisory role:

The Member States of the Organization may consult the Court regarding the interpretation of this Convention or of other treaties concerning the protection of human rights in the American states. Within their spheres of competence, the organs listed in Chapter X of the Charter of the Organization of American States, as amended by the Buenos Aires Protocol, may in like manner consult the Court.

⁹ Due to the exceptional circumstances caused by the COVID-19 pandemic, this Advisory Opinion was deliberated and approved during the 138th Regular Session of the Court, which took place virtually using electronic means as established in its Rules of Procedure.

13. The request was submitted to the Court by Colombia pursuant to the aforementioned Article 64(1) of the Convention. Colombia is a Member State of the OAS and, therefore, has the right to request an advisory opinion from the Inter-American Court.

14. The main purpose of the Inter-American Court's advisory function is to interpret the American Convention or other treaties concerning the protection of human rights in the Americas, thereby defining its sphere of competence. In addition, the Court has considered that, when referring to its authority to provide an opinion on "other treaties concerning the protection of human rights in the States of the Americas," Article 64 (1) of the Convention is broad and non-restrictive.¹⁰

15. Likewise, Articles 70¹¹ and 71¹² of the Rules of Procedure stipulate the formal requirements that must be met by the requesting State or body for the Court to consider a request for an advisory opinion. Basically, these requirements are: (i) to state with precision the specific questions on which an opinion is sought; (ii) to identify the provisions to be interpreted; (iii) to state the considerations giving rise to the request, and (iv) to provide the names and addresses of the Agent or the Delegates. As noted previously, requirements (iii) and (iv) were duly met (*supra* paras. 2 and 4).

16. As to requirements (i) and (ii), the Court points out that the request submitted by the Colombia presents the following characteristics: (a) it contains a section entitled "Specific Provisions," indicating that "[t]he provisions on which an interpretation is sought pertain to three diplomatic instruments, namely, the American Declaration, the OAS Charter and the American Convention" and lists a number of clauses from the preambles and articles of these instruments that the Court is asked to interpret; (b) in this regard, only point "i" refers in a generic and broad manner to "international, conventional and customary law, and, in particular, to the American Declaration of the Rights and Duties of Man of 1948," while the other questions do not specify which provision(s) indicated in the section on "Specific Provisions" relate to each one; (c) it requests an interpretation of different legal provisions involving various regional instruments; and (d) as the factual basis for the consultation, questions "i", "ii" and "iii" refer to "a Member State of the Organization of American States that has denounced the American Convention on Human Rights," "a State [that] further denounces [the American Convention,] the Charter of the Organization of American States and seeks to withdraw from the Organization" or "when a situation of serious and systematic human rights violations arises under the jurisdiction of a State of the Americas that has denounced the American Convention and the OAS Charter."

17. During the proceedings related to this request, a number of written and oral observations were received expressing different views concerning the Court's jurisdiction to

¹⁰ Cf. "Other Treaties" Subject to the Consultative Jurisdiction of the Court (Art. 64 American Convention on Human Rights). Advisory Opinion OC-1/82 of September 24, 1982. Series A No. 1, first operative paragraph, and the *Institution of Asylum and its Recognition as a Human Right in the Inter-American System of Protection (interpretation and scope of Articles 5, 22(7) and 22(8), in relation to Article 1(1) of the American Convention on Human Rights)*. Advisory Opinion OC-25/18 of May 30, 2018. Series A No. 25, para. 15.

¹¹ Article 70 of the Court's Rules of Procedure states the following: "Interpretation of the Convention: 1. Requests for an advisory opinion under Article 64(1) of the Convention shall state with precision the specific questions on which the opinion of the Court is being sought. 2. Requests for an advisory opinion submitted by a Member State or by the Commission shall, in addition, indicate, the provisions to be interpreted, the considerations giving rise to the request and the names and addresses of the Agent or the Delegates [...]."

¹² Article 71 of the Court's Rules of Procedure states: "Interpretation of other treaties: 1. If, as provided for in Article 64(1) of the Convention, the interpretation requested refers to other treaties concerning the protection of human rights in the American States, the request shall indicate the name of the treaty and the parties thereto, the specific questions on which the opinion of the Court is being sought and the considerations giving rise to the request [...]."

issue this advisory opinion, and regarding the admissibility and merits of the questions raised. Therefore, the Court will examine its jurisdiction over this matter as well as the admissibility and merits of the questions submitted by the Requesting State, and will proceed to consider the pertinent aspects in the following order: (a) the formal requirement to specify the provisions to be interpreted; (b) *ratione personae* jurisdiction; (c) jurisdiction over the regional instruments involved and other sources of international law; (d) the merits of the request for an advisory opinion; and (e) the formal requirement to state questions in a precise manner and the Court's authority to reframe those questions.

A. The formal requirement to specify the provisions to be interpreted

18. Some of the observations submitted considered that certain questions raised by Colombia do not comply with the provisions of Article 70 of the Court's Rules of Procedure, since they do not adequately specify the Convention-based legal provisions, or those of other relevant treaties, for which the Court's interpretation is sought.¹³

19. The Court notes that none of the questions specifically includes the legal provisions to be interpreted; consequently, they are *prima facie* inadmissible.¹⁴ However, in its application Colombia includes a general section entitled "Specific Provisions" with a list of provisions on which an interpretation is sought (*supra* para.16). Therefore, although it does not state upon which particular provision(s) listed in that section each question is based, the Court surmises that, given the nature of the matters raised, the questions are related to all the provisions listed in the respective section on which an interpretation is sought, namely: the four unnumbered paragraphs in the Considerations of Resolution XXX of the Ninth International Conference of American States, which adopted the American Declaration, and the six unnumbered paragraphs of the Preamble of the American Declaration; also, the first five paragraphs, unnumbered, of the Preamble, and Articles 3(1), 17, 45, 53 and 106 of the OAS Charter; and the five unnumbered paragraphs of the Preamble, and Articles 1, 2, 27, 29, 30, 31, 33 to 65 and 78 of the American Convention.

20. In addition, the Court notes that in several briefs containing observations and during the public hearing, reference was made to other provisions of those instruments, with special emphasis on Article 32 of the American Convention and Article 143 of the OAS Charter. Although Colombia did not invoke this last provision in its request, it did so upon presenting its respective position on the matter. The Court considers that, since both the requesting State and various participants have invoked these provisions as central elements of their arguments, and since both are related to the subject of the consultation, given the correlation between duties and rights and the terms for denouncing the American Convention and the OAS Charter, it is also pertinent to refer to the norms that allow the Court to fully exercise its advisory authority.

21. To summarize, the Court considers that Colombia has fulfilled the requirement to specify the provisions of the American Convention, the OAS Charter and the American Declaration that require interpretation in accordance with its request.

B. Ratione personae jurisdiction

22. Some observations referred to the scope of the Court's *ratione personae* jurisdiction in relation to the questions regarding the obligations of States that do not belong or have ceased

¹³ Written observations presented by the Republic of Nicaragua, Universidad Santo Tomás, Universidad del Rosario, and Mr. Harold Bertot Triana.

¹⁴ Cf. Advisory Opinion OC-25/18, *supra*, para. 25.

to belong to the Organization of American States.¹⁵ The Court understands that these arguments could have potential impact, particularly when addressing the third question raised by Colombia concerning the situation of a State that has denounced the OAS Charter and withdrawn from the organization, and also from the American Convention.

23. In its first advisory opinion, the Court indicated that, "if the principal purpose of a request for an advisory opinion relates to the implementation or scope of international obligations assumed by a Member State of the inter-American system, the Court has jurisdiction to render the opinion. By the same token, the Court lacks that jurisdiction if the principal purpose of the request relates to the scope or implementation of international obligations assumed by States not members of the inter-American system."¹⁶ In other words, since this assumption implies that the State belonged to the inter-American system prior to denouncing both instruments and it is necessary to determine the effects of that decision on the State's international obligations, as well as the obligations of the remaining Member States of the OAS, the Court maintains jurisdiction to rule on this matter.

C. Jurisdiction over the regional instruments involved and other sources of international law

24. In relation to *ratione materiae* jurisdiction, some of the observations received argued that the Court should refrain from addressing international obligations derived from sources of law other than the inter-American treaties over which it has jurisdiction, being unable to refer to customary international law or to instruments outside of the inter-American system.¹⁷

25. With respect to the American Convention, the Court has already established that its advisory function allows it to interpret any rule of that treaty, and that no part or aspect of this instrument shall be excluded. In this sense, it is clear that the Court, as the "final interpreter of the American Convention" is competent to issue, with full authority, interpretations of all the provisions of the Convention, including those of a procedural nature.¹⁸

26. Also, as mentioned previously, by virtue of Article 64(1) of the Convention the Court may exercise its consultative jurisdiction in relation to the OAS Charter.¹⁹ Furthermore, Article 64(1) of the American Convention authorizes the Court to render advisory opinions on the interpretation of the American Declaration, in the context and within the limits of its jurisdiction set out in the OAS Charter and the Convention as well as other treaties concerning the protection of the human rights in the Member States of the Americas.²⁰ Therefore, in this Advisory Opinion, when interpreting the obligations derived from the OAS Charter in response to the questions raised by Colombia, the Court will refer to the American Declaration.

27. The Court also notes that the State has referred to several clauses of the preambles of the three instruments. Accordingly, it is pertinent to point out that the Court, in its advisory role, may be required to examine the preambles of the international instruments under

¹⁵ Written observations presented by the Pro Bono Foundation of Colombia, Ricardo Abello Galvis and Walter Arévalo Ramírez, Harold Bertot Triana, and Fernando Arletaz.

¹⁶ Advisory Opinion OC-1/82, *supra*, para. 38.

¹⁷ Written observations presented by the United States of America and the Republic of Nicaragua.

¹⁸ *Cf. Article 55 of the American Convention on Human Rights*. Advisory Opinion OC-20/09 of September 29, 2009. Series A No. 20, para. 18, and Advisory Opinion OC-25/18, *supra*, para. 34.

¹⁹ *Cf. Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights*. Advisory Opinion OC-10/89 of July 14, 1989. Series A No. 10, para. 44.

²⁰ *Cf. Advisory Opinion OC-10/89, supra*, first and only operative paragraph, and Advisory Opinion OC-25/18, *supra*, para. 35.

consideration, which may fulfill several functions within the framework of the interpretative action. In this regard, the Vienna Convention on the Law of Treaties²¹ (hereinafter “Vienna Convention”) in Article 31(2), establishes that the treaty text also includes the preamble and the annexes. For example, the Court has referred to the preamble of the American Convention, since it contains “references that establish the object and purpose of the treaty,”²² thereby shedding light on the intent of its drafters.²³

28. As to the interpretation of international customary law in matters of human rights, the Court has indicated that, in exercising its interpretative function, it has recourse to international human rights law, taking into account relevant sources thereof.²⁴ In this regard, it has specified that the *corpus iuris* of international human rights law consists of a series of rules expressly recognized in international treaties or established in international customary law.²⁵ Thus, the Court is competent to refer to international customary law among the sources used for interpretative purposes and to the clauses of treaties concerning any residual obligations emanating from general international law.

29. In conclusion, in its advisory capacity the Court is authorized to rule on the preambular clauses and on all provisions of the American Convention on Human Rights, the OAS Charter and the American Declaration submitted for consultation by the Colombian State, in the terms indicated and insofar as these concern the protection of human rights in the American States, since they fall within the purview of the Court’s jurisdiction.

D. The merits of the request for an advisory opinion

30. Some of the observations submitted to the Court emphasized that Colombia’s request sought a response to specific events of a political nature²⁶ and alluded to various situations related to the subject matter of the consultation. In this regard, the Court notes that reference to certain examples serves the purpose of illustrating the potential significance of setting criteria and making interpretations a broad and general scope on the legal matter that is the subject of the consultation, without this implying that the Court is issuing a legal ruling on the specific situation raised in these examples.²⁷ Indeed, to the contrary, this allows the Court to demonstrate that its advisory opinion does not constitute mere abstract speculation and that interest in it is justified by the benefit that it may bring to the international system for the

²¹ Vienna Convention on the Law of Treaties, U.N. Doc A/CONF.39/27 (1969), U.N.T.S. vol. 1155, page 331, signed in Vienna on May 23, 1969, entered into force on January 27, 1980.

²² *Entitlement of legal entities to hold rights under the inter-American system of human rights (Interpretation and scope of Article 1(2), in relation to Articles 1(1), 8, 11.2, 13, 16, 21, 24, 25, 29, 30, 44, 46, and 62(3) of the American Convention on Human Rights, and of Article 8(1) A and B of the San Salvador Protocol)* Advisory Opinion OC-22/16 of February 26, 2016. Series A No. 22, para. 41.

²³ Cf. Advisory Opinion OC-22/16, *supra*, para. 47.

²⁴ Cf. *Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection*. Advisory Opinion OC-21/14 of August 19, 2014. Series A No. 21, para. 60, and *Gender Identity, and Equality and Non-discrimination of Same-Sex Couples. State obligations concerning change of name, gender identity, and rights derived from a relationship between same-sex couples (interpretation and scope of Articles 1(1), 3, 7, 11(2), 13, 17, 18 and 24, in relation to the Article 1 of the American Convention on Human Rights)*. Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 60.

²⁵ Cf. Advisory Opinion OC-21/14, *supra*, para. 60, and Advisory Opinion OC-24/17, *supra*, para. 60.

²⁶ Written observations presented by the Republic of Nicaragua, for the Human Rights Clinic of the Postgraduate Law Program at the Pontificia Universidade Católica do Paraná and Study Group on Human Rights Systems of the Federal University of Paraná, and for Mr. Luis Peraza Parga.

²⁷ Cf. *The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law*. Advisory Opinion OC-16/99 of October 1, 1999. Series A No. 16, para. 49, and Advisory Opinion OC- 25/18, *supra*, para. 51.

protection of human rights,²⁸ since it refers to a fundamental matter that concerns the inter-American system as a whole.

31. In sum, the Court has understood that, while it should not lose sight of the fact that its advisory role essentially involves the exercise of its interpretative powers, consultations should serve a practical purpose and be predictable in their application. At the same time the Court should not limit itself to an extremely precise factual premise that makes it difficult for the decision to disassociate it from a specific case, which would be detrimental to the general interest that could be served by a request for consultation.²⁹ This ultimately requires a delicate legal assessment to discern the substantial purpose of the request so that the matter may achieve the aims of widespread validity and relevance to all American States, beyond the reasons that may have originated the petition and beyond the particular facts that gave rise to it, so as to help OAS Member States and organs to fully and effectively discharge their international obligations.³⁰

32. Accordingly, the Court considers that, without ruling on any specific matter which may have been raised by way of example in the present consultative procedure, it is appropriate to proceed with its consideration of the substantial purpose underlying this request, in order to address the general interest in the Court ruling on a matter of legal significance at the regional level, namely the international human rights obligations of a State that denounces the American Convention and/or the OAS Charter. In this regard, the response to the present request for an advisory opinion will allow the Court to clarify and specify, through the interpretation of the relevant legal provisions, the scope of the clauses regarding the denunciation of both treaties and the effect on a State's human rights obligations, thereby promoting the full and effective protection of the individual within the framework of the inter-American system.

E. The formal requirement to formulate questions in a precise manner and the Court's authority to reframe those questions

33. In the exercise of its advisory role, the Court is called upon to unravel the meaning, purpose and reason for international human rights norms.³¹ Thus, in exercising the powers inherent in the competence granted by Article 64 of the Convention, it may need to clarify or elucidate and, in certain cases, rephrase the questions posed to it, in order to clearly determine the substance of its interpretative task.³²

34. In this regard, the Court considers that the first and second questions were clearly expressed, and that there is no need to reformulate them, other than referring to the relevant legal provisions, as indicated *supra*.

35. With respect to the third question, which is subdivided into three queries or points, Colombia indicated that it seeks to "obtain guidance from the Court as to the manner of enforcing the obligations referred to in questions 1 and 2." The Court notes that this is based on the assumption of a situation of serious and systematic human rights violations in the State concerned. The Court considers that the introduction of this factual premise may limit its

²⁸ Cf. Advisory Opinion OC-16/99, *supra*, para. 49, and Advisory Opinion OC-25/18, *supra*, para. 51.

²⁹ Cf. Advisory Opinion OC-16/99, *supra*, paras. 38 to 41, and Advisory Opinion OC-25/18, *supra*, para. 52.

³⁰ Cf. Advisory Opinion OC-16/99, *supra*, para. 47, and Advisory Opinion OC-25/18, *supra*, para. 52.

³¹ Cf. *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention* (arts. 1 and 2 American Convention on Human Rights). Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14, para. 23, and Advisory Opinion OC-25/18, *supra*, para. 54.

³² Cf. Advisory Opinion OC-25/18, *supra*, para. 55.

approach to the question, since it could be one of the major factors to consider in the response, but not necessarily the only one. Given that this Court is not bound by the literal terms of the questions submitted to it in the exercise its advisory role, it does not consider it pertinent to admit the question referring to that clause. Therefore, it will consider the third query in broader terms, without being limited solely to the assumption proposed.

36. That said, the second point of this question asks the Court to indicate the mechanisms that are available to OAS Member States to enforce a State's human rights obligations once it has withdrawn from the regional organization, having denounced the OAS Charter, and also after denouncing the American Convention. On this point, the matter of crucial importance is the activation of the collective guarantee mechanisms, a concept that underlies the entire inter-American system, from the time that a State expresses its intention to denounce the American Convention and/or the OAS Charter, through the transition period until the denunciations become definitive and, finally, until the State has fulfilled its obligations under the OAS Charter, at which point it would be disengaged from the organization. For this reason, the Court will reformulate the question on that understanding.

37. The Court also notes that the third point of that question is expressed in abstract terms which cannot be reformulated for the purposes of interpreting specific conventional provisions, since it refers to "mechanisms for the international protection of human rights" available to persons subject to the jurisdiction of a State that is not a member of the OAS. The point concerning mechanisms for the international protection of human rights that are outside of the inter-American system of protection are beyond the scope of this Court's jurisdiction.³³ Consequently, the Court does not consider it pertinent to rule on obligations arising from the universal system or on mechanisms for the protection of human rights afforded by that system, or others to which that State is party, since these systems are governed by their own normative framework and mandate and are therefore not admissible.

38. In order to exercise its advisory function more effectively, and bearing in mind that this role essentially involves interpreting and applying the American Convention and other human rights treaties in the American States, the Court will proceed to define and reformulate, based on the legal provisions submitted for consultation and in the terms indicated previously, the questions that fall within its advisory jurisdiction as indicated below:

Taking into account the four unnumbered paragraphs in the recitals of Resolution XXX of the Ninth International Conference of American States, adopting the American Declaration, and the six unnumbered paragraphs of its Preamble; the first five paragraphs, unnumbered, of the Preamble, and Articles 3(I), 17, 45, 53, 106 and 143 of the OAS Charter; and the five unnumbered paragraphs of the Preamble, and Articles 1, 2, 27, 29, 30, 31, 32, 33 to 65 and 78 and of the American Convention:

- 1) What are the international human rights obligations of a Member State of the Organization of American States that has denounced the American Convention on Human Rights?
- 2) If a State that is not a party to the American Convention denounces the Charter of the Organization of American States, what are the effects of that denunciation and withdrawal on the international human rights obligations to which the first question refers?
- 3) What international human rights obligations do Member States of the Organization of American States have with respect to any State of the Americas that has

³³ Cf., *Mutatis mutandis*, Advisory Opinion OC-25/18, *supra*, para. 27.

denounced the American Convention on Human Rights and the Charter of the Organization of American States?

39. The Court will now proceed to answer those questions for the purpose of assisting and providing guidance to the Member States and the organs of the OAS, in fulfilment of the mission entrusted to it by the inter-American system.³⁴

IV

THE INTERNATIONAL HUMAN RIGHTS OBLIGATIONS OF A MEMBER STATE OF THE ORGANIZATION OF AMERICAN STATES THAT HAS DENOUNCED THE AMERICAN CONVENTION ON HUMAN RIGHTS

40. The first question posed by Colombia concerns the international human rights obligations of a Member State of the Organization of American States that has denounced the American Convention on Human Rights.

41. In order to give its opinion on the interpretation of the legal provisions brought before it for consultation, the Court will refer to Articles 31 and 32 of the Vienna Convention on the Law of Treaties, concerning the general rule of interpretation of international treaties of a customary nature.³⁵ This involves the simultaneous application of good faith, the ordinary meaning of the terms used in the treaty in question, their context, and the object and purpose of the treaty. Additionally, since it is a human rights treaty, the Court must refer to the system's own interpretative guidelines. In the case of the American Convention, it expressly contains such guidelines in Article 29,³⁶ including the *pro persona* principle.³⁷ Furthermore, the Court has repeatedly pointed out that human rights treaties are living instruments, the interpretation of which must accompany the evolution of the times and current living conditions.³⁸

42. The main provision submitted to the Inter-American Court for interpretation is Article 78 of the American Convention, together with the other aforementioned articles of the same treaty and its preamble. Such an interpretation must also take into account the preamble and certain provisions of the OAS Charter, specifically Articles 3(I), 17, 45, 53, 106 and 143, as well as the considerations and the preamble of the American Declaration and other international instruments relevant to that context, namely the Inter-American Democratic Charter, as the interpretative text of both the OAS Charter and the American Convention.

³⁴ Cf. *Restrictions to the death penalty (arts. 4(2) and 4(4) American Convention on Human Rights)*. Advisory Opinion OC-3/83 of September 8, 1983. Series A No. 3, para. 25.

³⁵ Cf. Advisory Opinion OC-21/14, *supra*, para. 52, and Advisory Opinion OC-25/18, *supra*, para. 134. See also, International Court of Justice (ICJ), *Case concerning sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia v. Malaysia)*. Judgment of December 17, 2002, para. 37, and International Court of Justice, *Avena and other Mexican nationals (Mexico v. United States of America)*. Judgment of March 31, 2004, para. 83.

³⁶ Article 29 of the American Convention establishes the following: "Restrictions Regarding Interpretation: No provision of this Convention shall be interpreted as: a) permitting any State Party, group or person to suppress the enjoyment or exercise of the rights and freedoms recognized in this Convention or to restrict them to a greater extent than is provided for; b) restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said States is a party; c) precluding other rights or guarantees that are inherent in the human personality or derived from representative democracy as a form of government; or d) excluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may have."

³⁷ Cf. Advisory Opinion OC-21/14, *supra*, para. 54, and Advisory Opinion OC-25/18, *supra*, para. 136.

³⁸ Cf. Advisory Opinion OC-16/99, *supra*, para. 114, and Advisory Opinion OC-25/18, *supra*, para. 137.

43. In order to address the question in the terms in which it was worded, the Court finds it necessary to refer to the following matters in its interpretation of the relevant provisions submitted for consultation: (a) the rules of general international law applicable to the denunciation of treaties and the specificity of human rights treaties; (b) the denunciation clause contained in the American Convention on Human Rights and its procedural guidelines; and (c) the effects on the international obligations of a Member State of the Organization of American States that has denounced the American Convention on Human Rights, and on the persons under its jurisdiction.

A. The rules of general international law applicable to the denunciation of treaties and the specificity of human rights treaties

44. As a starting point, the Court will briefly outline (1) the rules of general international law applicable to the denunciation of treaties, and will then make some observations regarding (2) the specificity of human rights treaties, such as the American Convention.

A.1) The rules of general international law applicable to the denunciation of treaties

45. General international law governs the system related to treaties³⁹ through the Vienna Convention on the Law of Treaties, as a specific category of international instruments that are binding upon those States which have freely consented to ratify and be bound by them. As stated in its preamble, it is based on “principles of international law embodied in the United Nations Charter, such as the principles of the equal rights and self-determination of peoples, of the sovereign equality and independence of all States, of non-interference in the domestic affairs of States, of the prohibition of the threat or use of force and of universal respect for, and observance of, human rights and fundamental freedoms for all.” In Part V, concerning the “Invalidity, termination and suspension of the operation of treaties,” the Vienna Convention establishes general provisions regarding the validity and continuance of treaties,⁴⁰ and the obligations derived from other sources of international law.⁴¹ Section three contains clauses that specifically regulate the termination of treaties, the following of which are pertinent:⁴²

54. Termination of or withdrawal from a treaty under its provisions or by consent of the parties. The termination of a treaty or the withdrawal of a party may take place: a) in conformity with the provisions of the treaty, or b) at any time by consent of all the parties after consultation with the other contracting States. (Underlining added)

56. Denunciation of or withdrawal from a treaty containing no provision regarding termination, denunciation or withdrawal. 1. A treaty which contains no provision regarding its termination and which does not provide for denunciation or withdrawal is not subject to denunciation or withdrawal unless: a) it is established that the parties intended to admit the possibility of denunciation or withdrawal; or b) a right of denunciation or withdrawal may be implied by the nature of the treaty. 2. A party shall give not less than twelve months’ notice of its intention to denounce or withdraw from a treaty under paragraph 1. (Underlining added)

³⁹ “Treaty” means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments, and whatever its particular designation. Cf. Vienna Convention on the Law of Treaties, Article 2.

⁴⁰ Article 42 of the Vienna Convention on the Law of Treaties provides the following: “Validity and continuance in force of treaties. 1. The validity of a treaty or of the consent of a State to be bound by a treaty may be impeached only through the application of the present Convention. 2. The termination of a treaty, its denunciation or the withdrawal of a party, may take place only as a result of the application of the provisions of the treaty or of the present Convention. The same rule applies to suspension of the operation of a treaty.”

⁴¹ Article 43 of the Vienna Convention on the Law of Treaties provides the following: “Obligations imposed by international law independently of a treaty. The invalidity, termination or denunciation of a treaty, the withdrawal of a party from it, or the suspension of its operation, as a result of the application of the present Convention or of the provisions of the treaty, shall not in any way impair the duty of any State to fulfil any obligation embodied in the treaty to which it would be subject under international law independently of the treaty.”

⁴² Vienna Convention on the Law of Treaties, Articles 54 and 56.

46. Although the Vienna Convention entered into force after the American Convention, and it is possible that a Member State of the OAS may not be a party thereto,⁴³ the Court advises that it is an accepted fact that the Vienna Convention reflects certain applicable rules of international customary law,⁴⁴ even though it does not differentiate between the types of treaties, except in Article 60(3) (*infra* footnote 48).

47. Thus, as a general rule, a denunciation of an international treaty must observe the terms and conditions established in the provisions of that same treaty (Art. 54 (a), Vienna Convention). Clearly, if the treaty itself does not make provision for its denunciation, the absence of an express provision in this regard indicates that the State cannot disengage from its commitments and that the treaty will remain in force,⁴⁵ except in the two situations mentioned in the treaty, namely, that the parties intended to admit the possibility of denunciation or withdrawal; or that this may be implied by the nature of the treaty. (Art. 56(1) of the Vienna Convention). In such cases, the State must give at least twelve months' notice of its intention to denounce or withdraw from a treaty (art. 56(2) of the Vienna Convention). These provisions also apply to the constituent instruments of international organizations.⁴⁶

48. That said, while a State's sovereignty and consent are considered the cornerstones of the obligations under international law, it is widely acknowledged that in some situations the special nature of human rights treaties has a practical impact and, consequently, a different approach is required to the norms of general international law. For example, this specificity has been expressed in the area of reservations.⁴⁷ Therefore, since human rights treaties are a specific type of multilateral treaty - inasmuch as they do not establish reciprocal rights among States or protect their interests, but rather establish obligations toward the individuals under

⁴³ The Vienna Convention on the Law of Treaties has been ratified by 22 of the 35 Member States of the OAS: Argentina, Barbados, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Panama, Paraguay, Peru, St. Vincent and the Grenadines, Suriname, and Uruguay.

⁴⁴ See Article 4 of the Vienna Convention on the Law of Treaties: "Non-retroactivity of the present Convention. Without prejudice to the application of any rules set forth in the present Convention to which treaties would be subject under international law independently of the Convention, the Convention applies only to treaties which are concluded by States after the entry into force of the present Convention with regard to such States." In addition, the final paragraph of the preamble of the Vienna Convention establishes that customary law should govern "questions not regulated" by the Convention. The International Court of Justice has recognized that several provisions of the Vienna Convention are customary norms of international law. See, *inter alia*, *Gabčíkovo-Nagymaros Project (Hungary v. Slovakia)*. Judgment of September 25, 1997, para. 109; *Kasikili Island /Sedudu (Botswana v. Namibia)*. Judgment of December 13, 1999, para. 18; *Case of LaGrand (Germany v. United States of America)*, Judgment of June 27, 2001, para. 101; *Land and maritime boundary between Cameroon and Nigeria (Cameroon v. Nigeria)*. Judgment of October 10, 2002, para. 263; *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia v. Malaysia)*, *supra*, para. 37; *Border dispute (Benin v. Niger)*. Judgment of July 12, 2005, para. 126, and *Questions relating to the obligation to prosecute or extradite (Belgium v. Senegal)*. Judgment of July 20, 2012, para. 100.

⁴⁵ Within the context of the United Nations, this is the case of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights of 1966; the Convention on the Elimination of All Forms of Discrimination against Women of 1979; the International Convention for the Protection of All Persons from Enforced Disappearance of 2006; and, the Protocol for the Abolition of the Death Penalty of 1989. Regarding the International Covenant on Civil and Political Rights, see Human Rights Committee, *General Comment No. 26 Continuity of Obligations*, Sixty-first Session, U.N. Doc. HRI/GEN/1/Rev.7 at 200 (1997).

⁴⁶ See Article 5 of the Vienna Convention on the Law of Treaties.

⁴⁷ The Court has already established special standards related to State reservations in these types of treaties. Cf. *The Effect of Reservations on the Entry into Force of the American Convention on Human Rights*. Advisory Opinion OC-2/82 of September 24, 1982. Series A No. 2. Similar rulings have been issued by the International Court of Justice and the United Nations Human Rights Committee. See, International Court of Justice. *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*. Advisory Opinion of May 28, 1951, para. 23, and Human Rights Committee, *General Comment No. 24 Issues Relating to Reservations Made upon Ratification or Accession to the Covenant or the Optional Protocols thereto, or in Relation to Declarations under Article 41 of the Covenant*, Fifty-second Session, November 11, 1994, U.N. Doc. CCPR/C/21/Rev.1/Add.6, para. 17.

their jurisdiction whose violations can be claimed by them or by the community of States Parties through the action of the organs of protection - not all the general provisions contained in the Vienna Convention regarding the invalidation, termination and suspension of the operation of treaties are strictly applicable, for example with regard to termination for a material or serious breach.⁴⁸ Consequently, it is necessary to assess, in each case, whether those provisions are fully applicable or appropriate to the object and purpose of the American Convention, or of any other treaty concerning the protection of human rights in the continent. In this regard, it has been postulated that human rights treaties express universal axiological principles, withdrawal from which should not be permitted.⁴⁹

49. On this point, the Court has previously indicated that "a State Party to the American Convention can only release itself from its obligations under the Convention by following the provisions that the treaty itself stipulates."⁵⁰ Consequently, since the American Convention *does* make provision for its denunciation, specifically in Article 78 (*infra* section B), it cannot be interpreted that the State has no power to end its participation in that treaty, since those are the terms on which the States agreed to be bound by the treaty. This, without prejudice to any other considerations that the Court may deem pertinent to examine in this advisory opinion with regard to the object and purpose of the American Convention.

50. The Court will now clarify some points concerning general provisions for the denunciation of treaties as expressed in multilateral human rights treaties and, in particular, will assess their specific manifestations within the framework of the American Convention.

A.2) *The specificity of human rights treaties*

51. The Court has repeatedly stated that international human rights treaties, such as the American Convention, are of a different juridical nature from general international public law. On the one hand, their object and purpose is the protection of the human rights of individuals and therefore their provisions should be interpreted on the basis of those values that the Inter-American System seeks to safeguard from the perspective of the "best approach" for the protection of the individual.⁵¹ On the other hand, they create a legal order in which States assume obligations, not in relation to other States, but towards the individuals subject to their

⁴⁸ The Vienna Convention on the Law of Treaties regulates the termination of a treaty owing to a material breach as follows: "60. Termination or suspension of the operation of a treaty as a consequence of its breach. 1. A material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part. 2. A material breach of a multilateral treaty by one of the parties entitles: a) the other parties by unanimous agreement to suspend the operation of the treaty in whole or in part or to terminate it either: i) in the relations between themselves and the defaulting State, or ii) as between all the parties; b) a party specially affected by the breach to invoke it as a ground for suspending the operation of the treaty in whole or in part in the relations between itself and the defaulting State; c) any party other than the defaulting State to invoke the breach as a ground for suspending the operation of the treaty in whole or in part with respect to itself if the treaty is of such a character that a material breach of its provisions by one party radically changes the position of every party with respect to the further performance of its obligations under the treaty. 3. A material breach of a treaty, for the purposes of this article, consists in: a) a repudiation of the treaty not sanctioned by the present Convention; or b) the violation of a provision essential to the accomplishment of the object or purpose of the treaty. 4. The foregoing paragraphs are without prejudice to any provision in the treaty applicable in the event of a breach." However, clause 5 of Article 60(3) states that: "Paragraphs 1 to 3 do not apply to provisions relating to the protection of the human person contained in treaties of a humanitarian character, in particular to provisions prohibiting any form of reprisals against persons protected by such treaties."

⁴⁹ United Nations, Aide Memoire "Denunciation of the PIDCP by the Democratic People's Republic of Korea" of September 23, 1997, para. 7. Available at: <https://treaties.un.org/doc/Publication/CN/1997/CN.467.1997-Eng.pdf>

⁵⁰ *Case of Ivcher Bronstein v. Peru. Jurisdiction.* Judgment of September 24, 1999. Series C No. 54, para. 40, and *Case of Constitutional Court v. Peru. Jurisdiction.* Judgment of September 24, 1999. Series C No. 55, para. 39.

⁵¹ *Cf. Case of González et al. ("Cotton Field") v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of November 16, 2009. Series C No. 205, paras. 33 and 62.

jurisdiction.⁵² Consequently, parallel to the recognition of rights, a system of individual petitions exists to ensure the greatest access possible to judicial protection, particularly in those States that have accepted the judicial oversight of the Inter-American Court.

52. Indeed, the modern development of the international law of treaties accelerated in the aftermath of the second world war, a historic moment when, faced with the serious, massive and systematic violations committed, the international community considered it necessary to reaffirm the importance of human dignity⁵³ and of universal, interdependent and indivisible respect for the human rights and fundamental freedoms of all human beings without distinction. This resulted in the international codification of those rights and freedoms in order to ensure their practical application, thereby providing individuals with an opportunity to claim these at the international level whenever a State fails in its duty to respect, guarantee and offer integral reparation. The basic instruments of the modern inter-American system proclaim that the rights "based on attributes of the human personality" must be subject to international protection, under the American Declaration and the American Convention.⁵⁴ This reinforces the catalogue of fundamental rights and, in turn, expands the prospects of access to justice, since human rights treaties are endowed with specific oversight mechanisms to safeguard their effective implementation.

53. The process of internationalization, codification and progressive development of fundamental human rights, both at the universal and the inter-American levels, has become an insurmountable limit to state power.⁵⁵ In the case of the American Convention, its object and purpose is "the protection of the basic rights of individual human beings,"⁵⁶ regardless of nationality, both from their own State and from any other State.⁵⁷ A State's commitment to fully respect and guarantee human rights, as mandated by Article 1 of the American Convention, is an essential premise for the consolidation of democracy and contributes to its legitimate position within the international community. This treaty is also applied as a collective guarantee,⁵⁸ and must be implemented in good faith in accordance with the *pacta sunt servanda* principle.

54. Access to international justice is also envisaged as a guarantee that ensures effective judicial protection of the rights and freedoms recognized in the American Convention against any violations, and which supports and complements the national jurisdictions. Furthermore, it is a tool that promotes the empowerment and inclusion of historically or traditionally

⁵² Cf. Advisory Opinion OC-2/82, *supra*, para. 29.

⁵³ See, for example, the considerations of Resolution XXX of the Ninth International Conference of American States which approved the American Declaration, reaffirming that: "The American peoples have acknowledged the dignity of the individual, and their national constitutions recognize that juridical and political institutions, which regulate life in human society, have as their principal aim the protection of the essential rights of man and the creation of circumstances that will permit him to achieve spiritual and material progress and attain happiness. The American States have on repeated occasions recognized that the essential rights of man are not derived from the fact that he is a national of a certain state, but are based upon attributes of his human personality."

⁵⁴ Resolution XXX of the Ninth International Conference of American States, para. 2; American Convention, Preamble, para. 2. Similarly, see, the expression "Laws" in Article 30 of the American Convention on Human Rights. Advisory Opinion OC-6/86 of 9 of mayo of 1986. Series A No. 6, para. 30.

⁵⁵ Cf. Advisory Opinion OC-6/86, *supra*, para. 21.

⁵⁶ Advisory Opinion OC-2/82, *supra*, para. 29, and Advisory Opinion OC-25/18, *supra*, para. 135.

⁵⁷ Cf. Advisory Opinion OC-2/82, *supra*, para. 33, and Advisory Opinion OC-25/18, *supra*, para. 135.

⁵⁸ Cf. *Case of Ivcher Bronstein v. Peru. Jurisdiction*, *supra*, para. 42; *Case of the Constitutional Court v. Peru. Jurisdiction*, *supra*, para. 41, and *Case of González et al. ("Cotton Field") v. Mexico. Preliminary objection, merits, reparations and costs*, *supra*, para. 62.

disadvantaged groups, thereby strengthening democratic institutions, even in countries with a strong tradition of observance of human rights.⁵⁹

55. For its part, Article 2 of the American Convention requires the States Parties to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights and freedoms.⁶⁰ The general duty under Article 2 of the American Convention requires States to adopt two types of measures: on the one hand, the elimination of any norms and practices that in any way violate the guarantees provided under the Convention; on the other hand, the promulgation of norms and the development of practices conducive to effective observance of those guarantees.⁶¹ This implies that measures of domestic law must be effective (the principle of *effet utile*), which means that the State Party must adopt all measures to ensure that the provisions of the Convention are effectively implemented in its domestic legal system, for which the State must adjust its actions to the Convention's rules on protection.⁶² The Court has affirmed that the obligation under Article 2 of the Convention recognizes a customary law that establishes that a State which has ratified a human rights treaty must introduce the necessary modifications to its domestic law to ensure proper compliance with the international obligations it has assumed.⁶³

56. Therefore, when a State is a party to a multilateral human rights treaty it shares certain ideals and universal axiological principles with the other States Parties. In this regard, the Court notes that the rules of the American Convention seek to promote a set of values for the protection of the individual *vis à vis* the State,⁶⁴ within a democratic framework that ensures the observance of essential human rights and freedoms. The preamble of the American Convention establishes the following:

Reaffirming their intention to consolidate in this hemisphere, within the framework of democratic institutions, a system of personal liberty and social justice based on respect for the essential rights of man;

[...]

Reiterating that, in accordance with the Universal Declaration of Human Rights, the ideal of free men enjoying freedom from fear and want can be achieved only if conditions are created whereby everyone may enjoy his economic, social, and cultural rights, as well as his civil and political rights
[...]. (Underlining added)

57. The Court notes that at present there are widely varying degrees of inter-American protection of human rights in the continent. Some countries have granted full protection to the rights of persons under their jurisdiction, having ratified the American Convention and also

⁵⁹ See, also Inter-American Court of Human Rights, *Considerations on the universal ratification of the American Convention and other Inter-American treaties in matters of human rights*, OEA/Ser.L/V/II.152 Doc.21, August 14, 2014, para. 56.

⁶⁰ Cf. *Case of Palamara Iribarne v. Chile. Merits, reparations and costs*. Judgment of November 22, 2005. Series C No. 135, para. 89.

⁶¹ Cf. *Case of Castillo Petruzzi et al. v. Peru. Merits, reparations and costs*. Judgment of May 30, 1999. Series C No. 52, para. 207, and *Case of Fernández Prieto and Tumbeiro v. Argentina. Merits and reparations*. Judgment of September 1, 2020. Series C No. 411, para. 99.

⁶² Cf. *Case of "The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile. Merits, reparations and costs*. Judgment of February 5, 2001. Series C No. 73, para. 87, and *Case of Alvarado Espinoza et al. v. Mexico. Merits, reparations and costs*. Judgment of November 28, 2018. Series C No. 370, para. 258.

⁶³ Cf. *Case of Garrido and Baigorria v. Argentina. Reparations and costs*. Judgment of August 27, 1998. Series C No. 39, para. 68, and *Case of Castañeda Gutman v. Mexico. Preliminary objections, merits, reparations and costs*. Judgment of August 6, 2008. Series C No. 184, para. 132.

⁶⁴ Cf. *Case of González et al. ("Cotton Field") v. Mexico. Preliminary objection, merits, reparations and costs, supra*, para. 33.

accepted the contentious jurisdiction of the Inter-American Court.⁶⁵ There are also countries which, having ratified the Convention and undertaken to respect and ensure respect for conventional rights, have not yet accepted the Court's contentious jurisdiction, cutting off access to inter-American justice for the persons under their jurisdiction. Finally, another group of member countries of the OAS maintains a minimum threshold of protection through the American Declaration and the OAS Charter under the supervision of the Inter-American Commission, having not yet ratified the American Convention. Thus, achieving the universal application of the full protection afforded by the inter-American system of human rights is a legitimate aspiration⁶⁶ of the system as a whole, of the Member States of the OAS, and of each and every one of the inhabitants of the American continent regardless of their nationality, who are the holders of rights and principal beneficiaries of the entire protection system. Similarly, there are other human rights treaties of a regional nature, with different levels of ratification (*infra* paras. 84 and 85), which strengthen the protection of human rights on the continent.

58. On the other hand, the denunciation of a human rights treaty, such as the American Convention, represents a backward step in the level of inter-American protection of human rights and in the effort to promote the universal application of the inter-American system. Therefore, bearing in mind the object and purpose of human rights treaties, considering the relevant provisions and having regard to the serious nature of a decision of that magnitude, the Court considers it essential to offer a clear interpretation of the procedural guidelines for making a denunciation and its effects on international obligations. The Court will also make some additional observations regarding the collective guarantee mechanisms as essential safeguards associated with the structure of a democratic State against sudden denunciations that are contrary to the general legal principle of acting in good faith. This is based on the understanding that the holders of the rights recognized in the American Convention, who would be left unprotected by the inter-American judicial protection, are in an asymmetrical position in relation to the power of the State. Thus, the Court seeks to support the community of American States and the competent OAS organs in collectively and peacefully ensuring the effectiveness of the American Convention and of the inter-American system of protection of human rights.⁶⁷

B. The denunciation clause contained in the American Convention on Human Rights and its procedural guidelines

59. As mentioned previously, Article 78 of the American Convention establishes the possibility of denouncing the treaty as a whole.⁶⁸ This was expressly agreed by the States of the Americas when they adopted this instrument in the following terms:

⁶⁵ Article 62 of the American Convention.

⁶⁶ *Cf.* Inter-American Court of Human Rights, *Considerations related to the universal ratification of the American Convention and other inter-American human rights treaties*, *supra*, para. 4.

⁶⁷ In this regard, the Court has indicated that "The principle of effectiveness (*effet utile*) permeates the protection of all rights recognized in [the American Convention]." *Case of Anzualdo Castro v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of September 22, 2009. Series C No. 202, para. 77, and *Case of Rodríguez Revolorio et al. v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of October 14, 2019. Series C No. 387, para. 135.

⁶⁸ The Court has indicated that "The optional clause recognizing the contentious jurisdiction of the Inter-American Court is of particular importance to the operation of the system of protection embodied in the American Convention. When a State consents to that clause, it binds itself to the whole of the Convention and is fully committed to guaranteeing the international protection of human rights that the Convention embodies. A State Party may only release itself from the Court's jurisdiction by renouncing the treaty as a whole." *Case of Ivcher Bronstein v. Peru. Jurisdiction*, *supra*, para. 46, and *Case of the Constitutional Court v. Peru. Jurisdiction*, *supra*, para. 45.

Article 78

1. The States Parties may denounce this Convention at the expiration of a five-year period from the date of its entry into force and by means of notice given one year in advance. Notice of the denunciation shall be addressed to the Secretary General of the Organization, who shall inform the other States Parties.

2. Such a denunciation shall not have the effect of releasing the State Party concerned from the obligations contained in this Convention with respect to any act that may constitute a violation of those obligations and that has been taken by that state prior to the effective date of denunciation.

60. This provision describes two procedural requirements that must be met at international level to validly denounce the American Convention in its entirety, namely: (i) at least five years' membership from the date of the treaty's entry into force and (ii) notification, submitted one year in advance, to the OAS Secretary General who, as custodian of the treaty, shall inform the other States Parties. In this regard, the Court emphasizes that a State's intention to denounce the treaty cannot be presumed or inferred from domestic acts; such a denunciation must be made expressly and formally through the procedure established at the international level.⁶⁹ Once the requirements have been met, the denunciation takes effect one year after notification, unless the instrument of denunciation or the notification are revoked prior to the established period (art. 68 of the Vienna Convention).

61. That said, the Inter-American Court points out that the American Convention does not expressly establish the procedures required under a State's domestic law for taking a decision of this nature and which, in terms of international law, constitutes a unilateral expression by that State. A domestic decision to denounce a treaty or to withdraw from an international organization is usually adopted and communicated by the executive branch, although in some situations the judicial or legislative branches may take such decisions. In the case of human rights treaties, such as the American Convention, a decision of this nature has specific implications, since it would "deprive all the Convention's beneficiaries of the additional guarantee of protection of their human rights that the Convention's jurisdictional body affords."⁷⁰ However, there is no uniformity - or, in many cases, clarity - regarding which branch of government, organ or authority, at the domestic level, is responsible for the process of denouncing an international human rights treaty, other than the one entrusted with formally notifying the denunciation to the treaty's custodian, pursuant to Article 67 of the Vienna Convention.

62. The Court has referred to the constitutional provisions of States that are or have been Parties to the American Convention to ascertain their current practice. In this regard, it notes

⁶⁹ Article 67 of the Vienna Convention on the Law of Treaties establishes the following: "Instruments for declaring invalid, terminating, withdrawing from or suspending the operation of a treaty. 1. The notification provided for under article 65, paragraph 1, must be made in writing. 2. Any act declaring invalid, terminating, withdrawing from or suspending the operation of a treaty pursuant to the provisions of the treaty or of paragraphs 2 or 3 of article 65 shall be carried out through an instrument communicated to the other parties. If the instrument is not signed by the Head of State, Head of Government or Minister for Foreign Affairs, the representative of the State communicating it may be called upon to produce full powers."

⁷⁰ Cf. *Case of Ivcher Bronstein v. Peru. Jurisdiction, supra*, para. 41, and *Case of the Constitutional Court v. Peru. Jurisdiction, supra*, para. 40.

that eight States, namely, Argentina,⁷¹ Bolivia,⁷² Chile,⁷³ Ecuador,⁷⁴ Guatemala,⁷⁵ Mexico,⁷⁶ Paraguay,⁷⁷ and Peru,⁷⁸ have domestic constitutional provisions

⁷¹ Article 75 of the Constitution of Argentina states the following: "Article 75. - Congress is empowered to: [...] 22. To approve or reject treaties concluded with other nations and international organizations [...] The American Declaration of the Rights and Duties of Man; the Universal Declaration of Human Rights; the American Convention on Human Rights; the International Pact on Economic, Social and Cultural Rights; the International Pact on Civil and Political Rights and its empowering Protocol; the Convention on the Prevention and Punishment of Genocide; the International Convention on the Elimination of all Forms of Racial Discrimination; the Convention on the Elimination of all Forms of Discrimination against Women; the Convention against Torture and other Cruel, Inhuman or Degrading Treatments or Punishments; the Convention on the Rights of the Child; in the full force of their provisions, they have constitutional hierarchy, do not repeal any section of the First Part of this Constitution and are to be understood as complementing the rights and guarantees recognized herein. They shall only be denounced, in such event, by the National Executive Power after the approval of two-thirds of all the members of each Chamber. The other treaties and conventions on human rights shall require the vote of two-thirds of all the members of each Chamber, after their approval by Congress In order to attain constitutional hierarchy."

⁷² Article 260 of the Constitution of the Plurinational State of Bolivia establishes the following: "Article 260. I. The repudiation of the international treaties shall follow the procedures established in the same international treaty, the general norms of international law, and the procedures established in the Constitution and the law for its ratification. II. The repudiation of ratified treaties must be approved by the Plurinational Legislative Assembly before being executed by the President of the State. III. The treaties approved by referendum must be submitted to a new referendum prior to their repudiation by the President of State."

⁷³ Article 54 of the Constitution of the Republic of Chile establishes the following: "Article 54. The powers of the Congress are: 1) [...] The provisions of a treaty may only be repealed, amended or suspended in the manner provided in the treaties themselves or in accordance with the general rules of international law. The President of the Republic has the exclusive power to denounce a treaty or withdraw from it, for which purpose he shall request the opinion of both branches of the Congress, in the case that the treaties have been approved by it. Once the denunciation or withdrawal has produced its effects in conformity with the provisions of the international treaty, it shall cease to have effect in the Chilean legal system. In the case of the denunciation or withdrawal from a treaty that was approved by Congress, the President of the Republic shall inform of that to it within fifteen days of effecting the denunciation or withdrawal."

⁷⁴ Articles 419 and 420 of the Constitution of the Republic of Ecuador establishes the following: "Art. 419. - The ratification or denunciation of international treaties shall require prior approval by the National Assembly in cases where: [...] 4. They refer to the rights and guarantees provided for in the Constitution. Art. 420. - The ratification of treaties can be requested by referendum, citizen initiative or the President of the Republic. Denunciation of a treaty that has been adopted shall pertain to the President of the Republic. In the event of denunciation of a treaty adopted by the citizenry in a referendum, the same procedure that adopted the treaty shall be required."

⁷⁵ Article 183 of the Constitution of the Republic of Guatemala establishes the following: "Article 183. - Functions of the President of the Republic. The functions of the President of the Republic are: [...] o) To direct foreign policy matters and international relations; sign, ratify, and denounce treaties and agreements in accordance with the Constitution".

⁷⁶ Article 76 of the Constitution of the United Mexican States establishes the following: "Article 76. The Senate shall have the power to approve the international treaties and conventions signed by the President of the Republic, as well as his decision to end, condemn, suspend, modify, amend, withdraw reservations and make interpretative declarations related such treaties and conventions; [...]."

⁷⁷ Articles 142 and 290 of the Constitution of the Republic of Paraguay establish the following: "Article 142. Denunciation of Treaties. International treaties related to human rights may only be denounced by the procedures that govern the amendment of this Constitution," and "Article 290. Amendment. Three years after the promulgation of this Constitution, amendments at the initiative of one-fourth of the legislators of any of the Chambers of the Congress, of the President of the Republic, or of thirty thousand electors, through a signed petition [,] may be realized. The full text of the amendment must be approved by [an] absolute majority in the Chamber of origin. [Once] it is approved, the equal treatment will be required at the reviewing Chamber. If in either of the Chambers the majority required for its approval is not met, the amendment will be considered as rejected, [and] it may not be presented again within a period of one year. [Once] the amendment is approved by both Chambers of the Congress, the text will be remitted to the Superior Tribunal of Electoral Justice to convene a referendum, within a time period of one-hundred and eighty days. If the result of this [referendum] is affirmative, the amendment will be sanctioned and promulgated, incorporating itself into the constitutional text. [...]."

⁷⁸ Articles 56 and 57 of the Constitution of Peru state the following: "Article 56. - Approval of Treaties. Treaties must be approved by the Congress before their ratification by the President of the Republic, provided that they concern the following matters: 1. Human Rights. [...] Article 57. [...] Denunciation of treaties is within the power of the President of the Republic, who has the duty to notify the Congress. In the case of treaties subject to approval by Congress, such denunciation requires its previous approval."

concerning the denunciation of treaties. Those States with constitutional regulations regarding the procedure for denouncing an international treaty all require the approval of the legislative body, with the sole exception of Guatemala. Indeed, in some States such as Argentina, Mexico and Paraguay, such decisions must be taken by a qualified majority. In Chile, this role is of an advisory nature. In other words, although there is currently no standard practice in these States, in countries where the domestic procedure for denouncing treaties is regulated by the Constitution, there is a marked tendency to require the participation of the legislative branch as a necessary condition for a democratic society.

63. Although the denunciation of treaties is not expressly regulated in the constitutions of twelve other States, these include clauses for the approval of international treaties by the legislative branch prior to the action of the executive branch, or else through a subsequent referendum. Those countries are Brazil,⁷⁹ Colombia,⁸⁰ Costa Rica,⁸¹ El Salvador,⁸² Haiti,⁸³

⁷⁹ The Constitution of the Federative Republic of Brazil states the following: "LXXVIII – [...] Paragraph 3. International human rights treaties and conventions which are approved in each House of the National Congress, in two rounds of voting, by three fifths of the votes of the respective members shall be equivalent to constitutional amendments;" and "Article 84. The President of the Republic shall have the exclusive power to: VIII – conclude international treaties, conventions and acts, ad referendum of the National Congress; [...]"

⁸⁰ Articles 150 and 224 of the Constitution of Colombia establish the following: "Article 150. It is the responsibility of Congress to enact laws. Through them, it exercises the following functions: [...] 16. To approve or reject treaties that the Government makes with other states or entities in international law. [...]" and "Article 224. In order to be valid, treaties must be approved by Congress."

⁸¹ Article 121 of the Constitution of the Republic of Costa Rica establishes the following: "Article 121.- In addition to other powers vested in it by this Constitution, the Legislative Assembly has exclusive powers to: [...] 4) Approve or reject international conventions, public treaties and concordats."

⁸² Articles 131 and 168 of the Constitution of the Republic of El Salvador establish the following: "Art. 131. - The Legislative Assembly shall have the power to: [...] 7. - Ratify treaties or agreements made by the Executive with other States or international organisms, or to refuse their ratification; [...]" and "Art. 168. - The President of the Republic has the following powers and obligations: 4. - To make international treaties and conventions, submit them to the Legislative Assembly for ratification, and oversee their observance; [...]"

⁸³ Articles 98(3) and 139 of the Constitution of the Republic of Haiti state the following: "Article 98(3). The National Assembly shall have the following powers: [...] 3) To approve or reject international treaties and conventions;" and Article 139 "[The President of the Republic] shall negotiate and sign all international treaties, conventions and agreements and shall present these to the National Assembly for ratification" (unofficial translation).

Honduras,⁸⁴ Nicaragua,⁸⁵ Panama,⁸⁶ Dominican Republic,⁸⁷ Suriname,⁸⁸ Uruguay⁸⁹ and Venezuela.⁹⁰ Finally, in five States, namely, Barbados, Dominica, Grenada, Jamaica and Trinidad and Tobago, the constitution does not contain express provisions for the approval or denunciation of international treaties.

64. The Court emphasizes that, regardless of the different domestic procedures for denouncing treaties in the region, the denunciation of a human right treaty - particularly one that establishes a jurisdictional system for the protection of human rights, such as the American Convention - must be subject to a pluralistic, public and transparent debate within the States, as it is a matter of great public interest because it implies a possible curtailment of rights and, in turn, of access to international justice. In this regard, the Court considers it pertinent to have recourse to the principle of parallelism of forms, which implies that if a State has established a constitutional procedure for assuming international obligations it would be appropriate to follow a similar procedure when it seeks to extricate itself from those obligations (*infra* para.171), in order to guarantee such public debate.

⁸⁴ Articles 16 and 205(30) of the Constitution of the Republic of Honduras establish the following: "Article 16. All international treaties must be approved by the National Congress before their ratification by the Executive branch. [...]" and "Article 205. The National Congress shall have the following powers: [...] 30. To approve or reject international treaties signed by the Executive Branch."

⁸⁵ Article 138 of the Constitution of Nicaragua establishes the following: "Article 138 - The National Assembly has the following functions: [...] 12) To approve or reject international instruments concluded with states or entities which are subjects of international law. Said international instruments may only be presented, discussed, approved or rejected in total, without the possibility to make amendments or additions to their text. The legislative approval shall give legal effect to them, inside and outside Nicaragua, once they have entered into force internationally through the deposit or exchange of ratifications or the compliance with the conditions and deadlines provided for in the text of the international treaty or instrument."

⁸⁶ Article 159 of the Constitution of the Republic of Panama establishes the following: "Article 159. The Legislative functions of the Nation are vested in the National Assembly and consist of making laws necessary for the fulfillment of the purposes of the performance functions, of the State declared in this Constitution and especially for the following: [...] 3. To approve or reject, prior to ratification, treaties and international agreements negotiated by the Executive Branch; [...]"

⁸⁷ Articles 93 and 128 of the Constitution of the Dominican Republic establish the following: "Article 93.-Powers. The National Congress legislates and supervises in representation of the people. Consequently, it shall have: 1) General Powers in legislative matters: [...] l) to approve or disapprove the international treaties and conventions signed by the Executive Branch; [...]" and "Article 128. - Powers of the President of the Republic. The President of the Republic [...] 1) as Head of State shall: [...] d) sign international treaties and conventions and submit them for approval to the National Congress, without which they will neither be valid nor carry obligations for the Republic. [...]"

⁸⁸ Articles 72 and 104 of the Constitution of Suriname state the following: "Article 72. Without prejudice to matters reserved elsewhere in the Constitution for regulation by law, the following subjects shall certainly be determined by law: a. Treaties, subject to the provisions of Article 104; [...]" and "Article 104. 1. Approval shall be given either explicitly or implicitly. Explicit approval shall be given by law. Implicit approval has been given if, within thirty days after the agreement has been submitted for that purpose to the National Assembly, no statement has been made by the National Assembly expressing the wish that the agreement be subject to explicit approval; 2. The law shall determine those cases in which approval is not required." (Unofficial translation).

⁸⁹ Articles 85 and 168 of the Constitution of the Oriental Republic of Uruguay establish the following: "Article 85.- The General Assembly is competent: [...] 7) [...]to approve or reject, by an absolute majority of the full membership of both Chambers, the treaties of peace, alliance, commerce, and conventions or contracts of any nature which the Executive Power may make with foreign powers" and "Article 168.- The President of the Republic, acting with the respective Minister or Ministers, or with the Council of Ministers, has the following duties: [...] 20) To conclude and sign treaties, the approval of the Legislative Power being necessary for their ratification."

⁹⁰ Articles 154 and 187 of the Constitution of the Bolivarian Republic of Venezuela establish the following "Article 154. Treaties agreed to by the Republic must be approved by the National Assembly prior to their ratification by the President of the Republic, with the exception of those which seek to perform or perfect pre-existing obligations of the Republic, apply principles expressly recognized by the Republic, perform ordinary acts in international relations or exercise powers expressly vested by law in the National Executive" and "Article 187. It shall be the function of the National Assembly [...] 18. To approve by law any international treaties or agreements entered into by the National Executive, with the exceptions set forth in the present Constitution."

65. In conclusion, and regardless of existing domestic regulations, or any that may be adopted in future by the States in the exercise of their constitutional powers, Article 78 of the American Convention establishes two procedural guidelines (*supra* para. 60) that must be duly observed to ensure the validity of the denunciation of this treaty under international law.

C. Effects on the international obligations of a Member State of the OAS that has denounced the American Convention on Human Rights and on the persons under its jurisdiction

66. Article 70 of the Vienna Convention on the Law of Treaties, concerning the consequences of the termination of a treaty, establishes that:

1. Unless the treaty otherwise provides or the parties otherwise agree, the termination of a treaty under its provisions or in accordance with the present Convention: a) releases the parties from any obligation further to perform the treaty; b) does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination.
2. If a State denounces or withdraws from a multilateral treaty, paragraph 1 applies in the relations between that State and each of the other parties to the treaty from the date when such denunciation or withdrawal takes effect.

67. Bearing in mind the general rules of international law and the specificity of human rights treaties, as well as those established in the American Convention itself and in other inter-American human rights treaties, the Court finds that is possible to identify at least six significant consequences for the international obligations of a Member State of the OAS that has denounced the American Convention on Human Rights, which are addressed below.

C.1) Conventional obligations remain intact during the transition period to full denunciation

68. When a State Party denounces a treaty, the obligations established therein remain intact during the period of transition prior to the denunciation taking effect. This period serves as a safeguard to prevent a State, under pressure from a specific situation or contingency, from suddenly and deliberately trying to extricate itself from fulfilling its obligations, or disregarding a ruling by the oversight bodies, or simply acting in a manner contrary to its commitments by failing to ensure *restitutio in integrum* of the rights of victims.⁹¹ In this regard, the Court recalls that States Parties to the Convention must comply, in good faith, with all the provisions of the Convention, including those related to the operation of the two oversight bodies of the inter-American system of protection.⁹² Article 78(1) of the American Convention stipulates a transition period of one year.

69. During this period and until the denunciation takes effect, the general obligations of an *erga omnes nature*⁹³ remain in force for the State. In other words, it must respect⁹⁴ and ensure

⁹¹ Cf. *Case of James et al. regarding Trinidad and Tobago. Provisional Measures*. Order of the Inter-American Court of Human Rights of May 27, 1999, recital 9.

⁹² Cf., *Mutatis mutandis, Case of Ivcher Bronstein v. Peru, Jurisdiction, supra*, para. 37, and *Case of the Constitutional Court v. Peru. Jurisdiction, supra*, para. 36.

⁹³ Cf. *Juridical Condition and Rights of Undocumented Migrants. Advisory Opinion OC-18/03* of September 17, 2003. Series A No. 18, paras. 109 and 140, and *Case of the "Mapiripán Massacre" v. Colombia*. Judgment of September 15, 2005. Series C No. 134, para. 111.

⁹⁴ In the *Case of Velásquez Rodríguez v. Honduras*, the Court determined the following: "The first obligation assumed by the States Parties under Article 1 (1) is 'to respect the rights and freedoms' recognized by the Convention. The exercise of public authority has certain limits which derive from the fact that human rights are inherent attributes of human dignity and are, therefore, superior to the power of the State." *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 165.

respect for – or guarantee⁹⁵– the standards of protection and effectiveness of those rights under all circumstances and respect all persons without discrimination⁹⁶ through the adoption of domestic measures,⁹⁷ in connection with all Convention-based rights.

70. Furthermore, the system of individual petitions and contentious cases remains active; consequently, the Commission and the Inter-American Court retain jurisdiction to examine any acts that violated conventional rights during this period and until the denunciation becomes effective. In other words, the State has an obligation to assume responsibility for any breach of the American Convention committed while it is still bound by the treaty. Likewise, the Court may order the adoption of provisional measures, under Article 63(2) of the Convention, and the Commission may use any other mechanism of protection provided in Chapter VII of the American Convention, using that instrument as a source of obligations.

71. In the view of this Court, the transition period established by the American Convention provides an adequate time frame to allow the other States Parties to the American Convention, as collective guarantors of its efficacy, an opportunity to express any observations or objections deemed pertinent regarding denunciations that do not withstand scrutiny in light of the democratic principle (*infra* para.73) and that undermine the inter-American public interest. In that regard, the Court recalls that all States Parties are required to ensure the integrity and effectiveness of the Convention. This general duty of protection is of direct interest to each State Party and to all of them as a whole. For this reason, Article 78 establishes the duty to inform the other parties when a notification of denunciation is received.

72. This requirement is also linked with the broader objectives underlying the entire system of international protection and the associated notion of collective guarantees (*infra* Chapter VI), pursuant to the first paragraph of the preamble, which expresses the States' intention to "consolidate in this hemisphere, within the framework of democratic institutions, a system of personal liberty" (*supra* para.56) along with the democratic principle enshrined in Articles 29,⁹⁸

⁹⁵ In the *Case of Velásquez Rodríguez v. Honduras*, the Court established the following: "The second obligation of the States Parties is to "ensure" the free and full exercise of the rights recognized by the Convention to every person subject to its jurisdiction. This obligation implies the duty of States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights. As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation. The obligation to ensure the free and full exercise of human rights is not fulfilled by the existence of a legal system designed to make it possible to comply with this obligation --it also requires the government to conduct itself so as to effectively ensure the free and full exercise of human rights." *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, paras. 166 and 167.

⁹⁶ The Court has indicated that: "The effects of the fundamental principle of equality and non-discrimination encompass all States, precisely because this principle, which belongs to the realm of *jus cogens* and is of a peremptory character, entails obligations *erga omnes* of protection that bind all States and give rise to effects with regard to third parties, including individuals." *Juridical condition and rights of undocumented migrants. Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, para. 110.*

⁹⁷ The Court has established in its jurisprudence that, "The general duty under Article 2 of the American Convention requires States Parties to adopt, based on their constitutional procedures and the provisions of the Convention, measures of two kinds: on the one hand, elimination of any norms and practices that in any way violate the guarantees provided under the Convention; on the other hand, the promulgation of norms and the development of practices conducive to effective observance of those guarantees." *Case of Castillo Petruzzi et al. v. Peru. Merits, reparations and costs, supra*, para. 207, and *Case of Fernández Prieto and Tumbeiro v. Argentina, supra*, para. 99.

⁹⁸ Article 29(c) of the Convention establishes the following: "Restrictions Regarding Interpretation: No provision of this Convention shall be interpreted as: [...] c) precluding other rights or guarantees that are inherent in the human personality or derived from representative democracy as a form of government; [...]."

30⁹⁹ and 32¹⁰⁰ of the American Convention. Indeed, the democratic principle inspires, illuminates and guides the comprehensive application of the American Convention; it constitutes both a guiding principle and an interpretative guideline. As a guiding principle, it articulates the type of political organization chosen by the States of the Americas to attain the values that the system wishes to promote and protect, including the full exercise of human rights.¹⁰¹ In this regard, it provides a clear orientation for their observance through the division of powers and the proper functioning of the democratic institutions of the States Parties within the framework of the rule of law. Furthermore, the Court has affirmed that “representative democracy is one of the pillars of the entire system of which the Convention forms part.”¹⁰² In other words, it is not exclusive to the conventional system, but is based more broadly on the progressive development of the inter-American system, as the foundational premise of the regional organization, since this principle is enshrined in the OAS Charter - the constitutive treaty and fundamental instrument of the inter-American system.¹⁰³ The relationship between human rights and representative democracy is likewise established in the Inter-American Democratic Charter.¹⁰⁴ Thus, the effective exercise of democracy in the Americas is an international legal obligation to which States have consented, in exercise of their sovereignty, and is no longer solely a matter of domestic, internal or exclusive jurisdiction.¹⁰⁵

73. For the foregoing reasons, it is crucial to probe a State’s good faith in relation to the purpose and context of a denunciation, especially if it arises from the following situations: (1) a disagreement with a decision adopted by the protection body and motivated by a manifest will to breach the international commitments adopted therein;¹⁰⁶ (2) in a scenario in which guarantees¹⁰⁷ have been suspended indefinitely or which threatens the core on non-derogable

⁹⁹ Article 30 of the Convention states the following: “Scope of Restrictions. The restrictions that, pursuant to this Convention, may be placed on the enjoyment or exercise of the rights or freedoms recognized herein may not be applied except in accordance with laws enacted for reasons of general interest and in accordance with the purpose for which such restrictions have been established.”

¹⁰⁰ The second subparagraph of Article 32 of the Convention states that: “The rights of each person are limited by the rights of others, by the security of all, and by the just demands of the general welfare, in a democratic society.”

¹⁰¹ See, *inter alia*, Resolution AG/RES. 835 (XVI O/86) which states that “the democratic system is essential to the establishment of a political society in which human rights can be fully realized.” Likewise, Resolution XXVII of the Tenth Inter-American Conference of Caracas of 1954 states: “The full validity of the fundamental human rights and duties may be achieved only under a system of representative democracy.” General Assembly of the Organization of American States. Resolution AG/RES. 835 (XVI O/86) of November 15, 1986, and Tenth Inter-American Conference of Caracas of 1954. Resolution XXVII on Strengthening the System for the Protection of Human Rights.

¹⁰² Advisory Opinion OC-6/86, *supra*, para. 34, and *Case of Petro Urrego v. Colombia. Preliminary objections, merits, reparations and costs*. Judgment of July 8, 2020. Series C No. 406, para. 90.

¹⁰³ Cf. Advisory Opinion OC-6/86, *supra*, para. 34, and *Case of Women Victims of Sexual Torture in Atenco v. Mexico. Preliminary objection, merits, reparations and costs. Judgment of November 28, 2018*. Series C No. 371, para. 54.

¹⁰⁴ Cf. Organization of American States. Inter-American Democratic Charter. Approved at the first plenary session of the OAS General Assembly, held on September 11, 2001 during the Twenty-eighth Session, Articles 3 and 4. The Inter-American Juridical Committee recalled that “the Inter-American Democratic Charter was conceived as a tool to update, interpret and apply the fundamental Charter of the OAS, and represents a progressive development of International Law.” IJC/RES. 159 (LXXV-O/09).

¹⁰⁵ Cf. *Case of San Miguel Sosa et al. v. Venezuela. Merits, reparations and costs*. Judgment of February 8, 2018. Series C No. 348, para. 114.

¹⁰⁶ According to Article 68(1) of the American Convention, “The States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties.” The obligation to comply with the Court’s judgments correspond to a basic principle of international law, supported by international jurisprudence, according to which States must fulfil their international obligations in good faith (*pacta sunt servanda*) and, as indicated by this Court and pursuant to Article 27 of the Vienna Convention, may not invoke domestic law as justification of failure to perform their international responsibilities. Cf. Advisory Opinion OC-14/94, *supra*, para. 35.

¹⁰⁷ The Court has indicated that the suspension of guarantees must operate as a strictly exceptional measure to address real emergency situations, “to the extent and for the period of time strictly required by the exigencies of the situation,” and not as a measure to tackle common criminality. It has further determined that “it is the obligation of the State to determine the reasons and motives that lead the domestic authorities to declare a state of emergency

rights;¹⁰⁸ (3) in a context of serious, massive or systematic violations of human rights¹⁰⁹; (4) in a context of progressive erosion of democratic institutions;¹¹⁰ (5) if the democratic order has been disturbed or has suffered a manifest, irregular or unconstitutional rupture,¹¹¹ and/or (6) in the event of an armed conflict. These situations are especially serious and could eventually undermine democratic stability, security and peace in the hemisphere, resulting in widespread impairment of human rights.

74. Such situations may be assessed based on different information sources, particularly country reports or *in loco* visits by the Inter-American Commission, rulings issued by the inter-American system of individual petitions and contentious cases, reports of the electoral observation missions and decisions of the Permanent Council, the OAS General Assembly and the *ad hoc* Meeting of Ministers of Foreign Relations, in application of the Inter-American Democratic Charter or of Resolution 1080/91. Other sources include reports or decisions of the universal system and information compiled by national institutions responsible for the protection of human rights in the denouncing State, provided that these have the required independence.¹¹²

75. Consequently, as collective guarantors of the American Convention, the States Parties to the Convention have a duty to express their observations or objections in a timely manner and within the institutional framework of the OAS, in order to safeguard the effective protection of human rights and the democratic principle. The aim is to prevent a State from

and it is up to these authorities to exercise appropriate and effective control over this situation and to ensure that the suspension decreed is limited, in accordance with the Convention. States do not enjoy an unlimited discretion; it is up to the Inter-American system's organs to exercise this control in a subsidiary and complementary manner, within the framework of their respective competences." *Case of Zambrano Vélez et al. v. Ecuador. Merits, reparations and costs.* Judgment of July 4, 2007. Series C No. 166, paras. 47 and 52. See also, *Habeas Corpus under Suspension of Guarantees (arts. 27(2), 25(1) and 7.6 American Convention on Human Rights)*. Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, para. 19.

¹⁰⁸ Article 27(2) of the Convention establishes that: "2. The foregoing provision does not authorize any suspension of the following articles: Article 3 (Right to Juridical Personality), Article 4 (Right to Life), Article 5 (Right to Humane Treatment), Article 6 (Freedom from Slavery), Article 9 (Freedom from Ex Post Facto Laws), Article 12 (Freedom of Conscience and Religion), Article 17 (Rights of the Family), Article 18 (Right to a Name), Article 19 (Rights of the Child), Article 20 (Right to Nationality), and Article 23 (Right to Participate in Government), or of the judicial guarantees essential for the protection of such rights." See also, Advisory Opinion OC-8/87, *supra*, para. 23.

¹⁰⁹ For example, the World Conference on Human Rights of Vienna, in 1993, expressed its dismay and condemnation that gross and systematic violations and situations that constitute serious obstacles to the full enjoyment of all human rights continue to occur in different parts of the world. Such violations and obstacles include, as well as torture and cruel, inhuman and degrading treatment or punishment, summary and arbitrary executions, disappearances, arbitrary detentions, all forms of racism, racial discrimination and apartheid, foreign occupation and alien domination, xenophobia, poverty, hunger and other denials of economic, social and cultural rights, religious intolerance, terrorism, discrimination against women and lack of the rule of law. *Cf.* Vienna Declaration and Programme of Action of the World Conference on Human Rights of June 25, 1993, para. 30.

¹¹⁰ For this it is essential to determine whether the decision to denounce is taken in the context of a "minimum level of democratic quality," that would indicate the State's good faith. To this end, it is necessary to ascertain whether the denouncing State ensures sufficient respect for the effective exercise of representative democracy, taking into account the following essential elements of democratic institutions, according to the Inter-American Democratic Charter: "respect for human rights and fundamental freedoms, access to and the exercise of power in accordance with the rule of law, the holding of periodic, free, and fair elections based on secret balloting and universal suffrage as an expression of the sovereignty of the people, the pluralistic system of political parties and organizations, and the separation of powers and independence of the branches of government." *Cf.* Article 3 of the Inter-American Democratic Charter.

¹¹¹ See, the Inter-American Democratic Charter, Articles 19 and 20. For its part, the "Commitment of Santiago" of June 4, 1991, is applicable in two situations, namely: 1) acts that cause an abrupt or irregular interruption of the democratic institutional political process and 2) acts that cause an interruption of the legitimate exercise of power by a democratically-constituted government. OAS General Assembly. Resolution on Representative Democracy of June 5, 1991, AG/RES. 1080 (XXI-O/91), Resolution 1.

¹¹² See the Paris Principles, *Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights*, approved by the United Nations General Assembly on December 20, 1993.

using denunciation as a bad-faith attempt to sidestep its international human rights commitments, reduce or curtail the effective protection of such rights, weaken access to the international judicial mechanism, and deprive the people of the complementary protection afforded by the inter-American system.

C.2) The effective denunciation of the American Convention does not produce retroactive effects

76. In second place, the definitive denunciation of the Convention does not retroactively release the denouncing State from the responsibilities assumed prior to the denunciation taking effect. Under Article 78(2) of the Convention, "such a denunciation shall not have the effect of releasing the State Party concerned from the obligations contained in the Convention with respect to any act that may constitute a violation of those obligations and that has been taken by that state prior to the effective date of denunciation." This is consistent with the Vienna Convention, which establishes that the termination of a treaty "does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination" (art. 70 (1)(b)).

77. Accordingly, the protection organs of the inter-American system are authorized to continue processing petitions and contentious cases related to alleged violations of the American Convention and for internationally wrongful acts committed prior to the denunciation taking effect. Thus, the Commission and the Inter-American Court may examine, within the framework of the system of individual petitions and contentious cases, an international wrongful act committed by a State that has denounced the Convention, even after the denunciation produces effects, (i) for any acts or omissions before and up to the date on which the denunciation takes effect; (ii) for acts of a continuous nature that commenced before the date on which the denunciation takes effect, such as in cases of enforced disappearance of persons, or (iii) for "continuous or manifest" effects of acts that predate the moment in which the denunciation takes effect.¹¹³ This applies both to individual cases and to interstate applications.¹¹⁴

78. Furthermore, as regards compliance with the recommendations issued by the Inter-American Commission in its merits reports on declared violations of the American Convention, this Court has indicated that the good faith principle in the observance of treaties requires that, "if a State signs and ratifies an international treaty, especially one concerning human rights, such as the American Convention, it has the obligation to make every effort to apply the recommendations of a protection organ such as the Inter-American Commission, one of the principal organs of the Organization of American States, whose function is to promote the observance and defense of human rights" in the hemisphere."¹¹⁵

79. In addition, a State that has denounced the Convention remains bound to comply fully with the reparations ordered by the judgments of this Court until it concludes the monitoring compliance with judgment stage. As stated previously, the American Convention imposes the obligation to provide full redress for any violations of the rights and freedoms recognized therein. Indeed, when an unlawful act attributable to a State occurs, that State becomes

¹¹³ Cf. *Case of Blake v. Guatemala. Preliminary objections*. Judgment of July 2, 1996, Series C, No. 27, paras. 33 to 34 and 46; *Case of James et al. regarding Trinidad and Tobago. Provisional measures*. Order of the Inter-American Court of Human Rights of September 25, 1999, and *Case of James et al. regarding Trinidad and Tobago. Provisional measures*. Order of the Inter-American Court of Human Rights of November 26, 2001, consideration para. 3. See also, IACHR. Report N° 89/01 - Case 12.342 Balkissoon Roodal v. Trinidad and Tobago of October 10, 2001, para. 23.

¹¹⁴ See Article 45 of the American Convention. Cf. IACHR. Report No. 11/07 on Interstate Case 01/06 (Nicaragua v. Costa Rica) of March 8, 2007, paras. 124 and 127.

¹¹⁵ Cf. *Case of Loayza Tamayo v. Peru. Merits*. Judgment of September 17, 1997. Series C No. 33, para. 80.

internationally responsible for a violation of international law. Based on this responsibility, a new juridical relationship emerges for the State, which is the obligation to make reparation.¹¹⁶ Moreover, the Court has indicated that the obligation to provide reparation, pursuant to Article 63(1) of the American Convention, “reflects a customary norm that also constitutes one of the fundamental principles of current international law, as has been recognized by this Court and by the case law of other tribunals.”¹¹⁷

80. Given that an inter-American judgment acquires the “authority of international *res judicata*,” it produces an effectiveness *inter partes* which entails the State’s obligation to comply with everything established in the inter-American judgment promptly, fully and effectively.¹¹⁸ There is a total and absolute relationship between the contents and effects of a judgment that results in an obligation under Articles 67 and 68(1) of the American Convention.¹¹⁹ Thus, the State has a duty to fulfill its previous commitments in good faith and in exercise of its sovereignty, namely, to “comply with the Court’s decision in any case” to which it is a party. In other words, any State that has accepted the jurisdiction of the Inter-American Court cannot extricate itself from its obligations derived from judgments issued by this Court, despite having denounced the Convention.¹²⁰

81. The same applies to the execution of provisional measures ordered under Article 63(2) of the Convention, prior to the denunciation taking effect, based on the requirements of extreme gravity and urgency and, when necessary, to avoid irreparable damage to persons, while it remains in force. Thus, while the Court maintains this protection ordered for as long as the risk persists and the basic requirements remain, the State concerned has the obligation to implement those measures in good faith and in an effective manner.¹²¹

82. The Court recalls that Article 65 of the American Convention establishes a system of collective guarantees to ensure compliance with decisions of the Inter-American Court. In this regard, the Court must indicate in its annual work report to the OAS General Assembly “the cases in which a State has not complied with its judgments.” Likewise, Article 30 of the Statute of the Inter-American Court establishes that the said work report “shall indicate those cases in which a State has failed to comply with the Court’s rulings.” Consequently, the Court has issued orders in which it has applied the provisions of Article 65 and informed the OAS General Assembly of non-compliance with reparations ordered in its judgments in several cases, and has asked the General Assembly to urge the corresponding States to comply, in keeping with its task of protecting the practical effects of the American Convention.¹²²

C.3) The validity of the obligations arising from the ratification of other inter-American human rights treaties remains active

¹¹⁶ Cf. *Case of Garrido and Baigorria v. Argentina. Reparations and Costs*. Judgment of August 27, 1998. Series C No. 39, para. 40, and *Case of Ximenes Lopes v. Brazil*. Judgment of July 4, 2006. Series C No. 149, para. 232.

¹¹⁷ Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs*. Judgment of July 21, 1989. Series C No. 7, para. 25, and *Case of Aloeboetoe et al. v. Suriname. Reparations and costs*. Judgment of September 10, 1993. Series C No. 15, para. 43.

¹¹⁸ Cf. *Case of Gelman v. Uruguay. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of March 20, 2013, paras. 31 and 32.

¹¹⁹ Cf. *Case of Gelman v. Uruguay. Monitoring Compliance with Judgment, supra*, para. 32.

¹²⁰ Cf. *Case of Caesar v. Trinidad and Tobago. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of November 21, 2007, Consideration 3 and second operative paragraph.

¹²¹ Cf. *Case of James et al. regarding Trinidad and Tobago. Provisional measures*. Order of the Inter-American Court of Human Rights of November 26, 2001, paras. 3, 10 and 13, and *Matters of certain Venezuelan prisons. Humberto Prado. Marianela Sánchez Ortiz and family regarding Venezuela. Provisional measures*. Order of the Inter-American Court of Human Rights of July 8, 2020, Considerations 1, 2 and 24.

¹²² See, *inter alia*, Annual Report of the Inter-American Court of Human Rights of 2019, page 81.

83. Articles 31 and 77 of the American Convention establish, respectively, the following:

Article 31. Recognition of Other Rights

Other rights and freedoms recognized in accordance with the procedures established in Articles 76 and 77 may be included in the system of protection of this Convention.

Article 77

1. In accordance with Article 31, any State Party and the Commission may submit proposed protocols to this Convention for consideration by the States Parties at the General Assembly with a view to gradually including other rights and freedoms within its system of protection.
2. Each protocol shall determine the manner of its entry into force and shall be applied only among the States Parties to it.

84. In this regard, the Court has indicated that “[t]he Convention is the cornerstone of the system for the protection of human rights in America.”¹²³ Since its adoption, it has undergone progressive development and codification within the framework of the inter-American system of protection of human rights. Thus, it has recognized and incorporated certain economic, social, cultural and environmental rights through the Additional Protocol to the American Convention in the Area of Economic, Social and Cultural Rights, or “Protocol of San Salvador,”¹²⁴ and has also adopted the Protocol to the American Convention on Human Rights to Abolish the Death Penalty¹²⁵ “with a view to consolidating the practice of not applying the death penalty in the Americas.”

85. Similarly, the OAS has promoted the progressive and thematic development of the following inter-American treaties on human rights: (i) Inter-American Convention to Prevent and Punish Torture;¹²⁶ (ii) Inter-American Convention on Enforced Disappearance of Persons;¹²⁷ (iii) Inter-American Convention to Prevent, Punish and Eradicate Violence against Women (“Convention of Belém do Pará”);¹²⁸ (iv) Inter-American Convention for the Elimination of all Forms of Discrimination against Persons with Disabilities;¹²⁹ (v) Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance;¹³⁰ (vi) Inter-American Convention against all Forms of Discrimination and Intolerance,¹³¹ and (vii) Inter-American

¹²³ Cf. *Case of Las Palmeras v. Colombia. Merits*. Judgment of December 6, 2001. Series C No. 90, para. 33.

¹²⁴ The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights: “Protocol of San Salvador” was adopted on November 17, 1988, and entered into force on November 16, 1999. The preamble states the following: “Considering the close relationship that exists between economic, social and cultural rights, and civil and political rights, in that the different categories of rights constitute an indivisible whole based on the recognition of the dignity of the human person, for which reason both require permanent protection and promotion if they are to be fully realized, and the violation of some rights in favor of the realization of others can never be justified.”

¹²⁵ The Protocol to the American Convention on Human Rights to Abolish the Death Penalty was adopted on June 8, 1990, and entered into force in each country on the date of deposit of that State’s ratification instrument.

¹²⁶ The Inter-American Convention to Prevent and Punish Torture was adopted on December 9, 1985, and entered into force on February 28, 1987.

¹²⁷ The Inter-American Convention on Enforced Disappearance of Persons was adopted on June 9, 1994, and entered into force on March 28, 1996.

¹²⁸ The Inter-American Convention to Prevent, Punish and Eradicate Violence against Women, “Convention of Belém do Pará” was adopted on June 9, 1994, and entered into force on March 5, 1995.

¹²⁹ The Inter-American Convention for the Elimination of all forms of Discrimination against Persons with Disabilities was adopted on June 7, 1999 and entered into force on September 14, 2001.

¹³⁰ The Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance was adopted on June 5, 2013, and entered into force on November 11, 2017.

¹³¹ The Inter-American Convention against all Forms of Discrimination and Intolerance was adopted on June 5, 2013 and entered into force on February 20, 2020.

Convention on the Protection of the Human Rights of Older Persons.¹³² All these treaties impose on the States that have ratified them more specific and reinforced international obligations in relation to the issues addressed.¹³³

86. As to the power of the States to terminate their participation in a treaty, the Court notes that neither of the two Protocols contains a denunciation clause. In this regard, the Court considers that despite their titles, these instruments by their very nature constitute treaties, pursuant to Article 2(1)(a) of the Vienna Convention. These Protocols form part of the progressive codification of international human rights law on the American continent and specify their own periods of validity; therefore they are not mere accessories to the American Convention. Furthermore, the Court points out that all the other inter-American conventions expressly include a denunciation clause.¹³⁴ The formulation of each treaty is practically identical: (i) it establishes that the Convention shall remain in force indefinitely, but any of the States Parties may denounce it; (ii) stipulates that the instrument of denunciation shall be deposited with the General Secretariat of the OAS; (iii) establishes a transition period of one year from the date of deposit of the instrument until the denunciation takes effect; and (iv) specifies that, after that period, the effects of the treaty shall cease for the denouncing State and shall remain in force for the other States Parties.¹³⁵

87. In accordance with the Vienna Convention, it is appropriate to refer to the guidelines established in each treaty regarding its entry into force and any applicable mechanisms of denunciation. In that regard, the Court concludes that, in order for a State to withdraw from inter-American human rights treaties that contain a specific denunciation clause, an individual and separate denunciation of each inter-American treaty is a *sine qua non* requirement, under the terms of its own provisions. Therefore, if a State denounces the American Convention, or withdraws from the OAS, it remains bound by the other treaties unless it denounces each one individually. (*infra* para.154).

88. As to the two Protocols to the American Convention, the absence of a specific denunciation clause means that Article 56 of the Vienna Convention applies so that, in principle, they are “not subject to denunciation.” However, if a specific issue arises the corresponding assessments must be made bearing in mind this general principle and, if applicable, the only two options that could alter that conclusion, namely, that “it [was] established that the parties intended to admit the possibility of denunciation” or that the right of denunciation “may be implied from the nature of the treaty.”

89. Therefore, a State that denounces the American Convention is not released from obligations arising from its ratification of other inter-American human rights treaties, which remain in effect. In other words, the States Parties to each of these treaties remain subject to the full observance of other instruments for the protection of human rights that they have

¹³² The Inter-American Convention for the Protection of the Human Rights of Older Persons was adopted on June 15, 2015, and entered into force on January 11, 2017.

¹³³ The Court notes that most of the treaties stipulate, as a mechanism of protection, the processing of petitions, either in general or specific terms. In addition, some treaties establish other monitoring mechanisms.

¹³⁴ Inter-American Convention to Prevent and Punish Torture, Article 23; Inter-American Convention on Enforced Disappearance of Persons, Article XXI; Inter-American Convention to Prevent, Punish and Eradicate Violence against Women, “Convention of Belém do Pará,” Article 24; Inter-American Convention for the Elimination of all forms of Discrimination against Persons with Disabilities, Article XIII; Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance, Article 21; Inter-American Convention against all Forms of Discrimination and Intolerance, Article 21 and Inter-American Convention for the Protection of the Human Rights of Older Persons, Article 39.

¹³⁵ The Inter-American Convention for the Elimination of all forms of Discrimination against Persons with Disabilities establishes that: “Such denunciation shall not exempt the state party from the obligations imposed upon it under this Convention in respect of any action or omission prior to the date on which the denunciation takes effect.”

ratified and not denounced individually and separately, as well as to the OAS Charter and the American Declaration (*infra* paras. 94 to 99).

C.4) The definitive denunciation of the American Convention does not invalidate the domestic effectiveness of principles derived from Convention-based precepts interpreted as a standard for the prevention of human rights violations

90. Once the denunciation of the Convention has taken effect, the denouncing State must continue to ensure the full observance and exercise of the human rights of individuals under its jurisdiction without discrimination, in its role as a Member State of the OAS, and based on the OAS Charter, the American Declaration and other treaties and instruments for the protection of the human rights, as well as other sources of international law. The Court notes that several States have incorporated the American Convention into their domestic laws; therefore, notwithstanding a denunciation at the international level, this treaty may continue to form part of the domestic regulatory framework.

91. In this regard, it is pertinent to point out that the authorized interpretations issued by this Court form part of the applicable *corpus iuris* that provides content and efficacy to the protection of human rights, both at the international and domestic levels, as well as being a source of law. In particular, the Court recalls that its interpretation of legal principles derived from Convention-based precepts set parameters for the effective fulfilment of the human rights obligations set forth not only in the Convention but also in the OAS Charter, the American Declaration and other treaties and instruments, with particular emphasis on the duty to prevent human rights violations.

92. This is even more evident with respect to the principles derived from interpretations issued by the Court in the context of its advisory role, the broad scope of which has been emphasized on numerous occasions because it has legal effects for all Member States of the OAS, regardless of whether they have ratified the American Convention.¹³⁶ Indeed, the Court recalls that the interpretation given to a provision of the Convention through an advisory opinion provides the organs of all OAS Member States, including those that are not parties to the Convention,¹³⁷ with “a source that, by its very nature, also contributes, especially in a preventive manner, to achieving the effective respect and guarantee of human rights. In particular, it can provide guidance when deciding matters relating to [...] possible human rights violations [...] and to avoid possible human rights violations.”¹³⁸

93. In this regard, the Court points out that the legal principles derived from the Court’s case law as a whole constitute an instrument that supports the Inter-American Commission in the performance of its work, as well as the OAS Member States in the observance and fulfilment of their human rights obligations arising from the Charter and the American Declaration. This is significant not only for States that have denounced the Convention, but also for all OAS Member States, since those interpretations enrich the content and scope of inter-American law. The Court observes that, in many cases, its interpretations of the conventional text necessarily transcend the Convention and enrich the content of the American Declaration and other inter-American treaties and instruments, insofar as these relate to the normative protection of rights and freedoms.

¹³⁶ Cf. Advisory Opinion OC-18/03, *supra*, para. 60, and Advisory Opinion OC-25/18, *supra*, para. 30.

¹³⁷ Cf. *Case of Cabrera García and Montiel Flores v. Mexico*. Preliminary objection, merits, reparations and costs. Judgment of November 26, 2010. Series C No. 220, paras. 51 and 52; *Case of Gelman v. Uruguay. Monitoring Compliance with Judgment*, *supra*, recitals 65 to 90, and Advisory Opinion OC-21/14, *supra*, para. 31.

¹³⁸ Advisory Opinion OC-21/14, *supra*, para. 31.

C.5) Obligations associated with the minimum threshold of protection through the OAS Charter and the American Declaration remain under the supervision of the Inter-American Commission

94. The Inter-American Commission precedes the American Convention; thus, the OAS Charter granted the Inter-American Commission, as its principal organ, jurisdiction to protect human rights,¹³⁹ a function that continues regardless of the application of the American Convention.¹⁴⁰ Article 106 of the Charter establishes that: "There shall be an Inter-American Commission on Human Rights, whose principal function shall be to promote the observance and protection of human rights and to serve as a consultative organ of the Organization in these matters." The OAS Charter also refers to the essential rights of man in its preamble (paragraph four) and in several of its provisions, specifically in Article 3(I). In this regard, the Court has reiterated that "these rights are none other than those enunciated and defined in the American Declaration."¹⁴¹ Therefore, a minimum threshold of protection of human rights remains through the OAS Charter and the American Declaration under the supervision of the Inter-American Commission, as the principal organ of the OAS.¹⁴²

95. Furthermore, the Court has previously indicated that "to determine the legal status of the American Declaration it is appropriate to look to the inter-American system of today in the light of the evolution it has undergone since the adoption of the Declaration, rather than to examine the normative value and significance which that instrument was believed to have had in 1948."¹⁴³ Thus, the OAS General Assembly has reaffirmed, on numerous occasions, that the American Declaration is a source of international obligations for the Member States of the

¹³⁹ Advisory Opinion OC-10/89, *supra*, para. 41.

¹⁴⁰ The Commission was created by Resolution VIII of the Fifth Meeting of Consultation of Ministers of Foreign Relations, held in Santiago de Chile in 1959, to "promote respect for human rights," and delegated to the OAS Council the task of establishing its organization and defining its powers. In 1960, the OAS Council approved the Statute of the Commission, which was amended on several occasions. It currently confers the following powers in respect of all Member States of the OAS "a. to develop an awareness of human rights among the peoples of the Americas; b. to make recommendations to the governments of the states on the adoption of progressive measures in favor of human rights in the framework of their legislation, constitutional provisions and international commitments, as well as appropriate measures to further observance of those rights; c. to prepare such studies or reports as it considers advisable for the performance of its duties; d. to request that the governments of the states provide it with reports on measures they adopt in matters of human rights; e. to respond to inquiries made by any member state through the General Secretariat of the Organization on matters related to human rights in the state and, within its possibilities, to provide those states with the advisory services they request; f. to submit an annual report to the General Assembly of the Organization, in which due account shall be taken of the legal regime applicable to those States Parties to the American Convention on Human Rights and of that system applicable to those that are not Parties; g. to conduct on-site observations in a state, with the consent or at the invitation of the government in question; and h. to submit the program-budget of the Commission to the Secretary General so that that he may present it to the General Assembly." (Art. 18 of the Statute). In relation to those Member States of the Organization that are not parties to the American Convention on Human Rights, the Commission has the following additional powers: "a. to pay particular attention to the observance of the human rights referred to in Articles I, II, III, IV, XVIII, XXV, and XXVI of the American Declaration of the Rights and Duties of Man; b. to examine communications submitted to it and any other available information, to address the government of any member state not a Party to the Convention for information deemed pertinent by this Commission, and to make recommendations to it, when it finds this appropriate, in order to bring about more effective observance of fundamental human rights; and, c. to verify, as a prior condition to the exercise of the powers granted under subparagraph b. above, whether the domestic legal procedures and remedies of each member state not a Party to the Convention have been duly applied and exhausted." (Art. 20 of the Statute). In 1967, the Commission was incorporated as a principal organ of the OAS, with a mandate "to promote the observance and defense of human rights and to serve as consultative organ of the Organization in this matter." Article 145 of the Charter establishes that "Until the inter-American convention on human rights, referred to in Chapter XV, enters into force, the present Inter-American Commission on Human Rights shall keep vigilance over the observance of human rights."

¹⁴¹ Advisory Opinion OC-10/89, *supra*, para. 41.

¹⁴² Cf. IACHR, *Considerations related to the universal ratification of the American Convention and other inter-American human rights treaties*, *supra*, para. 17.

¹⁴³ Advisory Opinion OC-10/89, *supra*, para. 37.

OAS.¹⁴⁴ Accordingly, the Court has established that, “by means of an authoritative interpretation, the Member States of the Organization have signaled their agreement that the Declaration contains and defines the fundamental human rights referred to in the Charter. Thus the Charter of the Organization cannot be interpreted and applied as far as human rights are concerned without relating its norms, consistent with the practice of the organs of the OAS, to the corresponding provisions of the Declaration.”¹⁴⁵

96. The Court further points out that certain provisions of the American Declaration represent customary norms or general principles of international law and, in therefore, automatically constitute sources of international law. Indeed, the preamble of the Convention expressly states that “the essential rights of man [...] are based upon attributes of the human personality,” and that “these principles have been set forth in the [...] American Declaration of the Rights and Duties of Man.” Accordingly, the Court reaffirms the regulatory and binding nature of the American Declaration for Member States of the OAS, which is currently a central rule of the inter-American *corpus iuris* that reflects the minimum standard of protection of human rights in the American continent.

97. In *Advisory Opinion OC-10/89*, the Court established that, “for the Member States of the Organization, the Declaration is the text that defines the human rights referred to in the Charter.” Therefore, despite not being a treaty *stricto sensu*, the American Declaration is a source of international obligations for all Member States of the OAS.¹⁴⁶ It is also important to note that Article 29(d) of the Convention establishes that none of its provisions may be interpreted as “excluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may have.”

98. Therefore, a State that has denounced the American Convention remains bound by the obligations and duties related to the observance of the human rights set forth in the OAS Charter and the American Declaration. Thus, the Court concludes that the possibility of denunciation established in Article 78 of the Convention does not exclude or limit the jurisdiction of the Inter-American Commission - as the body responsible for promoting the observance and defense of human rights - to examine and process individual petitions related to States that are not parties to the American Convention, based on the essential human rights established in the OAS Charter, the American Declaration and any other inter-American treaty that is in force for the State concerned. This jurisdiction, based on Articles 106 and 145 of the OAS Charter, and on the Organization’s Statute and Rules of Procedure,¹⁴⁷ is maintained.

99. Similarly, based on Article 106 of the OAS Charter and on chapters I, IV, V and VI of Title II of the Inter-American Commission’s current Rules of Procedure, other mechanisms for the protection of human rights remain in effect, namely: the adoption of precautionary measures; monitoring and technical cooperation on human rights issues, through on-site investigations; the inclusion of the denouncing State in the Annual Report and in other reports on specific issues or countries; and summoning the denouncing State to hearings.

¹⁴⁴ Cf. *Advisory Opinion OC-10/89, supra*, para. 42.

¹⁴⁵ For example, in Resolution 314 (VII-0/77) of June 22, 1977, the OAS General Assembly entrusted the Inter-American Commission with the task preparing a study to “set forth the obligation to carry out the commitments assumed in the American Declaration of the Rights and Duties of Man.” In Resolution 371 (VIII-0/78) of July 1, 1978, the General Assembly reaffirmed its “commitment to promote the observance of the American Declaration of the Rights and Duties of Man” and Resolution 370 (VIII-0/78) of July 1, 1978, it referred to the “international commitments” of Member States to respect the rights of Man “recognized in by the American Declaration of the Rights and Duties of Man.” *Advisory Opinion OC-10/89, supra*, paras. 42 and 43.

¹⁴⁶ Cf. *Advisory Opinion OC-10/89, supra*, para. 45.

¹⁴⁷ Statute of the Inter-American Commission of Human Rights, Articles 18 to 20 and Rules of Procedure of the Inter-American Commission of Human Rights, Articles 23, 24, 51 and 52.

C.6) Customary norms, those derived from general principles of international law and those pertaining to *jus cogens* continue to bind the State by virtue of general international law

100. The Court notes that the Vienna Convention establishes that it is incumbent on the State “to fulfil any obligation embodied in the treaty to which it would be subject under international law independently of the treaty” (art. 43 of the Vienna Convention). In this regard, the Court observes that some obligations stipulated by the American Convention coincide with those pertaining to customary norms of international law. The same applies to the general principles of law (*supra* para.96) and to *jus cogens* norms. These provisions will continue to bind the denouncing State under general international law, as independent sources.

101. Article 53 of the Vienna Convention defines *jus cogens* norms as follows:

A peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole, as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

102. *Jus cogens* has been developed by international doctrine and case law.¹⁴⁸ In its development and by its own definition, *jus cogens* is not limited to treaty law. The sphere of *jus cogens* has expanded to encompass general international law, including all legal acts. *Jus cogens* has also emerged in the law pertaining to the international responsibility of States and, finally, it has influenced the basic principles of the international legal order.¹⁴⁹

103. Accordingly, the relevant articles on Responsibility of States for Internationally Wrongful Acts,¹⁵⁰ developed by the International Law Commission, state the following:

Article 40: Application of this Chapter

1. This chapter applies to the international responsibility which is entailed by a serious breach by a State of an obligation arising under a peremptory norm of general international law.
2. A breach of such an obligation is serious if it involves a gross or systematic failure by the responsible State to fulfil the obligation.

Article 41: Particular consequences of a serious breach of an obligation under this chapter.

1. States shall cooperate to bring to an end through lawful means any serious breach within the meaning of article 40.
2. No State shall recognize as lawful a situation created by a serious breach within the meaning of article 40, nor render aid or assistance in maintaining that situation.
3. This article is without prejudice to the other consequences referred to in this Part and to such further consequences that a breach to which this chapter applies may entail under international law.

Article 48: Invocation of responsibility by a State other than an injured State

¹⁴⁸ See, *inter alia*, T.P.I.Y, Trial Chamber II: Prosecutor v. Anto Furundzija. Judgment of December 10, 1998. Case No. IT-95-17/1-T, paras. 137-146, 153-157; International Court of Justice. *Armed activities in the territory of the Congo (new application: 2002) (Democratic Republic of the Congo v. Rwanda)*. Judgment of February 3, 2006, para. 64; *Military and paramilitary activities in and against Nicaragua (Nicaragua v. United States of America)*. Judgment of June 27, 1986, para. 190, and *Questions relating to the obligation to prosecute or extradite (Belgium v. Senegal)*. Judgment of July 20, 2012, para. 99.

¹⁴⁹ Cf. Advisory Opinion OC-18/03, *supra*, para. 99.

¹⁵⁰ Cf. United Nations General Assembly, *State Responsibility for Internationally Wrongful Acts*, Resolution approved on June 8, 2008, U.N. Doc. A/RES/62/61, Articles 40, 41 and 48.

1. Any State other than an injured State is entitled to invoke the responsibility of another State in accordance with paragraph 2 if:
 - a) the obligation breached is owed to a group of States including that State, and is established for the protection of a collective interest of the group; or
 - b) the obligation breached is owed to the international community as a whole.

2. Any State entitled to invoke responsibility under paragraph 1 may claim from the responsible State:
 - a) cessation of the internationally wrongful act, and assurances and guarantees of non-repetition in accordance with article 30; and
 - b) performance of the obligation of reparation in accordance with the preceding articles in the interest of the injured State or of the beneficiaries of the obligation breached.

104. Thus, the International Law Commission, in referencing Article 40 on state responsibility for a serious breach of an obligation stemming from a peremptory norm generally recognized under international law, indicated that:

The obligations referred to in article 40 arise from those substantive rules of conduct that prohibit what has come to be seen as intolerable because of the threat it presents to the survival of States and their peoples and the most basic human values.¹⁵¹

105. *Jus cogens* is presented as the legal expression of the international community as a whole, based on universal and superior values, which embodies basic standards that guarantee essential or fundamental human values related to life, human dignity, peace and security. The prohibition against acts of aggression, genocide, slavery and human trafficking, torture, racial discrimination and apartheid, crimes against humanity, as well as the right to self-determination, together with the norms of international humanitarian law, have been recognized as norms of *jus cogens*, which protect fundamental rights and universal values without which society would not prosper, and therefore produces obligations *erga omnes*.¹⁵²

106. Throughout its case law, the Inter-American Court has recognized the following *jus cogens* norms:

- Principle of equality and prohibition of discrimination;¹⁵³
- Absolute prohibition of all forms of torture, both physical and psychological;¹⁵⁴
- Prohibition of cruel, inhuman or degrading treatment or punishment;¹⁵⁵
- Prohibition of enforced disappearance of persons;¹⁵⁶

¹⁵¹ Yearbook of the International Law Commission of 2001, Vol. II, Part 2, page 120.

¹⁵² Cf. International Court of Justice. *Case of the Democratic Republic of Congo v. Rwanda*. Judgment of February 3, 2006, para. 64; *Questions relating to the obligation to prosecute or extradite, (Belgium v. Senegal)*. Judgment of July 20, 2012, para. 99; *Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain) (New application: 1962)*. Judgment of February 5, 1970, para. 34; *International Criminal Court, Case of the Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, No. ICC-01/09-01/11. Judgment of June 18, 2013, para. 90; *T.P.I.AND, Case of the Prosecutor v. Furundžija*, No. IT-95-17/1-T. Judgment of December 10, 1998, paras. 147 and 151 to 153, and *T.P. I.Y., Case of The Prosecutor v. Kupreškić et al.*, No. IT-95-16-T. Judgment of January 14, 2000, para. 520.

¹⁵³ Cf. Advisory Opinion OC-18/03, *supra*, para. 101, and *Case of the Workers of the Firework Factory of Santo Antônio de Jesus v. Brazil. Preliminary objections, merits, reparations and costs*. Judgment of July 15, 2020. Series C No. 407, para. 182.

¹⁵⁴ Cf. *Case of Maritza Urrutia v. Guatemala. Merits, reparations and costs*. Judgment of November 27, 2003. Series C No. 103, para. 92, and *Case of Azul Rojas Marín et al. v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of March 12, 2020. Series C No. 402, para. 140.

¹⁵⁵ Cf. *Case of Caesar v. Trinidad and Tobago. Merits, reparations and costs*. Judgment of March 11, 2005. Series C No. 123, para. 100, and *Case of Women Victims of Sexual Torture in Atenco v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of November 28, 2018. Series C No. 371, para. 178.

¹⁵⁶ Cf. *Case of Goiburú and et al. v. Paraguay. Merits, reparations and costs*. Judgment of September 22, 2006. Series C No. 153, para. 84, and *Case of Tenorio Roca et al. v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of June 22, 2016. Series C No. 314, para. 140.

- Prohibition of slavery and other similar practices;¹⁵⁷
- Principle of non-return (*non-refoulement*), including non-rejection at borders and indirect *refoulement*;¹⁵⁸
- Prohibition to commit or tolerate serious, massive or systematic human rights violations, including extrajudicial executions, forced disappearances and torture;¹⁵⁹ and
- Prohibition of crimes against humanity and the associated obligation to prosecute, investigate and punish those crimes.¹⁶⁰

107. Consequently, the obligations associated with the full observance of peremptory norms of international law remain binding for a State - even after it has denounced the American Convention or has withdrawn from the OAS - as well as for the entire community of States, since they are the foundation on which the international order is built.

108. The International Court of Justice has, on occasion, been instructive regarding these norms. In its judgment in the *Case of the Barcelona Traction, Light and Power Company of February 5, 1970*, the ICJ implicitly recognized their peremptory nature by stating that such obligations are of interest to all States and are *erga omnes*. The Court mentioned the prohibition of acts of aggression and genocide and protection against slavery and racial discrimination as universal norms that entail obligations *erga omnes*, as well as other norms that protect basic human rights.¹⁶¹ Therefore, failure to fulfil these obligations means that the offending party is responsible to the State that has been injured and to the entire international community. For that reason, any State can legitimately invoke the responsibility of another.

109. Thus, *jus cogens* norms, which are of a peremptory nature, entail obligations *erga omnes* of protection that bind all States and give rise to effects with respect to third parties, including individuals.¹⁶² Consequently, in the event that the denouncing State violates a *jus cogens* norm, the other OAS Member States and the international community in general, are obligated under general international law to: (i) cooperate to put an end, by legal means, to any serious breach, and (ii) not recognize as lawful any situation created by a serious breach, nor provide aid or assistance to maintain that situation. To that end, they may, for example, activate an inter-state litigation.

110. Therefore, the denouncing State will continue to be bound by these obligations – no longer by the American Convention - but by custom and by the general principles of law or *jus cogens*, as a source of international law,¹⁶³ even after its denunciation becomes final. In

¹⁵⁷ Cf. *Case of the Workers of Hacienda Brazil Verde v. Brazil. Preliminary objections, merits, reparations and costs*. Judgment of October 20, 2016. Series C No. 318, paras. 249 and 342, and *Case of Members of the Village of Chichupac and neighboring communities of the Municipality of Rabinal v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of November 30, 2016. Series C No. 328, para. 216.

¹⁵⁸ Cf. Advisory Opinion OC-21/14, *supra*, para. 225, and Advisory Opinion OC-25/18, *supra*, para. 181.

¹⁵⁹ Cf. *Case of the Gómez Paquiyauri Brothers v. Peru. Merits, reparations and costs*. Judgment of July 8, 2004. Series C No. 110, para. 128; *Case of Almonacid Arellano et al. v. Chile. Preliminary objections, merits, reparations and costs*. Judgment of September 26, 2006. Series C No. 154, para. 99, and *Case of the Miguel Castro-Castro Prison v. Peru. Merits, reparations and costs*. Judgment of November 25, 2006. Series C No. 160, para. 404.

¹⁶⁰ Cf. *Case of Almonacid Arellano et al. v. Chile, supra*, paras. 99 to 114, and *Case of Herzog et al. v. Brazil. Preliminary objections, merits, reparations and costs*. Judgment of March 15, 2018. Series C No. 353, paras. 212 and 232.

¹⁶¹ International Court of Justice. *Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)* (New application: 1962). Judgment of February 5, 1970, paras. 33 and 34.

¹⁶² Cf. Advisory Opinion OC-18/03, *supra*, para. 110, and Advisory Opinion OC-25/17, *supra*, para. 107.

¹⁶³ Article 38(1) of the Statute of the International Court of Justice states: "The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states; b. international custom, as evidence of a general practice accepted as law; c. subject to the provisions of Article 59, judicial decisions

other words, the cessation of the effects of the American Convention does not release the State from its duty to fulfil those human rights obligations to which it is subject under general international law.

D. Conclusion

111. Article 78 of the American Convention contains a denunciation clause that may be invoked by States with an interest in withdrawing from this treaty. To that end, the provision includes certain procedural rules that must be fully adhered to, in order to produce effects at the international level. Furthermore, it imposes a duty on the custodian of the treaty to notify the other parties when a notification of denunciation is received.

112. On this point, the Court recalls that a denunciation of the American Convention cannot take effect immediately. Article 78(1) establishes a one-year transition period during which the other States parties to the American Convention have an opportunity, as collective guarantors of its efficacy, to express any observations or objections deemed pertinent, in a timely manner and through institutional channels, regarding denunciations that do not withstand scrutiny in light of the democratic principle and that undermine the inter-American public interest, so that the collective guarantee is activated.

113. In this regard, the Court emphasizes the need to apply more rigorous scrutiny to denunciations if they are made in situations or circumstances that appear to be especially serious and that could undermine democratic stability, security and peace in the hemisphere, resulting in widespread impairment of human rights, such as: (1) a disagreement with a decision made by a protection body and motivated by a manifest intention to breach international commitments adopted therein; (2) in a scenario in which guarantees have been suspended indefinitely or which threatens the core of non-derogable rights; (3) in a context of serious, massive or systematic human rights violations; (4) in a context of progressive erosion of democratic institutions; (5) if there has been any disturbance or a manifest, irregular or unconstitutional rupture of the democratic order, and/or (6) in the event of an armed conflict.

114. The main effect of a final denunciation of the American Convention, as a human rights treaty, is to deprive the persons subject to the jurisdiction of the State concerned of multiple levels of protection. More specifically, it deprives them of the opportunity to have recourse to international judicial bodies such as the Inter-American Court to claim a complementary level of judicial protection of their rights. However, certain international human rights obligations will remain in effect for Member States of the OAS.

115. In particular, the Court has determined that, when a Member State of the OAS denounces the American Convention on Human Rights, its international human rights obligations stand as follows: (1) Convention-based obligations remain intact during the period of transition to full denunciation; (2) definitive denunciation of the American Convention produces no retroactive effects; (3) the validity of the obligations established through ratification of other inter-American human rights treaties remains in place; (4) the definitive denunciation of the American Convention does not invalidate the domestic efficacy of principles derived from Convention-based precepts interpreted as a standard for the prevention of human rights violations; (5) obligations associated with the minimum threshold of protection through the Charter of the OAS and the American Declaration remain under the supervision of the Inter-American Commission; and (6) customary norms, those derived from

and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.”

general principles of international law and those pertaining to *jus cogens* continue to bind the State by virtue of general international law.

116. Lastly, the Court recalls the importance of its jurisprudence for all Member States of the OAS, inasmuch as it enriches the content and scope of inter-American law. Moreover, it provides authorized hermeneutic guidelines to ensure the effective fulfilment of State obligations related to the observance of human rights derived from the OAS Charter, the American Declaration and other inter-American treaties and instruments for the protection of human rights in the American continent.

V

THE EFFECTS ON THE INTERNATIONAL HUMAN RIGHTS OBLIGATIONS OF A MEMBER STATE OF THE OAS THAT IS NOT A PARTY TO THE AMERICAN CONVENTION AND HAS DENOUNCED THE CHARTER OF THE ORGANIZATION OF AMERICAN STATES

117. The second question submitted by Colombia posits the case of a Member State of the OAS that is not a party to the American Convention and that withdraws from that organization. On this basis, Colombia inquires about the effects of said denunciation and withdrawal on the international human rights obligations of that State and on other Member States.

118. The Court finds it pertinent to make clear that, although the question focuses on the potential effects of denunciation and withdrawal from the OAS Charter, in order to respond to the request for a ruling it is necessary to take into account the denunciation clause contained in Article 143 and, if applicable, make an appropriate interpretation. In addition, the Court reiterates that any interpretation made of the OAS Charter and its effects is confined to issues concerning human rights obligations. Accordingly, the Court will address this question by interpreting the following matters: (a) the denunciation clause contained in Article 143 of the OAS Charter and the interpretation of the reference to the "obligations arising" from that treaty; (b) the effects of denunciation and withdrawal from the OAS Charter on the international human rights obligations derived therefrom (c) conclusion regarding the interpretation of the "obligations derived from the OAS Charter" and the scope of the remaining human rights obligations until full compliance.

A. The denunciation clause contained in Article 143 of the OAS Charter and interpretation of the reference to "obligations arising" from that treaty

119. The Charter of the Organization of American States, signed in 1948 in Bogotá, Republic of Colombia, is the constitutive treaty of this regional organization,¹⁶⁴ in the terms of Chapter VIII of the United Nations Charter on Regional Arrangements. According to Article 1, its main purpose is "to achieve an order of peace and justice, to promote solidarity [among the States], to strengthen their collaboration, and to defend their sovereignty, their territorial integrity, and their independence." The OAS Charter entered into force in December 1951, and was subsequently amended by the Buenos Aires Protocol of 1967,¹⁶⁵ the Cartagena de Indias

¹⁶⁴ However, the inter-American system did not emerge from that moment, but originated at the end of the nineteenth century, during the First International Conference of American States, held in Washington, D.C., from October 1889 to April 1890, which created the International Union of American Republics. Its immediate predecessor was the Pan American Union.

¹⁶⁵ Introduced reforms related to the establishment of economic and social development goals within the framework of democratic principles. Thus, it emphasized the principles of solidarity and regional cooperation to achieve economic, social and technological development, including the importance of setting standards for scientific, educational and cultural cooperation. In addition, it introduced several changes related to the titles and functions of the different constituent bodies of the OAS.

Protocol of 1985,¹⁶⁶ the Washington Protocol of 1992,¹⁶⁷ and the Managua Protocol of 1993.¹⁶⁸ The OAS is comprised of independent States of the hemisphere that were Members of the United Nations as of December 10, 1985, and the non-autonomous territories mentioned in document OEA/Ser.P, AG/doc.1939/85, of November 5, 1985, when they become independent, once they have signed and ratified the Charter according to the established procedure (arts. 7 and 8).

120. Article 143 of the OAS Charter provides for the possibility of denunciation and establishes that a Member State may withdraw from the regional organization, in the following terms:

Article 143. The present Charter shall remain in force indefinitely, but may be denounced by any Member State upon written notification to the General Secretariat, which shall communicate to all the others each notice of denunciation received. After two years from the date on which the General Secretariat receives a notice of denunciation, the present Charter shall cease to be in force with respect to the denouncing State, which shall cease to belong to the Organization after it has fulfilled the obligations arising from the present Charter. (Underlining added)

121. The Court notes that this provision establishes: (1) the requirement to inform the General Secretariat in writing of the decision to denounce the treaty, and the latter's obligation, as custodian of the treaty, to communicate the denunciation to all other Member States; (2) a two-year transition period, and (3) the effects derived from the entry into force of the denunciation. On this last point the article establishes, on the one hand, that the Charter shall cease to be in force with respect to the denouncing State and, on the other, that the denouncing State "shall cease to belong to the Organization after it has fulfilled the obligations arising from the present Charter."

122. Based on the foregoing, two interpretations may be made. One is that the effectiveness of the denunciation is contingent upon the fulfilment of obligations arising from the Charter; the other is that the denunciation becomes effective after the transition period has elapsed, at which point the Charter ceases to apply, although certain obligations arising from it remain. Given the manner in which the provision is worded, the Court considers that second interpretation should prevail.

123. Indeed, from the wording of this provision it is clear that although the future effects of the Charter cease for the denouncing State, the latter is not completely released from the obligations acquired prior to the denunciation taking effect. To the contrary, the wording of the Charter expressly requires the denouncing State to have fully complied with its obligations arising from that instrument as a condition of its withdrawal. Furthermore, the phrase "obligations arising from the present Charter" is comprehensive, and its wording does not limit compliance to a specific type of obligation. This naturally leads to the interpretation of the

¹⁶⁶ Introduced the essential purposes of the organization "to promote and consolidate representative democracy, with due respect for the principle of non-intervention and to achieve an effective limitation of conventional weapons that will make it possible to devote the largest amount of resources to the economic and social development of the Member States." As additional principles of the organization, it established that "[e]very State has the right to choose, without external interference, its political, economic, and social system and to organize itself in the way best suited to it, and has the duty to abstain from intervening in the affairs of another State. Subject to the foregoing, the American States shall cooperate fully among themselves, independently of the nature of their political, economic, and social systems." The Protocol also made several amendments to the organization's organic structure.

¹⁶⁷ Introduced further amendments stating that one of the fundamental purposes of the OAS is to promote, by cooperative action, the economic, social and cultural development of its Member States and to eradicate extreme poverty in the hemisphere. As additional principles of the organization, it established that "the elimination of extreme poverty is an essential part of the promotion and consolidation of representative democracy and is the common and shared responsibility of the American states."

¹⁶⁸ Established the Inter-American Council for Integral Development, the purpose of which is to "promote cooperation among the Member States for the furtherance of their integral development and, in particular, to help eliminate extreme poverty," in accordance with the provisions of the Charter, especially those contained in Chapter VII, in the economic, social, educational, cultural, scientific and technological fields."

nature of the obligations referred to in Article 143 from a human rights perspective. Therefore, it is necessary to interpret and determine the scope of its consequences or effects in relation to the remaining human rights obligations to which that provision refers, once the denunciation becomes final after the transition period.

124. In that sense, an interpretation based on objective criteria (linked to the text of the treaty) and subjective criteria (related to the intention of the parties) is appropriate since the OAS Charter is a multilateral constituent treaty of a regional organization. In its constant case law, the Court makes use of the interpretative methods set forth in Articles 31 and 32 of the Vienna Convention to carry out that interpretation.¹⁶⁹ The Court will now proceed to interpret Article 143 of the Charter in the following order: (1) literal interpretation; (2) teleological interpretation; (3) contextual and systematic interpretation, and (4) supplementary means of interpretation.

A.1) *Literal interpretation*

125. First, it is necessary to make an interpretation based on the ordinary meaning of the terms contained in Article 143 of the OAS Charter. According to the *Real Academia Española*, the verb “arise” has two main meanings: (i) to proceed, derive, originate from and the principle of emergence, and (ii) to issue, emit.¹⁷⁰ Therefore, a literal interpretation suggests that Article 143 refers to all the obligations derived or arising from the OAS Charter, or stemming therefrom, since the wording uses the plural form, and therefore cannot be interpreted as limiting the obligations solely to those of one type. However, Article 143 does not specify or list the remaining obligations; thus, in order to determine what these types of obligations are, the Court will have recourse to the other methods mentioned.

A.2) *Teleological interpretation*

126. The Court has indicated that in a teleological interpretation the purpose of the respective provisions are analyzed. To this end, it is pertinent to examine the object and purpose of the treaty itself and, if applicable, to analyze the purposes of the regional protection system.¹⁷¹ Being a constituent rule of a regional organization, such as the OAS, it is also pertinent to refer to the Protocols that amended it.

127. The preamble of the OAS Charter contains several references to the object and purpose of the treaty, which is primarily the “consolidation on this continent, within the framework of democratic institutions, of a system of individual liberty and social justice based on respect for the essential rights of man.” In addition to the preamble, the OAS Charter consists of three parts: the first concerns the nature, purposes and principles of the Organization, as well as the rights and duties of its members; the second part establishes the various bodies that comprise it and their functions; and the third part contains miscellaneous provisions. The first part of the Charter is also relevant to the teleological interpretation. With regard to its nature and purposes, the aim is to achieve an order of peace and justice in the American States, “to promote their solidarity, to strengthen their collaboration, and to defend their sovereignty, their territorial integrity, and their independence,” while respecting the principle of non-intervention (art. 1).

¹⁶⁹ Cf. Advisory Opinion OC-1/82, *supra*, para. 33, and *Case of González et al. (“Cotton Field”) v. Mexico. Preliminary objection, merits, reparations and costs, supra*, para. 32.

¹⁷⁰ Cf. Real Academia Española. *Diccionario de la Lengua Española*, 23. ed. [version 23.4 online].

¹⁷¹ Cf. *Case of González et al. (“Cotton Field”) v. Mexico. Preliminary objection, merits, reparations and costs, supra*, para. 59, and Advisory Opinion OC-22/16, *supra*, para. 40.

128. Article 2 of the OAS Charter proclaims a number of essential principles that it seeks to achieve, including “to strengthen the peace and security of the continent” and “to promote and consolidate representative democracy, with due respect for the principle of non-intervention” in order to “put into practice the principles on which it is founded and fulfill its regional obligations under the Charter of the United Nations.”

129. For its part, Article 3 of the Charter reaffirms the following principles:

- a) International law is the standard of conduct of States in their reciprocal relations.
- b) International order consists essentially of respect for the personality, sovereignty, and independence of States, and the faithful fulfillment of obligations derived from treaties and other sources of international law.
- c) Good faith shall govern the relations between States.
- d) The solidarity of the American States and the high aims which are sought through it require the political organization of those States on the basis of the effective exercise of representative democracy.
- e) Every State has the right to choose, without external interference, its political, economic, and social system and to organize itself in the way best suited to it, and has the duty to abstain from intervening in the affairs of another State. Subject to the foregoing, the American States shall cooperate fully among themselves, independently of the nature of their political, economic, and social systems.
- f) The elimination of extreme poverty is an essential part of the promotion and consolidation of representative democracy and is the common and shared responsibility of the American States.

[...]

- j) Social justice and social security are bases of lasting peace.

[...]

- l) The American States proclaim the fundamental rights of the individual without distinction as to race, nationality, creed, or sex.

130. Article 17 also establishes that the State “has the right to develop its cultural, political, and economic life freely and naturally. In this free development, the State shall respect the rights of the individual and the principles of universal morality.” In addition, Article 45 states that a person “can only achieve the full realization of his aspirations within a just social order, along with economic development and true peace,” and that Member States should dedicate every effort to the application of various principles and mechanisms, including the following: “All human beings, without distinction as to race, sex, nationality, creed, or social condition, have a right to material well-being and to their spiritual development, under circumstances of liberty, dignity, equality of opportunity, and economic security.” For its part, Article 53 establishes that the OAS accomplishes its purposes by means of its different organs, among them the General Assembly and the Inter-American Commission on Human Rights.¹⁷² It is also important to stress that the first Statute of the Inter-American Commission of 1960 established that “[...] by human rights we understand those enshrined in the American Declaration of the Rights and Duties of Man,” approved on April 30, 1948, a few months prior to the adoption of the Universal Declaration of Human Rights, during the Ninth Conference of Bogotá which adopted the OAS Charter.

131. The Court considers that a teleological interpretation of the preamble and principles of the Charter, and of the development of the Protocols that amended it, suggests that the purpose of the treaty is to create a regional organization aimed at consolidating a “system of

¹⁷² Although the Commission was created in 1959, its inclusion as a principal organ of the OAS was established by the Buenos Aires Protocol of 1967. This Protocol also included a transitory provision stating that: “Until the Inter-American Convention on Human Rights, referred to in Chapter XVIII, enters into force, the present Inter-American Commission on Human Rights shall keep vigilance over the observance of human rights.”

individual freedom and social justice, based on respect for the essential rights of man," which promotes "representative democracy" and international cooperation in the Americas, according to the principles and purposes of the United Nations and with respect for the personality, sovereignty and independence of the States and their obligations arising from treaties and other sources of international law. This shows that certain aims and objectives of the regional organization are interwoven with each other, and that their ultimate goal is to consolidate democratic stability, security and peace in the hemisphere through inter-American solidarity and cooperation, the promotion of representative democracy, respect for human rights without discrimination and the promotion of economic, social, educational, cultural, scientific and technological development.

A.3) *Contextual and systematic interpretation*

132. According to the systematic approach to interpretation, the provisions must be interpreted as part of a whole, whose meaning and scope must be established based on the legal system to which it belongs.¹⁷³ In this sense, the Court has considered that when interpreting a treaty it is not only necessary to take into account the agreements and instruments formally related to it (second paragraph of Article 31 of the Vienna Convention), but also the system of which it forms part (third paragraph of Article 31), that is, the inter-American system.¹⁷⁴

133. A systematic interpretation of the OAS Charter must take into account on the one hand, all the provisions that comprise it and, on the other, the agreements and instruments formally related to it, namely, the American Declaration of the Rights and Duties of Man, the progressive codification of international human rights law in the inter-American system through the American Convention and other inter-American treaties, and the Inter-American Democratic Charter, so as to determine whether the interpretation given to a specific provision or term is consistent with the meaning of the other provisions.¹⁷⁵

i) Domestic context

134. In addition to being mentioned in Article 143 of the OAS Charter, other provisions of this instrument also refer to the term "obligations" in relation to the Member States:

- Article 2 refers to the fulfilment of regional obligations under the United Nations Charter, and lists a number of essential principles (*supra* para.128).
- Among the principles proclaimed, Article 3(b) mentions "the faithful fulfillment of obligations derived from treaties and other sources of international law."
- Article 6 establishes that "Any other independent American State that desires to become a Member of the Organization should so indicate by means of a note addressed to the Secretary General, in which it declares that it is willing to sign and ratify the Charter of the Organization and to accept all the obligations inherent in membership, especially those relating to collective security expressly set forth in Articles 28 and 29 of the Charter."
- Article 9(e) stipulates that "The Member which has been subject to suspension shall continue to fulfill its obligations to the Organization."
- Article 24 contains an interpretative clause regarding the Charter's procedures for the peaceful settlement of disputes, which states the following: "This provision shall not be interpreted as an impairment of the rights and obligations of the Member States under Articles 34 and 35 of the Charter of the United Nations."

¹⁷³ Cf. *Case of González et al. ("Cotton Field") v. Mexico. Preliminary objection, merits, reparations and costs*, *supra*, para. 43, and Advisory Opinion OC-24/17, *supra*, para. 59.

¹⁷⁴ Cf. Advisory Opinion OC-22/16, *supra*, para. 44, and Advisory Opinion OC-25/18, *supra*, para. 183.

¹⁷⁵ Cf. Advisory Opinion OC-22/16, *supra*, para. 45, and Advisory Opinion OC-25/18, *supra*, para. 184.

- Article 131 establishes that: "None of the provisions of this Charter shall be construed as impairing the rights and obligations of the Member States under the Charter of the United Nations."

135. In addition, Article 54(e) of the OAS Charter assigns to the General Assembly the task of "determin[ing] the quotas of the Member States".

136. From the foregoing observations, the Court notes that the OAS Charter does not contain a precise list of obligations, although it repeatedly refers to those arising from the United Nations Charter, from treaties and from other sources of international law. Thus, the Court understands that the "obligations arising" from the Charter have their origin in the purposes and axiological principles reflected therein. As mentioned previously, these include the promotion and defense of human rights without discrimination, and are consolidated through the obligations derived from treaties and other sources of international law, such as the American Declaration, concerning the protection of human rights in the Americas. The Court has specified that the OAS Charter and the American Declaration are sources of international human rights obligations for the organization's Member States. Furthermore, "for the States Parties to the Convention, the specific source of their obligations with respect to the protection of human rights is, in principle, the Convention itself. [...] however, given the provisions of Article 29(d), these States cannot escape the obligations they have as members of the OAS under the Declaration, notwithstanding the fact that the Convention is the governing instrument for the States Parties thereto."¹⁷⁶

ii) Systematic interpretation

137. The Court recalls that the American Declaration was approved during the Ninth Conference that adopted the OAS Charter (*supra* para.130). As noted previously, this instrument complements the essential human rights referred to in Article 3(I) of the OAS instrument, which establishes that "[t]he American States proclaim the fundamental rights of the individual without distinction as to race, nationality, creed, or sex." The Court has indicated that specific human rights obligations are derived from the OAS Charter and from the text of the American Declaration adopted in 1948, which reflects customary norms and general principles of international law (*supra* paras. 94 to 97).

138. Furthermore, as discussed previously, within the inter-American system there has been a progressive codification of international human rights law through various instruments which, together with the American Convention and its two Protocols, comprise a set of treaties that are binding for the States that have ratified them (*supra* paras. 84 and 85). The Belem do Pará Convention, for example, is the most widely ratified treaty in the inter-American system, and underscores the American States' firm commitment to the prevention, punishment and eradication of violence against women.

139. In addition, the inter-American system has progressively strengthened the relationship between representative democracy and the observance of individual human rights and freedoms. Although there is no single model of democracy, the inter-American system in general embraces an ideal of a specific political system: representative democracy. Thus, one of the OAS Charter's essential purposes is "to promote and consolidate representative democracy, with due respect for the principle of nonintervention."¹⁷⁷ The Cartagena Protocol of 1985, which amended the Charter, further strengthened the concept of representative democracy by describing it in its preamble as "an indispensable condition for the stability, peace and development of the region." Subsequently, the Inter-American Democratic Charter

¹⁷⁶ Cf. Advisory Opinion OC-10/89, *supra*, paras. 43, 45 and 46.

¹⁷⁷ Article 2(b) of the Charter of the Organization of American States.

embodied the OAS Member States' interpretation of the provisions related to democracy, both in the OAS Charter and in the Convention.¹⁷⁸ According to the Inter-American Democratic Charter, "the effective exercise of representative democracy is the basis for the rule of law and of the constitutional regimes of the Member States of the [OAS]."¹⁷⁹ Article 3 includes as "essential elements of representative democracy, *inter alia*, respect for human rights and fundamental freedoms; access to and the exercise of power in accordance with the rule of law, the holding of periodic, free, and fair elections based on secret balloting and universal suffrage as an expression of the sovereignty of the people, the pluralistic system of political parties and organizations, and the separation of powers and independence of the branches of government." Furthermore, the Inter-American Democratic Charter, a legal instrument that forms part of the inter-American system, contains obligations related to the effective exercise of representative democracy that must be observed by the States and refers to the indissoluble link between democracy and full respect for human rights and freedoms in several of its articles (3, 7, 8, 9 and 10). Also noteworthy is Article 21, which establishes that "[t]he suspended Member State shall continue to fulfill its obligations to the Organization, in particular its human rights obligations."

140. To summarize, a systematic interpretation of Article 143 of the OAS Charter implies the recognition that the "obligations arising" from the Charter should include the duties and commitments adopted by the Member States to promote and respect human rights and freedoms without discrimination, contained in the Charter, in the American Declaration and in other instruments that form part of the development and progressive codification of inter-American law.

A.4) *Supplementary means of interpretation*

141. According to Article 32 of the Vienna Convention, supplementary means of interpretation, particularly the preparatory work of the treaty, may be used to confirm the meaning resulting from the interpretation made according to the methods described in Article 31. This implies that they are used in a supplementary manner.

142. One of the aims of the Ninth International Conference of American States was to approve a draft of the "Constitutive Agreement of the Inter-American System." During the debates held in the First Commission,¹⁸⁰ Argentina proposed the inclusion of an article on the denunciation of the Charter.¹⁸¹ In its considerations, Argentina indicated that this was inspired

¹⁷⁸ Paragraphs 2 and 4 of the Preamble of the American Convention establish the following: "Reaffirming their intention to consolidate in this hemisphere, within the framework of democratic institutions, a system of personal liberty and social justice based on respect for the essential rights of man; [...] Considering that these principles have been set forth in the Charter of the Organization of American States, in the American Declaration of the Rights and Duties of Man, and in the Universal Declaration of Human Rights [...]". In this sense, the Inter-American Democratic Charter could also be described as an agreement among States Parties regarding both treaties on the application and interpretation of those instruments. Thus, Article 31(3)(a) of the Vienna Convention on the Law of Treaties establishes that: "There shall be taken into account, together with the context: a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions." Cf. *Case of San Miguel Sosa et al. v. Venezuela. Merits, reparations and costs*, *supra*, para. 114.

¹⁷⁹ Cf. Article 2 of the Inter-American Democratic Charter.

¹⁸⁰ The First Commission, in turn, was subdivided into three sub-commissions: 1) Sub-commission A: preamble, principles and declaration of rights and obligations of the States (composed of Argentina, Bolivia, Brazil, Colombia, Cuba, Chile, Ecuador, USA, Guatemala, Mexico, Panama, Paraguay, Peru, Dominican Republic, Venezuela and Uruguay); 2) Sub-commission B: members, nature and purpose of the system (composed of Argentina, Brazil, Colombia, Ecuador, El Salvador, United States of America, Haiti, Mexico, Nicaragua, Paraguay, and Venezuela), and 3) Sub-commission C: provisions, ratification and enforcement (composed of Costa Rica, Honduras, Peru, Dominican Republic and Uruguay).

¹⁸¹ In the following terms: "An article regarding denunciation should be added to the treaty. The Delegation of Argentina considers that an agreement of this nature should contain a denunciation clause, because no government

by Article XII of the Convention on the Pan American Union, which stated the following “[t]he contracting States may withdraw from the Pan American Union at any time, but shall pay their respective quotas for the period of the current fiscal year.”¹⁸²

143. In this regard, Mexico stated the following:

[...] given the highly important nature of the Charter, adding a denunciation clause would be tantamount to introducing a principle of dissolution; and, in the event [of] keeping silent on that possibility, there is nothing to prevent a State from withdrawing. In this sense, it would be possible to do something similar to the United Nations Charter, which remains silent in this regard.

[...] if a denunciation clause were to be included [...] it seems very appropriate to establish certain requirements for withdrawing from the organization, as stipulated by the League of Nations. Mexico also considers it necessary to stipulate measures in the event of a State violating the provisions of the Charter.¹⁸³

144. Article 1 of the Covenant of the League of Nations established the following: “Any Member of the League may, after two years' notice of its intention so to do, withdraw from the League, provided that all its international obligations and all its obligations under this Covenant shall have been fulfilled at the time of its withdrawal.”¹⁸⁴

145. In their presentations to the First Commission, the delegates of Argentina and Mexico reiterated their positions. Argentina stated that “we sincerely believe that this article, which is similar to one that appears in the Río treaty, strengthens the Charter. It merely confirms a right that States already have by virtue of the *rebus sic stantibus* clause, and instead embodies an obligation: that of being bound by the obligations of the Charter during the period established in that article.”¹⁸⁵ The delegation of Mexico suggested that “we should establish a period of two years (which is the period set by the League of Nations) [...] as is customary in these types of clauses involving international organizations. Let us add that any State that denounces the agreement may withdraw once it has fully complied with any pending obligations within the Organization.”¹⁸⁶ The amendment proposed by Mexico was adopted unanimously by the First Commission.¹⁸⁷

has the right to compromise in perpetuity the State that it represents [...] the denunciation of a treaty is an inalienable right, which would exist even if not expressly included in the instrument signed. The *rebus sic stantibus* clause [...] has been enshrined in theory and was recognized by the Conference of San Francisco when it drafted the United Nations Charter [...] Politically and technically the method proposed in the Argentine articles is better, since it recognizes a right that no one could deny and instead establishes a correlative obligation that will give greater permanence to the treaty: the State that denounces it is not automatically disengaged; during one year, it has the same rights and obligations as the rest of the States that have not denounced the treaty”. Ninth International Conference of American States, 1948, Records and Documents. Bogotá: Ministry of Foreign Relations of Colombia, 1953. Volume III, page 163.

¹⁸² Ninth International Conference of American States, 1948, Records and Documents. Volume III, *supra*, page. 163 and 313. See also, Convention on the Pan American Union adopted on February 20, 1928 at the Sixth International Conference of American States, held in Havana, Cuba, Article XII. This Convention never entered into force owing to an insufficient number of ratifications.

¹⁸³ Ninth International Conference of American States, 1948, Records and Documents. Volume III, *supra*, page 312.

¹⁸⁴ Covenant of the League of Nations, signed on June 28, 1919, at Versailles, Article 1.

¹⁸⁵ Ninth International Conference of American States, 1948, Records and Documents. Volume III, *supra*, pages 291 and 292.

¹⁸⁶ Ninth International Conference of American States, 1948, Records and Documents. Volume III, *supra*, page 292

¹⁸⁷ Ninth International Conference of American States, 1948, Records and Documents. Volume III, *supra*, page 293.

146. In sum, a review of the *travaux préparatoires* confirms that the final draft of Article 143 does not limit the obligations to be fulfilled by a denouncing State for its release from the OAS to the payment of quotas; other obligations derived from the Charter may also be included. This confirms that human rights obligations should be considered in the context of the provisions of Article 143 of the OAS Charter.

B. The effects of denunciation and withdrawal from the OAS Charter on the international human rights obligations arising therefrom

147. It is important to bear in mind that the OAS Charter and the American Declaration, together with their respective mechanisms, are the final link with the international system for the protection of human rights, when a Member State of the OAS has denounced the American Convention, since they provide the only mechanism of inter-American protection in a State that has not ratified the American Convention and accepted the contentious jurisdiction of the Inter-American Court. In this regard, it is pertinent to stress that a State's denunciation of the OAS Charter and its withdrawal from the Organization would otherwise leave those persons under its jurisdiction entirely unprotected by the regional organs of international protection. The Court reiterates the particularly serious implications of denouncing the OAS Charter in the situations described in paragraph 73 *supra*, and therefore emphasizes that other Member States of the OAS have a responsibility to express, in a timely manner, any observations or objections deemed pertinent based on the notion of collective guarantee.

148. The Court will now address the question concerning the effects of denunciation and withdrawal from the OAS Charter on a State's international human rights obligations.

B.1) The human rights obligations arising from the OAS Charter remain intact during the transition period to final denunciation

149. As mentioned previously, all obligations arising from the OAS Charter remain unaltered during the two-year transition period, from the date on which the General Secretariat receives the notice of denunciation until it becomes effective. During this period, the State may also revoke its notice of denunciation. In this regard, the mechanisms for the protection of human rights under the responsibility of the Inter-American Commission on Human Rights remain active.

B.2) Definitive denunciation of the OAS Charter produces no retroactive effects

150. Final or definitive denunciation of the OAS Charter does not produce retroactive effects. The Inter-American Commission, as the body entrusted by the Charter to ensure observance of human rights, may examine individual petitions alleging any human rights violations that occurred prior to the effective date of denunciation and the cessation of the effects of the OAS Charter for the denouncing State, or violations of a continuous nature or effect (*supra* paras. 77 and 94), based on its obligations derived from that instrument and from the American Declaration.

B.3) The duty to abide by obligations derived from decisions by the human rights protection bodies of the inter-American System remains in force until compliance is final

151. The Court further notes that, according to the wording of Article 143 of the OAS Charter, the denouncing State is not released from its human rights obligations assumed prior to finalizing its denunciation of the Charter. It must fulfill the "obligations arising from the [...]"

Charter,” including those acquired previously and, in this case, those derived specifically from the decisions of the human rights protection bodies, based on the human rights instruments to which the denouncing State was obligated in the terms specified below.

152. Accordingly, if the denouncing State was also a party to the American Convention, it must comply, in good faith and under the *pacta sunt servanda* principle, with obligations acquired in proceedings based on that treaty, while the human rights protection bodies maintain their temporary jurisdiction over the denouncing State. In this regard, any State that withdraws from the OAS remains bound in all cases brought to the attention of the human rights protection bodies and must continue to participate in the established procedures. In particular, the Court reiterates that the denouncing State remains obligated to comply with reparations ordered by the Court in its contentious role, even after the denunciation of the OAS Charter becomes final.

153. As to those States that withdraw from the OAS but have never been a party to the American Convention, or have not accepted the optional clause regarding the Inter-American Court’s jurisdiction, they are required to make their best efforts to abide by the recommendations of the Inter-American Commission. This last consideration is particularly important because in such a situation the people would lack access to a jurisdictional mechanism and, therefore, would have no other means of ensuring inter-American protection of their human rights.

B.4) The duty to abide by inter-American human rights treaties ratified and not denounced under its own procedures remains in effect

154. Although the effects of the OAS Charter cease for a State that has denounced it or has withdrawn from the Organization, that State remains subject to the full observance of other human rights instruments that it has ratified and not denounced individually and separately. These instruments remain in force for the State in question and, while ratification of the treaty is generally conditional on the status of OAS Member State, this is not required for the continuity of the obligations.

B.5) Customary norms, those derived from general principles of law and norms pertaining to jus cogens continue to bind the State by virtue of general international law, together with the duty to abide by the obligations derived from the United Nations Charter

155. The Court has previously indicated that customary norms, those derived from general principles of law and those pertaining to *jus cogens*, as independent sources of general international law, continue to bind a State that has denounced the American Convention. (*supra* paras. 94 to 97 and 100 to 110). The same applies to a State that has denounced the OAS Charter and withdraws from the regional organization. Thus, the customary norms, those derived from general principles of international law and those pertaining to *jus cogens* represent the essential core of human rights that ensure universal protection for human dignity.

156. The Court also points out that Article 131 of the OAS Charter establishes that: “[n] one of the provisions of this Charter shall be construed as impairing the rights and obligations of the Member States under the Charter of the United Nations.” Since the OAS is a regional organization within the framework of Chapter VIII of the United Nations Charter, which also seeks to consolidate peace and security, the OAS member countries that cease to belong to this organization remain bound by their obligations arising from the United Nations Charter or other binding international instruments of a universal nature.

157. Thus, although persons under the jurisdiction of a State that has denounced the OAS Charter are deprived of the complementary protection afforded by the inter-American system of protection, the cessation of the effects of the OAS Charter or the State's withdrawal from the OAS, does not release it from its human rights obligations under general international law.

C. Conclusion regarding the interpretation of the clause "obligations arising from the OAS Charter" and the scope of the remaining human rights obligations until effective compliance

158. Article 143 of the OAS Charter provides for the possibility that a Member State of the Organization may denounce its founding treaty, thereby terminating its effects in the future for the denouncing State. However, the Court recalls that the OAS Charter cannot be denounced with immediate effect. Article 143 establishes a two-year transition period, during which other Member States of the OAS, as collective guarantors of its efficacy in relation to the observance of human rights, have an opportunity to express any observations or objections deemed pertinent in a timely manner, using institutional channels, regarding denunciations that do not withstand scrutiny under the democratic principle and which undermine the inter-American public interest, so as to activate the collective guarantee (*supra* paras. 73 and 147).

159. Furthermore, according to its own terms, the denouncing State is not totally released from the obligations acquired prior to the denunciation becoming final, after the two-period has elapsed. To the contrary, the wording of the OAS Charter expressly requires that the denouncing State fulfil the human rights obligations arising therefrom.

160. In this regard, the Court has interpreted that the human rights obligations arising from the OAS Charter which must be fulfilled by a State that has denounced it include those that arise from the commission of an internationally wrongful act, and that were acquired through the mechanisms and procedures for the international protection of human rights. This includes compliance with reparations ordered by the Inter-American Court under the *pacta sunt servanda* principle, as well as best efforts to comply with recommendations issued by the Inter-American Commission.

161. In conclusion, the Court decides that, when a Member State of the Organization of American States denounces the Charter, its international human rights obligations stand as follows: (1) human rights obligations derived from the OAS Charter remain unaltered during the period of transition to full denunciation; (2) definitive denunciation of the OAS Charter produces no retroactive effects; (3) the duty to abide by obligations derived from decisions by the human rights protection bodies of the inter-American system remains in force until compliance is final; (4) the duty to abide by inter-American human rights treaties ratified and not denounced under their own procedures remains in effect; (5) customary norms, those derived from general principles of law and those pertaining to *jus cogens* continue to bind the State by virtue of general international law and, moreover, the duty to abide by the obligations inherent in the United Nations Charter remains in effect.

**VI
THE NOTION OF COLLECTIVE GUARANTEE THAT UNDERLIES THE INTER-AMERICAN
SYSTEM**

162. The third question posed by Colombia refers to the international human rights obligations of the other Member States of the OAS with respect to a State that denounces the Convention

and withdraws from the regional organization, after denouncing the OAS Charter. In its response to the previous questions, the Court has already referred to the remaining obligations for the denouncing State, both within the framework of the American Convention and of the OAS Charter, and the importance that other OAS Member States do not remain impassive and indifferent when denunciations are made for reasons or in contexts contrary to the principle of good faith.

163. The Court has also referred to the notion of the “collective guarantee,” which underlies the entire inter-American system, and in particular to the solidarity and good neighborliness among the States of the Americas, as mentioned in the OAS Charter. This Court has also considered that, in accordance with the collective guarantee mechanism underlying the American Convention,¹⁸⁸ it is incumbent upon all States of the inter-American system to cooperate with each other in order to comply with their international obligations, both regional and universal.¹⁸⁹

164. The collective guarantee translates into a general duty of protection required of States Parties to the American Convention and the OAS Charter, in order to ensure the effectiveness of those instruments, as a rule of an *erga omnes partes* nature. The Court emphasizes that human rights standards, both Convention-based and those derived from the OAS Charter and the American Declaration, reflect shared values and common interests that are considered important and, therefore, benefit from collective application. In this regard, the Court has affirmed that “the duty of cooperation among States in the promotion and observance of human rights is a rule of an *erga omnes* nature, since it must be observed by all States, and is of a binding nature in international law.”¹⁹⁰ The Court observes that, given the nature, object and purpose of human rights treaties, as well as the asymmetrical relationship between the individual and the State, the collective guarantee also ensures that persons under the jurisdiction of the denouncing State are not deprived of a minimum threshold of protection of their human rights.

165. The special nature of human rights treaties and of the regional bodies responsible for promoting and consolidating human rights in a democratic system, entail the need to apply and interpret their provisions in accordance with their object and purpose, so as to ensure that States Parties guarantee compliance with them and their *effet utile* in their respective domestic legal system.¹⁹¹ Consequently, the collective guarantee mechanisms established in the American Convention, together with the regional and universal international human rights obligations, require the States of the region to collaborate with each other in good faith.¹⁹²

166. In its case law, the Court has referred to various types of collective guarantee mechanisms provided under the American Convention, which translate into provisions and specific mandates. As an expression of the notion of collective guarantee, the Court has considered that, under Article 27(3), the States Parties to the American Convention have an international obligation to immediately inform the other States Parties, through the Secretary General of the OAS, of the provisions of the Convention that have been suspended, of the reasons that gave rise to the suspension and the date set for the termination of the suspension. This obligation also constitutes a safeguard to prevent abuse of the exceptional

¹⁸⁸ Cf. *Case of Ivcher Bronstein v. Peru. Jurisdiction, supra*, para. 42; *Case of the Constitutional Court v. Peru. Jurisdiction, supra*, para. 41, and Advisory Opinion OC-25/18, *supra*, para. 199.

¹⁸⁹ Cf. *Case of Goiburú et al. v. Paraguay, supra*, para. 132, and Advisory Opinion OC-25/18, *supra*, para. 199.

¹⁹⁰ Advisory Opinion OC-25/18, *supra*, para. 199.

¹⁹¹ Cf. *Case of the “Mapiripán Massacre” v. Colombia, supra*, para. 105.

¹⁹² Cf. *Case of Goiburú et al. v. Paraguay, supra*, para. 166.

powers of the suspension of guarantees and allows other State Parties to determine whether the scope of this suspension is consistent with the provisions of the Convention.”¹⁹³

167. Similarly, Article 65 of the Convention requires that the Inter-American Court indicate in its annual work report to the General Assembly of the OAS the cases in which a state has not complied with its judgments, so that this body can ensure compliance with the Court’s decisions. Thus, the notion of collective enforcement also plays an important role in the implementation of the international decisions of human rights bodies, such as the Inter-American Court.¹⁹⁴ In this regard, the Court has stated the following:

This concept of collective enforcement is closely related to the practical effects of the judgments of the Inter-American Court, because the American Convention embodies a system that constitutes a real regional public order, the maintenance of which is in the interest of each and every State Party. The interest of the signatory States is the preservation of the system for the protection of human rights that they themselves have created, and, if a State violates its obligation to comply with the decisions of the only jurisdictional organ in this matter, it is violating the undertaking to comply with the Court’s judgments made towards the other States. Therefore, the task of the General Assembly of the Organization of American States, in the case of manifest noncompliance by one of the States with a judgment delivered by the Inter-American Court, is precisely that of protecting the practical effects of the American Convention and preventing inter-American justice from becoming illusory by being at the discretion of the internal decisions of a State.¹⁹⁵

168. The Court recalls that, faced with a State’s clear breach of a judgment handed down by the Court or of an order for provisional measures, the OAS General Assembly has a duty, under Article 65 of the Convention, to ensure the timely implementation of the rulings. On this point, the Court considers that the States parties to the Convention, in exercise of the collective guarantee, should adopt institutional measures of a collective nature that are effective, timely and expedite to ensure the *effet utile* of the American Convention. Indeed, for the Court it is of utmost importance that, when the Inter-American Court, by virtue of its powers to oversee compliance with its judgments¹⁹⁶ and to order provisional measures, informs the OAS General Assembly of any case of non-compliance with its decisions, pursuant to Article 65 of the American Convention, a mechanism or system composed of States Parties to the Convention be established to promote due observance of and compliance with the Court’s decisions, especially the reparations ordered in favor of the victims of human rights violations.

169. In relation to denunciations of the American Convention and the OAS Charter, the Court emphasizes that the transition period established in Articles 78 and 143, respectively, of those instruments, provide safeguards against sudden or untimely denunciations. That period is crucial for States to express any observations or objections deemed pertinent when such denunciations are based on any of the assumptions mentioned in paragraph 73, which do not withstand scrutiny in light of the democratic principle, undermine the inter-American public interest, and weaken the operation of the inter-American system for the protection of human rights.

¹⁹³ *Case of Zambrano Vélez et al. v. Ecuador*, *supra*, para. 70.

¹⁹⁴ *Cf. Case of Apitz Barbera v. Venezuela. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of November 23, 2012, recital 46. See, also, Human Rights Committee, General Comment No. 31, *The nature of the general legal obligation imposed on States Parties to the Covenant*, Eightieth Session, U.N. Doc. HRI/GEN/1/Rev.7 (2004), para. 2, and ECHR, *Case of Soering v. United Kingdom*, (No. 14038/88), Judgment of July 7, 1989, para. 87.

¹⁹⁵ *Case of Apitz Barbera v. Venezuela. Monitoring Compliance with Judgment*, *supra*, para. 47.

¹⁹⁶ *Cf. Case of Baena Ricardo et al. v. Panama. Jurisdiction*. Judgment of November 28, 2003. Series C No. 104, paras. 128 to 137.

170. Finally, the notion of collective guarantee is considered to be of direct interest to each Member State of the OAS, and to all the States as a whole,¹⁹⁷ and is activated through the Organization's political organs. This mandates the implementation of various institutional and peaceful mechanisms for taking swift, collective action to address possible denunciations of the American Convention and/or of the OAS Charter in situations in which democratic stability, peace and security may be affected and lead to human rights violations.

171. In this regard, as an initial or minimal measure to contain a government's impulse to extricate itself from its international human rights obligations, it is appropriate to examine, within the framework of the collective guarantee, the context and formal conditions in which the decision to denounce is taken at the domestic level and its correspondence with the established constitutional procedures. However, the Court stresses that, pursuant to Article 27 of the Vienna Convention, domestic provisions and procedures may not be used as a pretext or an obstacle to the fulfilment of human rights obligations previously acquired.¹⁹⁸

172. Consequently, that first level of formal analysis, which would no longer act as a general system of protection, must be complemented and reinforced through the collective guarantee and an assessment of the democratic nature of the decision to denounce the treaty, and the general conditions and context in which the matter was decided and adopted. This is associated with the good faith of the denunciation; in other words, it must reflect the principles of the American States which "require the political organization of these States on the basis of the effective exercise of representative democracy."¹⁹⁹

173. Lastly, in relation to the effects and consequences on human rights obligations, the Court finds it pertinent to point out that the collective guarantee implies a duty by the States to act jointly and cooperate to protect the rights and freedoms which they have undertaken to uphold internationally through their membership of the regional Organization and, in particular, (1) to present in a timely manner their observations or objections regarding denunciations of the American Convention and/or of the OAS Charter that do not withstand scrutiny in light of democratic principle and that undermine the inter-American public interest (*supra* paras. 73, 147 and 258); (2) ensure that the denouncing State does not consider itself disengaged from the OAS until it has complied with the human rights obligations acquired through the various protection mechanisms within the framework of their respective competencies and, in particular, those related to compliance with the reparations ordered by the Inter-American Court until the conclusion of the proceedings; (3) cooperate with each other to put an end to impunity by investigating and prosecuting serious human rights violations;²⁰⁰ (4) grant international protection, in accordance with commitments arising from international human rights law, international humanitarian law, and refugee law, by admitting potential asylum seekers to the territory, guaranteeing their right to seek and receive asylum, and respecting the principle of *non-refoulement*, among other rights, until a lasting solution is achieved;²⁰¹ and (5) engage in bilateral and multilateral diplomatic efforts, and peacefully exercise their good offices so that those States that have withdrawn from the OAS may rejoin the regional system. All this without prejudice to universal or other types of forums or mechanisms that may prosper.

¹⁹⁷ Cf. Separate Opinion of Judge Cançado Trindade regarding the *Case of Las Palmeras v. Colombia. Preliminary objections*. Judgment of February 4, 2000. Series C No. 67, paras. 12 to 14.

¹⁹⁸ Cf., *Mutatis mutandis*, *Case of the Yean and Bosico Children and Case of Expelled Dominicans and Haitians v. Dominican Republic. Monitoring Compliance with Judgment and Jurisdiction*. Order of the Inter-American Court of Human Rights of March 12, 2019, para. 22.

¹⁹⁹ Advisory Opinion OC-6/86, *supra*, para. 30, citing the OAS Charter, Art. 3(d).

²⁰⁰ Cf. *Case of Goiburú et al. v. Paraguay*, *supra*, para. 166, and *Case of La Cantuta v. Peru. Merits, reparations and costs*. Judgment of November 29, 2006. Series C No. 162, para. 227.

²⁰¹ Cf. Advisory Opinion OC-21/14, *supra*, para. 38.

174. In conclusion, the Inter-American Court emphasizes that the considerations set forth in this Advisory Opinion seek to provide a legal solution to the interpretations of the American Convention, the OAS Charter, the American Declaration and other treaties concerning the protection of human rights in the Americas, which were requested under Article 64(1) of the American Convention. Therefore, this opinion is issued on the understanding that, in the exercise of its duty to ensure specific guarantees, it may contribute peacefully and from a human rights perspective to the settlement of disputes, in accordance with the essential purposes of the OAS, which are to achieve an order of peace and justice in the American States, promote their solidarity, strengthen their collaboration, and defend their sovereignty, territorial integrity, and independence, with due respect for the principle of nonintervention.

VII OPINION

175. For the above reasons, in interpretation of Articles 1, 2, 27, 29, 30, 31, 32, 33 to 65 and 78 of the American Convention on Human Rights and 3(I), 17, 45, 53, 106 and 143 of the Charter of the Organization of American States, as well as other instruments concerning the protection of human rights in the States of the Americas,

THE COURT,

DECIDES

By six votes in favor and one against, that:

1. It is competent to issue this Advisory Opinion, pursuant to paragraphs 12 to 39.

Dissenting, Judge E. Raúl Zaffaroni.

AND IS OF THE OPINION

By six votes in favor and one against, that:

2. When a Member State of the Organization of American States denounces the American Convention on Human Rights, its international human rights obligations stand as follows: (1) Convention-based obligations remain intact during the period of transition to final denunciation; (2) definitive denunciation of the American Convention on Human Rights produces no retroactive effects; (3) the validity of the obligations arising from the ratification of other inter-American human rights treaties remains in effect; (4) the definitive denunciation of the American Convention on Human Rights does not invalidate the domestic effectiveness of principles derived from Convention-based precepts interpreted as a standard for the prevention of human rights violations; (5) obligations associated with the minimum threshold of protection through the Charter of the Organization of American States and the American Declaration of the Rights and Duties of Man remain under the supervision of the Inter-American Commission on Human Rights; and (6) customary norms, those derived from general principles of law and those pertaining to *jus cogens* continue to bind the State by virtue of general international law, in the terms of paragraphs 40 to 116.

3. When a Member State of the Organization of American States denounces the Charter of the Organization of American States, its international human rights obligations stand as

follows: (1) human rights obligations derived from the OAS Charter remain unaltered during the period of transition to full denunciation; (2) definitive denunciation of the OAS Charter produces no retroactive effects; (3) the duty to abide by obligations derived from decisions by the human rights protection bodies of the inter-American system remains in force until compliance is final; (4) the duty to abide by the inter-American human rights treaties ratified and not denounced under their own procedures remains in effect; (5) customary norms, those derived from general principles of law and those pertaining to *jus cogens* continue to bind the State by virtue of general international law, and, moreover, the duty to abide by the obligations inherent in the United Nations Charter, remain in effect, pursuant to paragraphs 117 to 161.

4. The notion of collective guarantee that underlies the entire inter-American system implies that States have a duty to act jointly and cooperate to protect the rights and freedoms which they have undertaken to ensure internationally, through their membership of the regional organization and, in particular, (1) to present, in a timely manner, their observations or objections in the face of denunciations of the American Convention and/or of the Charter of the Organization of American States that do not withstand scrutiny in light of the democratic principle and that undermine the inter-American public interest; (2) ensure that the denouncing State does not consider itself disengaged from the Organization of American States until it has fully complied with its human rights obligations acquired through various mechanisms of protection within the framework of their respective competencies, particularly those related to compliance with the reparations ordered by the Inter-American Court of Human Rights until the conclusion of the proceedings; (3) cooperate to ensure the investigation and prosecution of serious human rights violations in order to eradicate impunity; (4) grant international protection, in accordance with international obligations derived from international human rights law, international humanitarian law and refugee law, admitting potential asylum seekers to their territory, guaranteeing their right to seek and receive asylum and respecting the principle of *non-refoulement*, among other rights, until a lasting solution is achieved; and (5) engage in bilateral and multilateral diplomatic efforts, and peacefully exercise their good offices so that those States that have withdrawn from the Organization of American States may rejoin the regional system, in the terms of paragraphs 162 to 174.

5. A State that denounces the American Convention on Human Rights and the Charter of the Organization of American States, and has withdrawn from that organization, will remain bound to respect the core of essential human rights as reflected in customary norms, in those derived from general principles of international law and in those pertaining to *jus cogens*, as independent sources of general international law that ensure universal protection for human dignity, as well as the obligations derived from the United Nations Charter, in the terms of paragraphs 155 to 157.

6. This Advisory Opinion is issued on the understanding that, in the exercise of the duty to ensure specific guarantees, it may contribute peacefully and from a human rights perspective to the settlement of disputes, in accordance with the essential purposes of the Organization of American States, which are to achieve an order of peace and justice in the American States, promote their solidarity, strengthen their collaboration, and defend their sovereignty, territorial integrity, and independence, with due respect for the principle of nonintervention, in the terms of paragraph 174.

Dissenting, Judge E. Raúl Zaffaroni.

Judge L. Patricio Pazmiño Freire informed the Court of his separate and partially dissenting opinion. Judge E. Raúl Zaffaroni advised the Court of his dissenting opinion

Done at San José, Costa Rica, in the Spanish language, on November 9, 2020.

I/A Court HR. The obligations in matters of human rights of a State that has denounced the American Convention on Human Rights and the Charter of the Organization of American States (Interpretation and scope of Articles 1, 2, 27, 29, 30, 31, 32, 33 a 65 and 78 of the American Convention on Human Rights and 3(l), 17, 45, 53, 106 and 143 of the Charter of the Organization of American States). Advisory Opinion OC-26/20 of November 9, 2020. Series A No. 26.

Elizabeth Odio Benito
President

L. Patricio Pazmiño Freire

Eduardo Vio Grossi

Humberto Antonio Sierra Porto

Eduardo Ferrer Mac-Gregor Poisot

Eugenio Raúl Zaffaroni

Ricardo C. Pérez Manrique

Pablo Saavedra Alessandri
Secretary

So ordered,

Elizabeth Odio Benito
President

Pablo Saavedra Alessandri
Secretary