The Prohibition of Amnesties by the Inter-American Court of Human Rights

*By Christina Binder**

A. Introduction

The Inter-American Court of Human Rights has proven a particularly active defender of human rights in Latin America. The Court has developed an innovative and creative jurisprudence with respect to all kinds of human rights violations, including forced disappearances, extrajudicial killings, violations of indigenous peoples' rights or those of undocumented migrants.[1] Legal scholars have praised the Inter-American Court for its effective protection of human rights[2] and even the In-

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1 *See generally* on the jurisprudence of the Inter-American Court of Human Rights (Inter-American Court, IACtHR) LAURENCE BURGORGUE-LARSEN & AMAYA ÚBEDA DE TORRES, LES GRANDES DÉCISIONS DE LA COUR INTERAMÉRICAINE DES DROITS DE L'HOMME (2008).

2 *See*, *e.g.*, Pía Carazo Ortíz, *El sistema interamericano de derechos humanos: democracia y derechos humanos como factores integradores en Latinoamérica*, in: ¿INTEGRACIÓN SURAMERICANA A TRAVÉS DEL DERECHO? UN ANÁLISIS INTERDISCIPLINARIO Y MULTIFOCAL, 231 (Armin von Bogdandy, César Landa Arroyo & Mariela Morales Antoniazzi eds, 2009); *see also* Laurence Burgorgue-Larsen, *El Sistema Interamericano de Protección de los Derechos Humanos entre Clasicismo y Creatividad*, in: ¿INTEGRACIÓN SURAMERICANA A TRAVÉS DEL

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ternational Court of Justice has drawn on the judgments of the Inter-American Court.[3] The Inter-American Court has, however, also been criticized for adopting an overly broad standard of review, exceeding the competences conferred on it in the American Convention on Human Rights (ACHR, Convention)[4] and for its detailed reparation orders which encroached on the states' internal domestic affairs.[5] Put differently, the Court was blamed for being a too active judicial lawmaker. It has therefore been suggested that the Inter-American Court would be well advised to pay more attention to national sovereignty and the consent of the regional community of states when exercising its adjudicative function.[6]

In the extensive use of its powers, the Inter-American Court considerably draws on the competences attributed to it in the ACHR. The Court dynamically interprets the rights contained in the Convention, often

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DERECHO? UN ANÁLISIS INTERDISCIPLINARIO Y MULTIFOCAL, 311 (Armin von Bogdandy, César Landa Arroyo & Mariela Morales Antoniazzi eds, 2009).

[3] The Inter-American Court's interpretation of the right to information on consular assistance as an individual right of arrested persons adopted in the advisory opinion *Right to Information on Consular Assistance* (Inter-Am. Court H.R., *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 1 October 1999, Series A, No. 16) was subsequently confirmed by the ICJ in the *LaGrand* and *Avena* cases (*LaGrand* (Germany v. United States), Judgment of 27 June 2001, ICJ Reports 2001, 466; *Avena and other Mexican Nationals* (Mexico v. United States), Judgment of 31 March 2004, ICJ Reports 2004, 12). *See also* the ICJ's reference to the IACtHR in *Ahmadou Sadio Diallo* (Republic of Guinea v. Democratic Republic of Congo, Judgment of 30 November 2010, para. 68.

[4] *See*, *e.g*, Gerald Neumann, *Import, Export and Regional Consent in the Inter-American Court of Human Rights,* 19 EJIL 101 (2008).

[5] *See* James L. Cavallaro & Stephanie E. Brewer, *Reevaluating Regional Human Rights Litigation in the Twenty-First Century: The Case of the Inter-American Court*, 102 AJIL 768, 824 (2008). *See*, *e.g*., *Miguel Castro-Castro Prison v. Peru* where the Inter-American Court directed the Peruvian state to inscribe the names of prisoners associated with the *Sendero Luminoso* who had died in politically motivated attacks on a national monument which provoked a public outcry. (Inter-Am. Court H.R., *Miguel Castro-Castro Prison v. Peru*, Merits, Reparations and Costs, Judgment of 25 November 2006, Series C, No. 160, para. 3.)

[6] Neumann (note 4).

widening their scope of protection.[7] It also finds innovative ways of implementation and enforcement.[8] These measures aim at ensuring that a state's human rights obligations are effectively implemented and give maximum effect to the ACHR. However, this dynamic has led to the Court's jurisdictional competence developing a life of its own which, at times, hardly finds a legal basis in the Convention. Moreover, the Inter-American Court has considerably restricted the scope of action of national institutions and domestic authorities in order to optimize the protection of human rights. This makes it a particularly interesting example in the broader perspective of this project on "lawmaking by international courts."

The Inter-American Court's proactive role with respect to a crucial Latin American legacy is especially telling: The passing of amnesty laws and decrees has shielded perpetrators of grave human rights violations from prosecution. The Court developed some of its most innovative and far-reaching approaches to the effective protection of human rights in its amnesty jurisprudence. The Inter-American Court – adopting a radically monist approach to the relationship between international and national law – gave direct effect to its judgments, determined that national laws lacked legal effects, and also obliged domestic courts to engage in a form of decentralized conventionality control (*control de convencionalidad*), whereby the domestic courts are prohibited from applying national laws which violate the ACHR.

This dynamism seems to be particularly necessary in the Latin American context of serious human rights violations, weak national institutions and fragile democracies. However, the restrictions that the Inter-American Court imposes on domestic authorities also raise questions concerning the delimitation of an international court's competence vis-à-vis domestic decision-making and the states' consent to such interference. In addition, the Inter-American Court needs the cooperation of national institutions, especially courts, to implement and enforce its judgments. The reactions of domestic actors and their acceptance of the Inter-American Court's jurisprudence are thus crucial.

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[7] *See infra* section C.III.

[8] *See generally* on the Inter-American Court of Human Rights Scott Davidson, The Inter-American Court of Human Rights (1992); Burgorgue-Larsen & Úbeda de Torres (note 1); Laurence Burgorgue-Larsen & Amaya Úbeda de Torres, The Inter-American Court of Human Rights. Case Law and Commentary (2011).

This contribution will examine the lawmaking role of the Inter-American Court and its inherent tension with democratic self-determination. This will be done with special focus on the Court's jurisprudence on national amnesty legislation, which provides for impunity in cases of grave human rights violations. After a brief overview of the Court's role in the Inter-American system for the protection of human rights (part B), the Court's exercise of its judicial functions will be scrutinized with special focus on its amnesty jurisprudence (part C). It will be argued that the Inter-American Court considerably expands the competences originally attributed to it in the ACHR. It is against this background that the reception of its amnesty jurisprudence at the national level will be examined and evaluated (part D). Part E concludes.

B. Functioning and Jurisdiction of the Inter-American Court of Human Rights

The Inter-American Court of Human Rights is, together with the Inter-American Commission on Human Rights, the main institution which was created by the Organization of American States (OAS) for human rights protection. Comparable to the European system before the entry into force of Protocol No. 11 to the European Convention on Human Rights, it is a two-track system, where the quasi-judicial Commission acts as first instance for victims of human rights violations. Where a state has accepted the jurisdiction of the Court in accordance with Article 62 ACHR, the Court acts as "second instance," issuing binding decisions on cases submitted to it by the Inter-American Commission or the affected state. Exercising jurisdiction over twenty one of the thirty five OAS member states,[9] the Inter-American Court might more appropriately be called the "*Latin* American Court of Human Rights," as neither the United States nor Canada has ratified the ACHR.

[9] The states which have recognized the IACtHR's jurisdiction are Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Uruguay and Venezuela. (As of June 2010, status of ratifications, available at: http://www.oas.org/juridico/spanish/firmas/b-32.html.)

The ACHR is the major source of human rights obligations in the region of the Americas.[10] The Convention also sets forth the competences attributed to the Inter-American Court.[11] The Court is composed of seven judges who are elected for terms of six years, with the possibility of one re-election, by the absolute majority of state parties to the ACHR.[12] Eminent (human rights) lawyers, such as Antônio Augusto Cançado Trindade and Thomas Buergenthal, have been appointed as judges and also presided over the Court.[13]

The Inter-American Court is not a permanent court but holds sessions at least twice every year.[14] In addition to exercising jurisdiction over contentious cases, including the competence to interpret its own judgments, the Court may also issue advisory opinions at the request of the Inter-American Commission, other organs of the OAS, and OAS member states. Furthermore, on the basis of the interpretation of its own mandate, the Inter-American Court retains the competence to supervise the execution of its judgments.[15]

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[10] The ACHR is ratified by 24 states. Grenada, Jamaica and Dominica have ratified the ACHR but not submitted to the jurisdiction of the Court. (*See id.*)

[11] *See* Arts 61-65 ACHR.

[12] Arts 52-54 ACHR; Arts 4-9 of the Statute Inter-American Court of Human Rights.

[13] Antônio Augusto Cançado Trindade (Brazil) acted as judge from 1995 to 2006; Thomas Buergenthal (United States) from 1979 to 1991. As of June 2010, the members of the Court were Rhadys Abreu Blondet (Dominican Republic, Ambassador with human rights portfolio); Leonardo A. Franco (Argentina, Professor for Human Rights Law at the National University of Lanús); Margarette May Macaulay (Jamaica, Attorney at Law at private practice); Diego García-Sayán (Peru, President of the IACtHR, General Director of the *Comisión Andina de Juristas*); Manuel E. Ventura Robles (Costa Rica, Vice-President of the IACtHR, *inter alia* former member of the Costa Rican foreign service); Alberto Pérez Pérez (Uruguay, Professor for Constitutional Law and Public International Law at the *Universidad de la República* in Montevideo) and Eduardo R. Vio Grossi (Chile, Professor for Public International Law at the University Diego Portales and the *Academia Diplomática de Chile "Andrés Bello"*). *See* Website of the Inter-American Court of Human Rights, available at: http://www.corteidh.or.cr/composicion.cfm.

[14] Art. 22 Statute of the Inter-American Court of Human Rights; Arts 11, 12 Rules of Procedure of the Inter-American Court of Human Rights.

[15] *See* Art. 63 Rules of Procedure of the Inter-American Court of Human Rights. The ACHR does not designate a body to supervise the execution of the Inter-American Court's judgments, but merely provides that the Court should

The Inter-American Court's proactive role as human rights defender and the fundamental importance given to its judgments stand in contrast to the number of cases it has decided so far. Especially in its early days, very few cases reached the Court. Although the Inter-American Court was established in 1979, it decided its first contentious case – *Velásquez Rodríguez v. Honduras*[16] – only in 1989.[17] The average caseload in the period 1989–2000 was three to four cases per year. Despite the fact that the number of cases that are submitted to the Court has increased in the last decade,[18] they remain few. In total, the Court has decided about 120 contentious cases, with around fourteen cases annually in recent years.[19] Given the more than 1,300 complaints received by the Inter-American Commission each year, themselves presenting only a small portion of the human rights violations in the region, the Court considers only a very small fraction of the human rights abuses committed in Latin America.

C. The Inter-American Court's Amnesty Jurisprudence

The problem of amnesty laws shielding perpetrators of grave human rights violations from prosecution is particularly critical in Latin America. Many states have a history of military dictatorships responsible for serious human rights violations, including forced disappearances, extrajudicial killings and brutal persecution of political opponents. In the

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indicate those states which have not complied with its judgments in its annual report to the OAS General Assembly (Art. 65 ACHR).

16 Inter-Am. Court H.R., *Velásquez Rodríguez v. Honduras,* Compensatory Damages (Art. 63(1) ACHR), Judgment of 21 July 1989, Series C, No. 7.

17 Before, the Inter-American Court issued numerous advisory opinions of major importance. (*See*, *e.g.*, Inter-Am. Court H.R., "*Other Treaties" Subject to the Advisory Jurisdiction of the Court (Art. 64 of the ACHR),* Advisory Opinion OC-1/82 of 24 September 1982, Series A, No. 1; Inter-Am. Court H.R., *Restrictions to the Death Penalty (Arts 4.2 and 4.4 of the ACHR)*, Advisory Opinion OC-3/83 of 8 September 1983, Series A, No. 3).

18 This is mainly due to a 2001 procedural reform modifying Art. 44.1 Rules of Procedure of the Inter-American Commission on Human Rights. Now, most cases have to be submitted to the Court in accordance with established criteria.

19 As of June 2010; the data are from: IACtHR, Jurisprudence: Decisions and Judgments, available at: http://www.corteidh.or.cr/casos.cfm.

context of transitions to democracy, amnesty laws were passed in numerous states (e.g., in Argentina, Chile, Uruguay),[20] establishing impunity for past human rights violations. In Peru, amnesty legislation was adopted under President Fujimori in 1995, shielding Fujimori himself and other human rights violators against prosecution for crimes they had committed in their fight against left wing guerrillas in the early 1990s.[21] Amnesty laws are still a major political topic in Latin America, given that transitions to democracy sometimes came "at the price" of amnesties. It proved difficult for young and only slowly consolidating democracies to struggle against impunity, as many of the previous leaders and human rights violators still remained in influential positions.[22] The Inter-American Court's amnesty jurisprudence appears to be particularly important in this context because it may support national efforts in this fight against impunity. The Court's jurisprudence is noteworthy moreover insofar as the ACHR – being adopted before the problem of impunity materialized in the region – does not explicitly deal with the problem of amnesties.

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[20] *See*, *for instance*, the notorious *Punto Final* and *Obediencia Debida* acts in Argentina which were passed in 1986 and 1987 and practically brought investigations on human rights violations committed by the military junta between 1976 and 1983 to a halt. *See also* the Chilean amnesty *decreto-ley* (decree-law) of 1978 (Amnesty decree law No. 2.191 of 18 April 1978, *Diario Oficial* [Official Gazette] No. 30.042) which established the non-responsibility for crimes committed between 11 September 1973 (military coup by Pinochet) and 10 March 1978. For Uruguay, *see* the Law Nullifying the State's Claim to Punish Certain Crimes/Limitations Act/Law of Expiry, Law No. 15.848 of 22 December 1986. For further reference, *see*, *e.g.*, STEVEN R. RATNER & JASON S. ABRAMS, ACCOUNTABILITY FOR HUMAN RIGHTS ATROCITIES IN INTERNATIONAL LAW: BEYOND THE NUREMBERG LEGACY 153 *et seq*. (2001).

[21] Law No. 26.479. *Conceden amnistía general a personal militar, política y civil para diversos casos* (Granting general amnesty for military, political and civil personnel for various cases) of 14 June 1995, published in *Normas Legales* (Legal Norms), No. 229 (1995) 200; modified by Law No. 26.492. *Precisan interpretación y alcances de amnistía otorgada por la Ley No. 26.479* (Detailing interpretation and scope of the amnesty granted by Law No. 26.479) of 28 June 1995, published in *Normas Legales* (Legal Norms), No. 230, 1995, 8.

[22] *See*, *e.g.*, Argentina, where President Carlos Menem pardoned around 30 top junta leaders in 1989 who had been imprisoned for human rights abuses due to the fear of a new military coup (decree 1002/89). The decree was recently declared unconstitutional by the Argentine Supreme Court in the *Mazzeo* Case, *see infra* section D.II.

The next sections will first examine the Court's jurisprudence concerning amnesty legislation contravening the ACHR. Second, it will be argued that the Inter-American Court's exercise of norm control – directly declaring a national amnesty law or decree to be without effect, or obligating national courts not to apply the law in a specific case before them (conventionality control/*control de convencionalidad*) – is based on a very broad interpretation of its own competences. Finally, potential problems of the Court's jurisprudence are highlighted.

I. Jurisprudence

Already in the early 1990s, the question of amnesty laws came up in the Inter-American system: In 1992 the Inter-American Commission stated that the Argentine and Uruguayan amnesty laws were inconsistent with those states' human rights obligations.[23] The Inter-American Court, asked by Argentina and Uruguay to render an advisory opinion on the Commission's competence to decide on the validity of domestic legislation, upheld the Commission's competence in this regard.[24] Still, "the political climate in the relevant countries remained hostile to the [Inter-American human rights] system's views on amnesty laws,"[25] and no immediate action at national level followed the Court's rulings. It was after 2000, with the Inter-American Court's landmark judgment in *Barrios Altos v. Peru* in 2001,[26] and later with the *La Cantuta v. Peru*[27] and

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[23] *See* Inter-American Commission on Human Rights, Cases 10.147, 10.181, 10.240, 10.262, 10.309, 10.311; IACHR Report No. 28/92, OEA/Ser.L/V/II.83, doc. 14, corr.1 (1992-93) (Argentina); Inter-American Commission on Human Rights, Cases 10.029, 10.036, 10.145, 10.305, 10.372, 10.373, 10.374, 10.375; IACHR Report No. 29/92, OEA/Ser.L/V/II.83, doc. 14, corr.1 (1992-93) (Uruguay). *See* Cavallaro & Brewer (note 5), 819 *et seq*. for further reference.

[24] Inter-Am. Court H.R., *Certain Attributes of the Inter-American Commission on Human Rights (Arts 41, 42, 44, 46, 47, 50 and 51 of the ACHR)*, Advisory Opinion OC-13/93 of 16 July 1993, Series A, No. 13, paras 30, 37, 57(1).

[25] *See* Cavallaro & Brewer (note 5), 820.

[26] Inter-Am. Court H.R., *Barrios Altos v. Peru,* Merits, Judgment of 14 March 2001, Series C, No. 75.

[27] Inter-Am. Court H.R., *La Cantuta v. Peru,* Merits, Reparations and Costs, Judgment of 29 November 2006, Series C, No. 162.

Almonacid v. Chile[28] decisions in 2006, that the issue of amnesty legislation was brought back onto the regional human rights agenda.[29]

The *Barrios Altos* and *La Cantuta* cases against Peru concerned massacres in 1991 and 1992, which had been committed by the paramilitary death squad "*La Colina*" and ordered by then President Fujimori. Those responsible were shielded from prosecution by amnesty laws passed under the Fujimori government in 1995.[30] In the *Barrios Altos* case, the Inter-American Court found that such impunity for violations of non-derogable human rights norms was inadmissible:

> This Court considers that all amnesty provisions, provisions on prescription and the establishment of measures designed to eliminate responsibility are inadmissible, because they are intended to prevent the investigation and punishment of those responsible for serious human rights violations such as torture, extrajudicial, summary or arbitrary execution and forced disappearance, all of them prohibited because they violate non-derogable rights recognized by international human rights law.[31]

The Court accordingly established that the 1995 amnesty laws violated the rights of the victims' families and the survivors from being heard by a tribunal as contained in Article 8.1 ACHR and to judicial recourse as provided for in Article 25 ACHR. The Court furthermore stated that the amnesty laws impeded the investigation, capture, prosecution and conviction of those responsible for the human rights violations in the Barrios Altos massacre in contravention of Article 1.1 ACHR and obstructed the clarification of the facts of the case. In addition, the adoption of self-amnesty laws[32] was found incompatible with the ACHR and in violation of Peru's obligation to adopt the legislative measures necessary to give effect to its obligations under the ACHR in accordance with Article 2 ACHR. Finally, the Inter-American Court held

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[28] Inter-Am. Court H.R., *Almonacid Arellano y otros v. Chile,* Preliminary Objections, Merits, Reparations and Costs, Judgment of 26 September 2006, Series C, No. 154.

[29] Concerning self-amnesties, *see also Loayza Tamayo v. Peru*, Reparations and Costs, Judgment of 27 November 1998, Series C, No. 42, paras 167 et seq. and operat. para. 2.

[30] Laws No. 26.479 and 26.492 (note 21).

[31] *Barrios Altos v. Peru* (note 26), para. 41.

[32] "Self-amnesties" are legal acts through which the regime committing the human rights violations shields itself from prosecution.

that the respective laws contributed to the defencelessness of victims and the perpetuation of impunity and were thus "manifestly incompatible with the aims and spirit of the [ACHR]."[33] Based on these considerations, the Inter-American Court ruled that the 1995 amnesty laws were devoid of legal effects ("*carecen efectos jurídicos*").[34] Subsequently, in an interpretation of its judgment (*sentencia de interpretación*), the Court confirmed the general effects of these rulings.[35]

These findings were reiterated in the *La Cantuta* case in 2006,[36] which prominently discussed the effects of the Peruvian amnesty laws before and after the *Barrios Altos* decision against the background of the massacre in La Cantuta in 1992.[37] The Inter-American Court established accordingly that, while between 1995 and 2001 (the *Barrios Altos* decision) the amnesty laws were applied and the situation was thus in contravention of the ACHR, after 2001, the amnesty laws were deprived of their legal effects in internal Peruvian legislation.[38] Survivors and victims' next of kin, whose perpetrators had not been prosecuted due to the effect of the amnesty laws between 1995 and 2001, were thus entitled to monetary compensation and psychological support. Furthermore, investigations and prosecutions had to proceed to hold responsible those who were accountable for the massacre.

The Court reached similar conclusions in *Almonacid v. Chile.*[39] The case concerned the extrajudicial killing of a professor (a supporter of the communist party) in September 1973 by state police forces of the Pinochet regime. The Inter-American Court found that the killing constituted a crime against humanity[40] and that such a violation could not remain unpunished.[41] The Court thus held that the non-prosecution of

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33 *Barrios Altos v. Peru* (note 26), para. 43.

34 *Id.*, operat. para. 4.

35 Inter-Am. Court H.R., *Barrios Altos v. Peru*, Interpretation of the Judgment on the Merits, Judgment of 3 September 2001, Series C, No. 83, para. 18 and operat. para. 2.

36 *La Cantuta v. Peru* (note 27).

37 *Id.*, paras 188, 189.

38 The Inter-American Court extensively listed Peruvian measures and jurisprudence to reach this conclusion.

39 *Almonacid v. Chile* (note 28).

40 *See*, *e.g.*, *id.*, para. 115.

41 *Id.*, para. 111.

those responsible by operation of the 1978 amnesty decree law (*decreto ley*)[42] constituted a violation of Articles 8.1 and 25 together with Articles 1.1 and 2 of the ACHR.[43] The Court, as in *Barrios Altos*, stated that the respective decree law was devoid of legal effects.[44] It ordered the compensation and satisfaction of the victims, including the prosecution of those responsible and the publication of the established facts in the *Diario Oficial* of Chile as well as in another newspaper of wide circulation. Furthermore, the Court found that the Chilean state was obliged to ensure that the 1978 amnesty decree law was no obstacle for the continuation of the investigations on the extrajudicial execution of the victim and similar situations, nor for the identification and punishment of those responsible in that case and similar cases.[45] Most importantly, in *Almonacid*, the Inter-American Court for the first time set forth its doctrine of conventionality control (*control de convencionalidad*).[46]

Thus, in the cases discussed above, the Inter-American Court adopts a similar approach with respect to domestic (self-) amnesty laws, which shield perpetrators of grave human rights violations from prosecution. The Court is less concerned about whether the respective law is a self-amnesty or an amnesty passed by a subsequent regime on the way of transition to democracy;[47] rather, it bases its argument on the amnesty laws' *ratio legis*: That such laws shield perpetrators of grave human rights violations from prosecution.[48] In doing so, the Court explicitly refers to the *jus cogens* character – the non-derogable nature – of the rights the crimes at issue had violated (prohibition of torture, prohibi-

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42 Amnesty decree law No. 2.191 (note 20).

43 *Almonacid v. Chile* (note 28), operat. para. 2.

44 *Id.*, operat. para. 3. The fact that the amnesty laws had not been applied by Chilean courts in various cases since 1998 was not considered sufficient to comply with the requirements of Art. 2 ACHR as the implementing authorities could change their approach (*id*., para. 121).

45 *Id*., operat. paras 5, 6.

46 *Id*., para. 124. For details, *see infra* sections C.II and III.

47 *Id*., para. 120.

48 *See Barrios Altos v. Peru* (note 26), para. 42. The Inter-American Court only generally refers to "amnesties" and "self-amnesties", without establishing clear procedural criteria as to the (in)admissibility of such laws. Only Judge Cançado Trindade, in a concurring opinion in the *Barrios Altos* Case, distinguished between amnesties and self-amnesties and considered self-amnesties as "particularly problematic". (*Barrios Altos*, Concurring Opinion of Judge Cançado Trindade (note 26), para. 7).

tion of extrajudicial killings, etc.).[49] It likewise rules that the respective amnesty laws are a violation of the survivors' and victims' family members' rights to a fair trial and to judicial protection[50] and declares them devoid of legal effects for being inconsistent with wording and spirit of the ACHR.[51]

II. Types of Norm Control Effectuated by the Court

In its amnesty jurisprudence (*Barrios Altos, La Cantuta* and *Almonacid*), the Inter-American Court does not oblige domestic authorities to amend or repeal deficient legislation. Rather, the Inter-American Court determines itself that the respective amnesty laws are without effects – *ab initio*[52] – for contravening central obligations under the ACHR. The wording chosen by the Court ("lack legal effects") shows that it does not consider an additional national legal act (e.g. a repeal of the amnesty law) necessary to give effect to its decision.[53] This is explicitly confirmed in the Separate Opinion of Judge García Ramírez in *La Cantuta*.[54] When affirming that national laws are without effects, the Inter-American Court attributes supranational force to its determina-

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[49] *See*, *e.g.*, *Barrios Altos v. Peru* (note 26), para. 41; *Almonacid v. Chile* (note 28), para. 111.

[50] Arts 8 and 25 ACHR.

[51] *See Almonacid v. Chile* (note 28), para. 119. *See also* the extensive appraisal of the Inter-American Court's contribution concerning the inadmissibility of self-amnesties by Judge Cançado Trindade, Separate Opinion, *La Cantuta v. Peru* (note 27), paras 23 *et seq*.

[52] This was stated most clearly in *La Cantuta*: "such 'laws' have not been capable of having effects, nor will they have them in the future." (*La Cantuta v. Peru* (note 27), para. 189).

[53] While especially the Court's findings in *La Cantuta* indicate that the Inter-American Court's statement is declaratory and not constitutive, such establishment would have been up to the competent institution at the domestic level (*e.g.* the constitutional court).

[54] *See* Separate Opinion of Judge García Ramírez, *La Cantuta v. Peru* (note 27), paras 4 and 5: "Basically, such laws are invalid – with no need for a special decision so holding as, in any event, any such decision would be a mere declaration of invalidity – from the very moment they conflict with the American Convention".

tions and acts like a domestic constitutional court.[55] Cassese highlights the importance of this feature by stating: "[C]'est la première fois qu'une juridiction internationale déclare que des lois nationales son dépourvues d'effets juridiques à l'intérieur du system étatique où elles ont été adoptées, et oblige par conséquence l'État à agir comme si ces lois n'avaient jamais été dictées."[56]

In addition to exercising a norm control which determines the validity of the respective laws, the Inter-American Court resorted to another innovative method to ensure the most effective implementation of the different states' human rights obligations in *Almonacid v. Chile*: The Court established that domestic courts were obliged not to apply national norms which were in violation of the ACHR and, what is more, in the interpretation given to the Convention by the Inter-American Court (*control de convencionalidad*).[57]

> The Court is aware that domestic judges and courts are bound to respect the rule of law, and therefore, they are bound to apply the provisions in force within the legal system. But when a State has ratified an international treaty such as the American Convention, its judges, as part of the State, are also bound by such Convention. This forces them to see that all the effects of the provisions embodied in the Convention are not adversely affected by the enforcement of

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55 *See* Néstor Sagüés, *El 'Control de Convencionalidad' en particular sobre las Constitucionales Nacionales*, LA LEY of 19 February 2009, 3: "en ciertos veredictos … la Corte Interamericana habría incluso nulificado normas nacionales, como leyes de amnistía, con efectos *erga omnes*, comportándose así como un verdadero Tribunal Constitucional nacional." ("in certain judgments … the Inter-American Court has even nullified national norms, such as amnesty laws, with *erga omnes* effects, acting like a true national Constitutional Court.")

56 "It's the first time that an international court determines that national laws are devoid of legal effects within the state system where they have been adopted and consequently obliges the state to act as if these laws had never been enacted." Antonio Cassese, *Y-a-t-il un conflit insurmontable entre souveraineté des États et justice pénale internationale?* in: CRIMES INTERNATIONAUX ET JURIDICTIONS INTERNATIONALES, 13, 16 (Antonio Cassese & Mireille Delmas-Marty eds, 2002).

57 Sagüés (note 55). *See also* Néstor Sagüés, *Obligaciones Internacionales y Control de Convencionalidad*, 8/1 ESTUDIOS CONSTITUCIONALES 117 (2010); Juan Carlos Hitters, *Control de Constitucionalidad y Control de Convencionalidad. Comparación (Criterios fijados por la Corte Interamericana de Derechos Humanos)* (2009), available at: http://www.scielo.cl/scielo.php?pid=S0718-52002009000200005&script=sci_arttext.

> laws which are contrary to its purpose and that have not had any legal effects since their inception. In other words, the Judiciary must exercise a sort of 'conventionality control' between the domestic legal provisions which are applied to specific cases and the American Convention on Human Rights. To perform this task, the Judiciary has to take into account not only the treaty, but also the interpretation thereof made by the Inter-American Court, which is the ultimate interpreter of the American Convention. [58]

This decentralized conventionality control obliges national courts not to apply (provisions of) laws which are in contravention of the ACHR.[59] Crucially, this obligation is not conditional on obtaining a prior judgment by the Inter-American Court. The Inter-American Court bases the duty to exercise the *control de convencionalidad*, *inter alia*, on Article 27 VCLT, namely that a state cannot justify the non-compliance with an international treaty with reference to internal law.[60] Put differently, the Court asks domestic courts to exercise a conventionality control which is comparable to the constitutionality control in domestic constitutional law. The standard of review is not only the ACHR, but also "the interpretation thereof made by the Inter-American Court, which is the ultimate interpreter of the American Convention."[61] The Inter-American Court thus obliges national judges to exercise their review also with reference to its own case law. According to the Court, national judges have to engage in such control not only when requested by a party to the case but also *ex officio*[62] and, where an internal norm violates the ACHR, abstain from applying it to the concrete case.[63] In situations where the national legislator has failed

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[58] *Almonacid v. Chile* (note 28), para. 124.

[59] In the interpretation of the Inter-American Court; for further details, *see infra* sections C.II and III.

[60] *Almonacid v. Chile* (note 28), para. 125.

[61] *Id*., para. 124.

[62] *See also* Inter-Am. Court H.R., *Trabajadores Cesados del Congreso (Aguado Alfaro y otros) v. Peru*, Preliminary Objections, Merits, Reparations and Costs, Judgment of 24 November 2006, Series C, No. 158, para. 128.

[63] *Almonacid v. Chile* (note 28), paras 123-125. The effect of such control by national judges is *inter partes*. (Sagüés (note 55), 2.) The Inter-American Court has not rendered a decision on what happens when the respective national tribunal is competent to invalidate norms *erga omnes*. Still, according to Sagüés, it might do so. (*Id*.)

to act and to amend the deficient law,[64] it is thus domestic courts and judges which have to give effect to the human rights guarantees in the ACHR. After being applied first in the *Almonacid* case 2006, the doctrine was confirmed in subsequent jurisprudence, including *Trabajadores Cesados del Congreso (Aguado Alfaro y otros) v. Peru* (November 2006),[65] *Heliodoro Portugal v. Panama* (August 2008)[66] and *Radilla Pacheco v. Mexico* (November 2009).[67]

III. Appreciation

Both forms of norm control, by the Inter-American Court and by domestic courts, aim at an effective implementation of a state's human rights obligations and give the maximum effect to the ACHR. The Inter-American Court's supranational determination that national laws (or decrees) are without effects bypasses the need for an additional national legal act.[68] Especially the *control de convencionalidad* has far-reaching consequences for the Latin American system of human rights protection, as it makes national judges the guardians of the human rights guarantees enshrined in the ACHR[69] and thus provides for its effective implementation at the decentralized level. In particular the latter,

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64 *See in this sense*, *Almonacid* (note 28), para. 123.

65 *Trabajadores Cesados del Congreso v. Peru* (note 62), para. 128.

66 Inter-Am. Court H.R., *Heliodoro Portugal v. Panama*, Preliminary Objections, Merits, Reparations and Costs, Judgment of 12 August 2008, Series C, No. 186, paras 180-181.

67 Inter-Am. Court H.R., *Radilla Pacheco v. Mexico*, Preliminary Objections, Merits, Reparations and Costs, Judgment of 23 November 2009, Series C, No. 209, para. 339. *See furthermore* Inter-Am. Court H.R., *Boyce y otros v. Barbados*, Preliminary Objections, Merits, Reparations and Costs, Judgment of 20 November 2007, Series C, No. 169, para. 78.

68 This facilitates the work of national institutions, especially when the nullification of amnesty laws is met with domestic resistance. The effectiveness of such international human rights protection seems particularly warranted in the Latin American context of fragile democracies and weak domestic institutions (*see infra* section D).

69 The Inter-American Court appears to leave open whether such control must also be exercised with respect to other human rights treaties. *See Almonacid v. Chile* (note 28), para. 124, "an international treaty, *such as* the American Convention" (emphasis added).

if properly effectuated, would counterbalance the limited number of cases which are brought before the Inter-American Court of Human Rights, as domestic judges are required to ensure the ACHR's effectiveness at the national level. This may be needed in the field of amnesties in particular; and, more generally, in the Latin American context of serious human rights violations.

In fact, the Inter-American Court explicitly relies on the particularly grave character of human rights violations when establishing the nullity of amnesty laws and decrees by affirming that the respective human rights (prohibition of torture, etc.) are recognized as non-derogable in international human rights law. The Court thus introduces a certain graduation as regards the seriousness of violations based on a hierarchy of norms. This is likewise evidenced by the Court's jurisprudence with respect to other laws which violate the ACHR but do not establish impunity for the most serious human rights violations. In such cases, the Inter-American Court orders national authorities to amend the respective laws but does not declare them to be without effects itself. For instance, in *Fermín Ramírez v. Guatemala*[70] the Court established that a provision of the Guatemalan penal legislation which contravened the ACHR should be modified in a reasonable time and not be applied as long as it was not amended.[71] In *"La Última Tentación de Cristo,"* the Court asked Chile to amend a provision of its Constitution as the preliminary censorship established therein violated Article 13 (freedom of thought and expression) of the ACHR.[72] Consequently, the Court resorts to the drastic sanction of determining that a national law is devoid of legal effects[73] only when confronted with breaches of *jus cogens* and

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[70] Inter-Am. Court H.R., *Fermín Ramírez v. Guatemala*, Judgment of 20 June 2005, Series C, No. 126. In the case at issue, an individual had been condemned to death *inter alia* on the basis of a provision of the Guatemalan penal legislation which provided for an evaluation of the threat the individual posed *pro futuro*.

[71] *Id*., operat. para 8.

[72] Inter-Am. Court H.R., *"La Última Tentación de Cristo" (Olmedo Bustos y otros) v. Chile,* Merits and Reparations, Judgment of 5 February 2001, Series C, No. 73, operat. para. 4.

[73] The illegality of amnesty laws which establish impunity for the perpetration of most serious human rights violations meets a general trend in international law as evidenced in the practice of the UN Human Rights Committee, the ICTY and the Special Court for Sierra Leone. *See*, *for further reference*, Leyla Sadat, *Individual Progress in International Law: Considering Amnesty,*

only acts as a supranational court in case of most serious human rights violations.

Still, neither of the norm controls which were introduced by the Inter-American Court has a firm legal basis in the ACHR. The Court's direct determination that national norms are without effects is in certain contradiction to Article 2 ACHR, which establishes the obligation of *states* to bring their legislation in line with the ACHR and thus may be taken as indication that domestic rather than international action is required. The Inter-American Court's reference to Article 27 VCLT[74] – that no state can justify the non-compliance with an international treaty with reference to internal law, is not pertinent insofar as Article 27 VCLT is, according to the overwhelming opinion, directed to *inter-state* relations.[75] A violation of the ACHR in contravention of Article 27 VCLT entails state responsibility, but a violation of Article 27 VCLT does not as such have consequences for the validity of the internal norm contravening the international obligation (in this instance the ACHR).

The decentralized system of norm control by national courts, the *control de convencionalidad*, is not contemplated at all in the ACHR. The Inter-American Court seems to rely on an *effet utile* argument; that effect has to be given to the ACHR.[76] However, the need for an effective implementation of the Convention at the national level does not necessarily give the Inter-American Court the competence to determine *how* this is to be done. Rather, it would be up to the respective state to decide how best to comply with its obligations under the ACHR in accordance with the specificities of its domestic legal system. For example, implementing the *control de convencionalidad* may pose institutional and procedural problems, especially for states with centralized systems of norm control, i.e. where only one court (the Supreme Court or the Constitutional Court) is competent to safeguard the integrity of the Constitution, such as in Uruguay or Costa Rica.[77] Furthermore, the conventionality control may be incompatible with a state's internal

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in: PROGRESS IN INTERNATIONAL LAW, 335, especially 348 *et seq*. (Russel Miller & Rebecca Bratspies eds, 2008).

74 *Almonacid v. Chile* (note 28), para. 125.

75 *See* MARK VILLIGER, COMMENTARY TO THE 1969 VIENNA CONVENTION ON THE LAW OF TREATIES 370 *et seq*. (2009).

76 *See* reasoning in *Almonacid v. Chile* (note 28), para. 125.

77 Since the 2005 constitutional reforms and the introduction of a centralized system of norm control this might be problematic also in Chile.

normative hierarchy, especially in states where the ACHR is not incorporated at constitutional level[78] or where provisions of national constitutions are found to violate the ACHR.[79] The Inter-American Court alluded to these problems when it stated that domestic institutions should engage in norm control within the ambit of their respective competences and with due regard to pertinent procedural regulations.[80] The Inter-American Court failed, however, to further elaborate and omitted to specify whether, for instance, in systems of centralized norm control, lower-instance judges would be exempt from conducting a *control de convencionalidad*.[81]

Finally, certain questions relate to the Court's statement that national judges have to base their conventionality control on the ACHR *in the interpretation made thereof by the Inter-American Court*. It seems to be based on the Court's competence as set forth in Article 62.3 ACHR to exercise jurisdiction on all cases concerning the "interpretation and application of the provisions of the Convention."[82] Still, the Inter-American Court's jurisprudence considerably extended the standard of review and also included universal human rights documents (the International Covenant on Civil and Political Rights (CCPR); Concluding Observations on Country Reports; and General Comments of the UN-Human Rights Committee (HRC))[83] and even soft law standards (e.g.

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[78] In Uruguay, the ACHR has the same rank as statutory laws (Art. 6 of the Constitution of Uruguay). *See*, *for further reference*, Allan Brewer Carías, *La interrelación entre los Tribunales Constitucionales de America Latina y la Corte Interamericana de Derechos Humanos, y la cuestión de la inejecutabilidad de sus decisiones en Venezuela*, in: DIREITOS HUMANOS, DEMOCRACIA, E INTEGRAÇÃO JURÍDICA NA AMÉRICA DO SUL, 661 (Armin von Bogdandy, Flávia Piovesan & Mariela Morales Antoniazzi eds, 2009).

[79] As stated, in *"La Última Tentación de Cristo"* the Inter-American Court found that a provision of the Chilean Constitution was inconsistent with the ACHR and asked Chile to modify it. *"La Última Tentación de Cristo" v. Chile* (note 72). *Also see* Sagüés (note 55), 3. *Cf.* Hitters (note 57).

[80] *Trabajadores Cesados del Congreso v. Peru* (note 62), para. 128.

[81] It has been suggested in literature that in systems with centralized norm control domestic courts should adopt a pragmatic stand and simply refer the respective cases to the competent tribunal. (Sagüés (note 55), 2.)

[82] *See* the Inter-American Court's definition of its role as "the ultimate interpreter of the ACHR" in *Almonacid v. Chile* (note 28), para. 124.

[83] *See*, *e.g.*, Inter-Am. Court H.R., *Ricardo Canese v. Paraguay,* Merits, Reparations and Costs, Judgment of 31 August 2004, Series C, No. 111, paras 115-135 (relying on HRC General Comment No. 27); Inter-Am. Court H.R.,

the UN Guiding Principles on Internal Displacement[84]) when examining whether a violation of the respective state's human rights obligations had occurred. Already the Inter-American Court's own competence to engage in such extensive review seems a somehow doubtful extension of its mandate.[85] To ask domestic judges to review cases according to these strict human rights standards appears to broaden the Inter-American Court's competences even further. In addition, where the review competence of domestic judges comprises only the ACHR, this may pose institutional problems at the national level.[86]

To sum up, despite the above-mentioned compelling practical reasons for the Court's lawmaking and its introduction of both systems of norm control, they lack a firm legal basis in the ACHR. Rather, the Inter-American Court resorts to an (overly?) extensive interpretation of its own competences. In addition, the Court considerably restricts domestic authorities (legislators and courts in particular) in their choice of

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Yatama v. Nicaragua, Preliminary Objections, Merits, Reparations and Costs, Judgment of 23 June 2005, Series C, No. 127, para. 208 (quoting from HRC General Comment No. 25); Inter-Am. Court H.R., *Raxcacó Reyes v. Guatemala*, Judgment of 15 September 2005, Series C, No. 133 (2005), para. 69 (citing HRC Concluding Observations on reports of Iran and Iraq). *See generally* Neumann (note 4), 109 *et seq*. *See also*, most recently, Inter-Am. Court H.R., *Saramaka People v. Suriname*, Judgment of 28 November 2007, Series C, No. 172, paras 92-94, where the Inter-American Court drew *inter alia* on Arts 1, 27 CCPR, HRC Concluding Observations on the Russian Federation and HRC General Comment No. 23: The Rights of Minorities (Art. 27), to interpret the right to property in Art. 21 ACHR with special focus on indigenous peoples. *See*, *for further reference*, Lisl Brunner, *The Rise of Peoples' Rights in the Americas: The Saramaka People Decision of the Inter-American Court of Human Rights*, 7 CHINESE JOURNAL OF INTERNATIONAL LAW 699 (2008).

84 *Guiding Principles on Internal Displacement*, 11 February 1998, UN Doc. E/CN.4/1998/53/Add. 2, relied upon by the Inter-American Court in the *Moiwana Village* Case. (Inter-Am. Court H.R., *Moiwana Village v. Suriname*, Preliminary Objections, Merits, Reparations and Costs, Judgment of 15 June 2005, Series C, No. 124, para. 111.)

85 The Inter-American Court stated respectively that "a certain tendency to integrate the regional and universal systems for the protection of human rights can be perceived in the Convention" ("*Other Treaties*" (note 17), para. 41) and also relied on Art. 29(b) ACHR. *See* critically Neumann (note 4), 111 *et seq*; and Cavallaro & Brewer (note 5), 817.

86 Certain national constitutions enumerate exhaustively the human rights treaties which are incorporated at constitutional level. (*See*, *e.g.*, Art. 75.22 of the Argentine Constitution).

how to best give effect to the ACHR at the national level, which raises legitimacy concerns as regards domestic decision-making. Against that background, it seems particularly fruitful to examine the reception of the Inter-American Court's amnesty jurisprudence in the states under its jurisdiction.

D. Reception of the Inter-American Court's Amnesty Jurisprudence at the National Level

The following section examines the reception of the jurisprudence of the Inter-American Court in selected states where (self-) amnesties proved to be particularly problematic, namely in Peru, Chile, Argentina and Colombia. One may distinguish between two sets of cases: First, those where states are obliged to implement the Court's decision pursuant to Article 68 ACHR;[87] and second, cases where states were not party to the proceedings and are thus not directly legally bound to follow the Inter-American Court's amnesty jurisprudence ("spill-over effect").

I. Effect Given to the Inter-American Court's Judgments by the States Parties to the Dispute

Peru fully complied with the *Barrios Altos* decision and followed the Inter-American Court's determination that the 1995 amnesty laws were devoid of legal effects. This was done on the basis of the incorporation of the ACHR in the domestic legal system[88] and national legal provisions making it possible to give effect to international decisions.[89] Ac-

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[87] Under Art. 68 ACHR states undertake "to comply with the judgment of the Court in any case to which they are parties."

[88] Arts 55-57 of the Peruvian Constitution. The Peruvian Constitution does not provide for an incorporation of international (human rights) treaties at a certain rank in legal hierarchy. Still, Art. 55 of the Constitution states that international treaties are "part of national law" and its final provisions establish that constitutional rights and freedoms have to be interpreted in accordance with international human rights treaties ratified by Peru.

[89] *See*, *e.g.*, Law No. 27.775 *Regula el procedimiento de ejecución de sentencias emitidas por Tribunales Supranacionales* (Regulating the procedure for the

cording to the Peruvian Constitutional Court (*Tribunal Constitucional*), [90] the Inter-American Court's interpretative authority in accordance with Article 62.3 ACHR made its interpretations binding upon all national authorities, including the Peruvian Constitutional Court. More particularly, the Constitutional Court found that not only the operative part of the judgments but also the Inter-American Court's reasoning had binding force.[91] The Constitutional Court was perhaps most outspoken on 29 November 2005[92] when it stated, in ordering investigations to be continued in compliance with the *Barrios Altos* decision, that the obligation of the Peruvian state to establish the facts and sanction the responsible did not only imply the nullity of those trial proceedings where the amnesty laws in question had been applied, but also of all other practice with the objective to prevent the investigation and sanction of violations of the right to life and physical integrity.[93]

In general, the Peruvian domestic authorities took a series of measures to eliminate the effects of the 1995 amnesty laws in the aftermath of the *Barrios Altos* judgment. These culminated in the conviction of former President Fujimori, who was sentenced to twenty five years of imprisonment in April 2009 by a Special Criminal Chamber of the Peruvian Supreme Court for the Barrios Altos and La Cantuta massacres, among

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execution of judgments handed down by Supranational Tribunals); Art. 115 *Código Procesal Constitucional* (Constitutional Procedure Code).

[90] The Peruvian Constitutional Court acts as the final interpreter of the Constitution with the competence to derogate, with *erga omnes* effects, unconstitutional legislation. In addition, ordinary judges may decide not to apply or enforce unconstitutional laws with effects *inter partes*. (System of judicial diffuse norm control in combination with a centralized control in a specialized court, *see* Arts 138, 201, 202 and 204 of the Peruvian Constitution.) (*See* Néstor Sagüés, *Regional Report Latin America*, VII. Konrad Adenauer Stiftung Conference on International Law, The Contribution of Constitutional Courts in Safeguarding Basic Rights, Democracy and Development 10 [2009]). As to the Peruvian Constitutional Court's composition of June 2010: all seven judges were professors of law at different Peruvian Universities. (*See* Website of the Peruvian Constitutional Court, available at: http://www.tc.gob.pe/magistrados/magistrados.html.)

[91] This even in cases where Peru was not a party to the dispute, *see infra* note 133.

[92] *See* Constitutional Court of Peru, *Santiago Martín Rivas*, Expediente N° 4587-2004-AA/TC, 29 November 2005.

[93] *See id.*, para 63.

other charges.[94] Furthermore, all judicial and prosecutorial institutions were ordered to give effect to the *Barrios Altos* decision.[95] Cases where the amnesty laws had been applied to shield perpetrators from prosecution thus had to be reopened.[96] Military tribunals also determined – in reliance on Article 27 VCLT – that the 1995 amnesty laws were devoid of legal effects for violating the ACHR.[97]

The Inter-American Court's position on the nullity of amnesty laws contravening the ACHR is thus given effect by Peruvian tribunals.[98] In so doing, the tribunals seem to adopt a radically monist understanding concerning the relationship between national and international law. The Peruvian Constitutional Court, in particular, supporting a full incorporation of the Inter-American Court's *Barrios Altos* decision in the national legal system, accepts the Inter-American Court as supreme interpreter of the ACHR and treats its decisions and reasoning as having a direct binding effect for Peruvian national authorities.

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[94] Sala Penal Especial, Corte Suprema de Justicia, *Sentencia Alberto Fujimori Fujimori*, Expediente N° AV-19-2001, 7 April 2009. The Special Criminal Chamber was composed of three Supreme Court judges. The charges were grouped into three different public trials, with the first trial focussing on human rights issues including the Barrios Altos and La Cantuta massacres. The decision was rendered on 7 April 2009 with Fujimori being found guilty on all charges. As of June 2010 it was under appeal before a second panel of five Supreme Court judges whose decision will be final. For details, *see* Jo-Marie Burt, *Guilty as Charged: The Trial of Former Peruvian President Alberto Fujimori for Human Rights Violations*, 3 INTERNATIONAL JOURNAL OF TRANSNATIONAL JUSTICE 384, 396 (2009).

[95] *Resolución de cumplimiento de sentencia del 22 de Septiembre de 2005*. *See also La Cantuta v. Peru* (note 27), para. 179.

[96] Peruvian judicial authorities declared "amnesty exceptions" or the denial of the opening of criminal investigations as inadmissible arguing with the inapplicability of amnesty laws in reliance on the *Barrios Altos* Case. *See*, *e.g.*, Segundo Juzgado Penal Especializado, *Causa Pedro Yauri Bustamante*, Causa N° 044-2002, 20 October 2004; Juez Penal Titular Superior de Justicia de Lima, *Caso Acumulado Barrios Altos*, *La Cantuta, Pedro Yauri y El Santa*, Causa N° 032-2001, 7 December 2004.

[97] *Consejo Supremo de Justicia Militar*, *Sala Plena,* Judgment of 1 June 2001; *Sala Revisora* (second instance tribunal in the Peruvian military justice system), Decision of 4 June 2001.

[98] *See*, *e.g.*, the findings of the Inter-American Court in *La Cantuta* where the Court establishes that Peru had fully implemented the *Barrios Altos* judgment (*La Cantuta v. Peru* (note 27), para. 186).

Moreover, the Inter-American Court's amnesty jurisprudence lent support to Peruvian human rights and victims' associations in their fight for truth and reconciliation and against impunity.[99] The Court's judgments gave momentum to movements that were pushing for the prosecution of human rights violators at the domestic level. This alliance of forces culminated in the conviction of former President Fujimori in April 2009. Burt concludes after an extensive analysis of the Inter-American Court's contribution to Peru's struggle against impunity: "The Fujimori trial … also reveals the rich synergy between domestic and international actors in the struggle to achieve accountability after atrocity. The Peruvian case thus reflects the ways international tribunals can complement and contribute to local efforts in favor of an accountability agenda."[100]

The effects of the Inter-American Court's amnesty jurisprudence, though considerable, are somewhat less evident in Chile. The implementation of *Almonacid* was more indirect.[101] In Chile,[102] no direct effect is attributed to the Inter-American Court's judgments. Furthermore, a bill promoted by the Chilean government to amend the Chilean criminal code so that serious human rights violations were not subject to amnesties or statutes of limitation (such as foreseen in the 1978 amnesty decree law) remained deadlocked in Congress as of June 2010.[103]

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[99] *See* Burt (note 94).

[100] *Id.*, 403.

[101] For a general appraisal, *see* Brian D. Tittemore, *Ending Impunity in the Americas: The Role of the Inter-American Human Rights System in Advancing Accountability for Serious Crimes under International Law*, 12 SOUTHWESTERN JOURNAL OF LAW AND TRADE IN THE AMERICAS 429, 455 (2005-2006).

[102] The 2005 reforms of the Chilean Constitution introduced a system of centralized norm control located at the Constitutional Court, which is vested with a monopoly to rule on the constitutionality of legislation with *erga omnes* effects (Art. 82 of the Chilean Constitution). Still, the Chilean Supreme Court is tasked to engage in norm control until the end of its term of office (*Cuadragesimacuarta*, Chilean Constitution). Art. 5 of the Chilean Constitution establishes the obligation to respect the fundamental rights of persons as recognized in the Constitution and international human rights treaties ratified by Chile. Thus, international human rights treaties arguably have constitutional rank.

[103] Interview with Gonzalo Aguilar Cavallo, Professor for Public International Law and Human Rights Law at the *Universidad de Talca*, Heidelberg, 29 June 2010; *see also* Human Rights Watch, Chile, Events of 2009, available at: http://www.hrw.org/en/node/87512.

At the same time, the 1978 amnesty decree law is not applied in practice as the Chilean Supreme Court has ruled consistently that the amnesty decreed by the military government in 1978 was inapplicable to war crimes or crimes against humanity, and that these crimes were not subject to the statute of limitations.[104] The Chilean Supreme Court referred *inter alia* to the Inter-American Court's *Almonacid* decision (as well as to *Barrios Altos*) when ruling that domestic legal norms could not be used as obstacles for the prosecution of perpetrators of gross human rights violations.[105] Also, the Inter-American Court's amnesty jurisprudence is generally well received and favourably discussed in Chilean and Latin American scholarship.[106]

To sum up, the Inter-American Court's broad interpretation of its own competences in the field of amnesties was accepted in Peru as well as in Chile. What is more, the Court's amnesty decisions generally supported domestic actors in their struggle against impunity. In fact, in both countries, the nullification of amnesty laws through the Inter-American Court "facilitated" the work of Chilean and Peruvian authorities, as it dispensed the need for an additional national act. This pragmatic approach seems to be especially appropriate in cases where it is difficult – due to internal resistance – to domestically amend or repeal problematic amnesty laws. This also points to the crucial role of domestic judges where the implementation of human rights obligations is concerned.

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[104] *See id.*

[105] Supreme Court of Chile, Criminal Chamber, *Molco Case*, No. 559-2004, 13 December 2006, paras 19-20, available at: http://www.cecoch.cl/htm/htm/revista/docs/estudiosconst/revistaano-5-1-htm/sentencimolco5_l-2007.pdf. (*See*, *however*, the Inter-American Court's findings in *Almonacid v. Chile* (note 28), para. 121; *see*, *for further reference*, note 44).

[106] Interview with Gonzalo Aguilar Cavallo (note 103). *See*, *e.g.*, Carlos M. Ayala Corao, *La ejecución de sentencias de la Corte Interamericana de Derechos Humanos / The execution of the decisions of the Inter-American Human Rights Court*, 5/1 ESTUDIOS INTERNACIONALES 127 (2007), available at: http://www.cecoch.cl/htm/revista/revistaano_5_1_2007.html; *see* more generally publications by Centro de Estudios Constitucionales de Chile (CECOCH), available at: http://www.cecoch.cl/htm/Imagenes.htm; and Scientific Electronic Library Online (SciELO Chile), available at: http://www.scielo.cl.

II. Reception of the Inter-American Court's Judgments in Other States

The "spill-over effect" of the Inter-American Court's amnesty jurisprudence to states not parties to the dispute is facilitated by the high rank accorded to the ACHR in the constitutions of most Latin American states and the self-executing character attributed to the rights enshrined in the Convention.[107] In fact, the constitutionality control of laws or decrees, which is exercised by domestic judges, often automatically includes a conventionality control because the ACHR is incorporated at constitutional level.[108] The Convention's direct incorporation also reduces legitimacy concerns as the Inter-American Court's exercise of authority is sanctioned by previous national constitutional processes. Still, what remains to be seen is to what extent domestic judges follow the Inter-American Court's interpretations of the Convention and whether they accept the doctrine of *control de convencionalidad*.

To make a long story short, domestic courts in Argentina and Colombia attached great importance to the Inter-American Court's amnesty jurisprudence;[109] especially the *Barrios Altos* case, which is frequently referred to. The "spill-over effect" of the Inter-American Court's jurisprudence thus seems considerable. Amnesty legislation is not applied to specific cases or is declared unconstitutional *inter alia* in reliance on the criteria established in the judgments of the Inter-American Court.

Argentine amnesty legislation cases reflect the establishment of the Inter-American Court's doctrine of *control de convencionalidad* in 2006.[110] Already in the case, *Julio Héctor Simón* of 2005,[111] the Argen-

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[107] *See*, *for further reference*, Brewer Carías (note 78). *See generally* Thomas Buergenthal, *Self-executing and Non-self-executing Treaties in National and International Law*, 235 RECUEIL DES COURS 303, 326 (1992).

[108] *See*, *e.g.*, María Angélica Gelli, *El Liderazgo Institucional de la Corte Suprema y las Perplejidades del Caso "Mazzeo"*, LA LEY of 7 December 2007, 1.

[109] For a detailed appraisal, *see* Tittemore (note 101), 449 *et seq*.

[110] Argentina has a system of diffuse norm control where judges are obliged not to apply unconstitutional legal provisions to a particular case with effects *inter partes*. Thus, the legislation remains in force. Still, as Argentina applies a doctrine similar to the American "*stare decisis*" doctrine, this implies a certain binding effect on later decisions. (*See* Sagüés (note 90), 3 *et seq*.) In Argentina, certain international human rights treaties, including the ACHR, are incorporated at constitutional level in accordance with Art. 75.22 of the Argentine Constitution.

tine Supreme Court relied extensively on the *Barrios Altos* decision when stating that Argentina's amnesty laws (*Punto Final* and *Obediencia Debida*) were unconstitutional.[112] The Argentine Supreme Court referred to the Inter-American Court's reasoning, specifically when stating that the Argentine amnesty laws had the same deficiencies as the Peruvian ones: They were self-amnesties, laws *ad hoc* and intended to prevent the prosecution of grave human rights violations.[113] The Supreme Court supported this reliance by arguing that the decisions of the Inter-American Court had to be interpreted in good faith and taken as "jurisprudential blueprints."[114]

The Argentine Supreme Court's most important decision, however, is *Mazzeo,*[115] where, in 2007, the Supreme Court determined that the 1989 decree passed by President Menem,[116] by which the President had pardoned thirty former military officers of the *Videla* regime, was unconstitutional. In so doing, the Argentine Supreme Court applied the *control de convencionalidad* and recognized the interpretative authority of the Inter-American Court as to the rights contained in the ACHR.[117] It

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[111] Argentine Supreme Court, *Recurso de hecho deducido por la defensa de Julio Héctor Simón en la causa Simón, Julio Héctor y otros s/ privación ilegítima de la libertad, etc.*, Causa No. 17.768, Judgment of 14 June 2005. *See*, *for further reference*, Diego García-Sayán, *Justicia interamericana y tribunales nacionales*, in: ¿INTEGRACIÓN SURAMERICANA A TRAVÉS DEL DERECHO? UN ANÁLISIS INTERDISCIPLINATIO Y MULTIFOCAL, 463, 473 (Armin von Bogdandy, César Landa Arroyo & Mariela Morales Antoniazzi eds, 2009).

[112] *See Julio Héctor Simón* (note 111), para. 24.

[113] *Id.*

[114] *Id.* Argentine appeals courts, such as the *Cámara Federal de Apelaciones de Salta,* also referred to the Inter-American Court's reasoning in the *Barrios Altos* Case when stating that the Argentine amnesty laws *Obediencia Debida* and *Punto Final* were unconstitutional. (*See* García-Sayán (note 111), 474.)

[115] Argentine Supreme Court, *Mazzeo Julio Lilo y otros*, Judgment of 13 July 2007, Jurisprudencia Argentina 2007-III-573, para. 21.

[116] Decree 1002/89 (note 22).

[117] *Mazzeo* (note 115), para. 21: "En otras palabras, el Poder Judicial debe ejercer una especie de "*control de convencionalidad*" entre las normas jurídicas internas que aplican en los casos concretos y la Convención Americana sobre Derechos Humanos. En esta tarea, el Poder Judicial debe tener en cuenta no solamente el tratado, sino también la interpretación que del mismo ha hecho la Corte Interamericana, intérprete última de la Convención Americana." ("Put differently, the judiciary must exercise a sort of "conventionality control" between internal legal norms which apply in concrete cases and the American

relied on the criteria which were developed by the Inter-American Court[118] when analysing a state's duty to investigate and prosecute crimes against humanity, to ultimately conclude that such crimes could not be pardoned and that the 1989 decree was unconstitutional.[119]

These examples show that Argentine courts generally accept the Inter-American Court's authority in the field of amnesties. The Court's important role was aptly summarized by Tittemore:

> It is apparent, therefore, that over the past several years, the inter-American jurisprudence has had a specific and significant impact upon efforts by the judiciary in Argentina to remove amnesties and statutes of limitations as obstacles to prosecutions for serious human rights violations committed during the military dictatorship in that country.[120]

Similarly, at the political level, the Inter-American Court's amnesty jurisprudence and, more generally, the Inter-American system of human rights protection – including, e.g. the Inter-American Commission's on-site country visits – has had an impact.[121] For example, people with experience in the Inter-American human rights system who, in addition, had sometimes been victims of the former military regime, served in the Argentine government.[122] This, as argued by Tittemore, is likely to have influenced Argentina's human rights policies and contributed to advancements in the fight against impunity at the domestic level.[123]

Convention on Human Rights. In so doing, the judiciary must not only take into consideration the Convention, but also the interpretation which is made thereof by the Inter-American Court, the ultimate interpreter of the American Convention").

[118] The Argentine Supreme Court also referred to the IACHR and the UN-HRC.

[119] *Mazzeo* (note 115), paras 21 and 29.

[120] Tittemore (note 101), 455.

[121] For details, *see id.,* 457 *et seq*. and 463 *et seq.*

[122] For instance, former IACHR Member and President Oscar Luján Fappiano served as the Secretary for Human Rights in the Argentine Ministry of Justice, Security and Human Rights. Jorge E. Taiana, who had been the IACHR's Executive Secretary from 1997 to 2001 held the position of Secretary of Foreign Affairs with the Government of President Nestor Kirchner. Taiana had also been political prisoner under the Argentine military dictatorship. *See id*., 463.

[123] *Id*., 465.

Likewise, in Colombia, the impact of the Inter-American Court of Human Rights is noteworthy. The Colombian Constitutional Court (*Tribunal Constitucional*)[124] based itself repeatedly on the Court's reasoning when deciding on the constitutionality of (self-) amnesties.[125] For example, when declaring unconstitutional a provision on the general inadmissibility of amnesties and acts of grace for participants of serious crimes of a Colombian law,[126] the Constitutional Court drew on the decisions of the Inter-American Court to distinguish between different categories of amnesties.[127] Likewise, when declaring constitutional the law ratifying the Statute of the International Criminal Court,[128] the Colombian Constitutional Court referred to the jurisprudence of the Inter-American Court when establishing that only specific amnesties (such as for political offences) might be permissible under certain conditions, but not amnesties which shielded the perpetrators of serious human rights violations from prosecution.[129] In a decision concerning acts of grace and amnesties in cases of forced disappearances, the Constitutional Court relied on the jurisprudence of the Inter-American Court to hold that the right to legal recourse for victims had improved through the evolution of international human rights protection.[130] In other cases, not related to amnesties, the Colombian Consti-

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[124] In Colombia, a decentralized system of norm control, where all judges are bound to use the "unconstitutionality exception" with effect *inter partes*, coexists with a control exercised by the Constitutional Court which declares unconstitutional laws to be unenforceable with general effects. (Arts 241-243 of the Colombian Constitution). Pursuant to Art. 93 of the Colombian Constitution, international human rights treaties are arguably incorporated at constitutional rank (so called "*bloque constitucional*"). *See* Manuel José Cepeda Espinosa, *Country Report Colombia*, VII. Konrad Adenauer Stiftung Conference on International Law. The Contribution of Constitutional Courts in Safeguarding Basic Rights, Democracy and Development 5 (2009).

[125] For a full list of cases, *see* http://www.corteconstitucional.gov.co. For further reference, *see* Tittemore (note 101), 457 *et seq*.

[126] Art. 13 of Law 733 of 29 January 2002.

[127] Colombian Constitutional Court, Judgment C-695/02 of 28 August 2002, para. 8.

[128] Law 742 of 5 June 2002.

[129] Colombian Constitutional Court, Judgment C-578/02 of 30 July 2002, 4.3.1.2.5.

[130] Colombian Constitutional Court, Judgment C-875/02 of 15 October 2002. The Colombian Constitutional Court distinguished the case under review

tutional Court explicitly recognized the jurisprudence of the Inter-American Court as binding.[131]

Also in states that are not party to the dispute, the Inter-American Court's amnesty jurisprudence is thus, at a minimum, relied upon as interpretative guidance;[132] sometimes it is accepted as mandatory.[133] Consequently, domestic jurisprudence shows the positive impact, the "spill-over effect," of the Inter-American Court's judgments. The Inter-American Court's far-reaching interpretation of its own powers, its lawmaking, has been accepted in the case of amnesty laws contravening the ACHR.

Moreover, reference to the Inter-American Court's judgments seems to assist domestic courts in their fight against impunity and inadmissible amnesties at the national level, as it gives moral and legal authority to their decisions.[134] The Inter-American system also positively influences the different states' human rights policies in the field of amnesties. Most

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from a different decision in an earlier case (1995) with reference to the 2001 *Barrios Altos* Case.

[131] *See* Colombian Constitutional Court, Judgments T-568 of 10 August 1999, C-010 of 19 January 2000 and C-200 of 19 March 2002, available at: http://www.corteconstitucional.gov.co.

[132] This was also the case in Chile, where judgments of the Inter-American Court were relied upon for interpretative guidance when dealing with problematic amnesty laws which were not applied to a particular case already before the *Almonacid* decision. For example, the Appellate Court of Santiago de Chile, when rejecting the appeal presented by those prosecuted for the detention and later disappearance in the case of *Miguel Ángel Sandoval Rodríguez*, referred to the *Barrios Altos* case. *See*, *for further reference*, Humberto Nogueira Alcalá, *Una senda que merece ser transitada: la sentencia definitiva de casación de la Quinta Sala de la Corte de Apelaciones de Santiago, Rol 11.821-2003, Caso Miguel Ángel Sandoval Rodríguez*, 9 REVISTA IUS ET PRAXIS 233 (2003). *See also* García-Sayán (note 111), 473.

[133] The Peruvian Constitutional Court generally affirmed that even when Peru had not been party to the proceedings, the Inter-American Court's judgments were binding on the state. Peruvian Constitutional Court, *Caso Arturo Castillo Chirinos*, Expediente N° 2730-06-PA/TC, Judgment of 21 July 2006, para. 12.

[134] For the case of Peru, *see* Burt (note 94). *See generally* Tittemore (note 101), 461, "courts in [the OAS] region are playing an increasingly proactive and independent role in addressing issues involving accountability for serious violations of human rights, and are drawing considerably upon the instruments and doctrine of the inter-American human rights system in this effort."

importantly, it provides support to civil society and human rights and victims associations, which rely on the national-international alliance in their fight against impunity.[135]

In the final analysis, the Inter-American Court's far-reaching exercise of authority in the field of amnesties and the broad interpretation of its own mandate seem to further democratization in various Latin American countries. The emphasis on accountability and the Court's effective human rights protection facilitates the efforts of domestic institutions in their endeavour to implement human rights and the rule of law. In so doing, the Court supports democratic transition and consolidation.[136] Thus, the tension between the Inter-American Court's proactive role, its lawmaking, and democratic self-determination appears to have been overcome in the field of amnesties at least.

E. Conclusion

The Inter-American Court has developed a dynamic jurisprudence and engaged in important lawmaking to give effect to the ACHR's human rights guarantees in the field of amnesties. Interpreting its own powers broadly, the Court not only declared national amnesty laws contravening the Convention devoid of legal effects, but also obliged domestic

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[135] *See*, *e.g.*, Burt (note 94), 385-386, as regards the Peruvian civil society's search for accountability: "Of special importance was their increasingly effective use of the inter-American system of human rights protection to advance this agenda: once Peru's transition to democracy was under way, the rich jurisprudence of the Inter-American Court of Human Rights (Inter-American Court), as well as the recommendations by the Inter-American Commission on Human Rights (IACHR), fundamentally shaped the policies regarding truth, justice and reparations adopted by the transitional government and key judicial bodies."

[136] *See id*. *See also* Tittemore (note 101), 469, "over time, the inter-American human rights system has had a domestic political impact in some Member States upon efforts to ensure accountability for serious human rights violations and thereby combat impunity in the region. Moreover, these effects, together with the influences upon the judiciary, can be viewed as potentially long-term and enduring, as they have contributed to the consolidation of a culture of democracy and the rule of law within the Member States concerned. In this way, the Inter-American system has helped to empower member States themselves to be the principal guarantors and defenders of fundamental human rights".

judges to exercise a decentralized conventionality control in accordance with its own interpretation of the ACHR.

This arrogation of competences through the Inter-American Court seems to have been accepted by domestic courts in Peru, Chile, Argentina and Colombia. The Inter-American Court's judgments concerning amnesty laws were implemented not only in the states which were parties to the cases (Peru, Chile), but also relied on in states not parties to the dispute (Argentina, Colombia). In this context, legal scholarship has referred to a veritable "dialogue" which developed between the Inter-American Court and domestic courts.[137]

In the field of amnesties, the impact of the Inter-American Court of Human Rights' lawmaking is thus considerable. Through the direct incorporation of the ACHR in most Latin American constitutions, the Inter-American Court's jurisprudence gains immediate force at the national level as it is relied on by domestic courts when exercising a constitutionality/conventionality control. This is supported by the radically monist understanding concerning the relationship between international and national law as regards human rights norms prevalent in most Latin American states. The limited number of cases brought before the Inter-American Court is thus overcome by the guidance its interpretations give to domestic courts and tribunals.

Still, the Inter-American Court's amnesty jurisprudence is to be appreciated against the background of the generally favourable political climate in Latin America, which turned against impunity in the 1990s, culminating in Pinochet's arrest in 1998. The Inter-American Court's jurisprudence on amnesty laws thus supported efforts by domestic judges, legislatures and civil society groups to invalidate amnesty laws. The growing distance to former (military) governments also contributed to a climate in which the invalidation of an amnesty could meet with both public and institutional support.[138] The Court's amnesty jurisprudence was thus well received and generally welcomed by public opinion, the media and civil society organisations in the respective

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137 Karla Quintana Osuna, *Diálogo entre la jurisprudencia interamericana y la legislación interna: el deber de los estados de adoptar disposiciones de derecho interno para hacer efectivos los derechos humanos*, in: ¿INTEGRACIÓN SURAMERICANA A TRAVÉS DEL DERECHO? UN ANÁLISIS INTERDISCIPLINARIO Y MULTIFOCAL, 573 (Armin von Bogdandy, César Landa Arroyo & Mariela Morales Antoniazzi eds, 2009).

138 Cavallaro & Brewer (note 5), 82.

states.[139] Likewise, it seems to have contributed to democratic consolidation in different Latin American states and, ultimately, to domestic self-determination.

The Inter-American Court's exercise of its competences may be more controversial in areas where public opinion is divided and the political context different. The decision of the Venezuelan *Sala Constitucional del Tribunal Supremo,*[140] which declared a judgment of the Inter-American Court[141] as non-executable, may serve as warning. In the same decision, the *Sala Constitucional* also asked the Venezuelan government to denounce the ACHR. Whereas the Venezuelan tribunal's decision was clearly politically motivated, most of its judges being appointed because of their closeness to President Chavez, it shows that the judgments of the Inter-American Court, when touching on sensitive issues at the national level, are far from undisputed. Likewise in Peru, after the Inter-American Court's ruling in *Castillo Petruzzi*[142] that the conviction of four Chileans for life-imprisonment by a so-called "faceless" Peruvian tribunal[143] was a violation of due process guarantees, the *Fujimori* regime asserted that the Court's orders were an intrusion on

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[139] For Peru, *see*, *e.g.*, Burt (note 94).

[140] Tribunal Supremo Venezolano, Sala Constitucional, *Caso Abogados Gustavo Álvarez Arias y otros,* Judgment No. 1.939 of 18 December 2008. *See*, *for further reference*, Brewer Carías (note 78), 669.

[141] Inter-Am. Court H.R., *Apitz Barbera y otros ("Corte Primera de lo Contencioso Administrativo") v. Venezuela*, Preliminary Objections, Merits, Reparations and Costs, Judgment of 5 August 2008, Series C, No. 182. The Inter-American Court established in *Apitz Barbera* that Venezuela had violated the right to a fair trial of the judges of the Venezuelan *Corte Primera de lo Contencioso Administrativo*, who had been destituted. The Inter-American Court ordered that Venezuela compensate the judges and re-institute them in their posts or in similar positions.

[142] Inter-Am. Court H.R., *Castillo Petruzzi y otros v. Peru,* Merits, Reparations and Costs, Judgment of 30 May 1999, Series C, No. 52, paras 1, 86.

[143] The main characteristic of faceless judges (*jueces sin rostro*) is their secrecy, with judges and prosecutors only being identified by codes, judges at all time invisible to the defendants and their council and trial proceedings being conducted in private. See UN Commission on Human Rights, Report of the UN Special Rapporteur on the Independence of Judges and Lawyers, Addendum: Report on the Mission to Peru, 19 February 1998, II (B), para. 4.

state sovereignty and the Congress approved a resolution attempting to retract Peru's recognition of the Inter-American Court's jurisdiction.[144]

Further challenges to the authority of the Inter-American Court are sure to come. Still, one way for the Inter-American Court to shield itself against such challenges are its well-reasoned judgments firmly grounded on established legal bases. According to Sagüés, the success of the *control de convencionalidad* will depend on the Inter-American Court's sound legal reasoning and its balanced approach to issues.[145] In the regional context of Europe, a study by Helfer and Slaughter identified factors such as functional capacity, fact finding capacity, quality of legal reasoning, and independence from political interests as decisive for an international court's impact and acceptance.[146]

So far, the Inter-American Court has been a vital guardian of human rights in critical areas such as problematic amnesty laws. What is more, its judicial lawmaking seems to have supported democratic consolidation in the concerned states. Still, a long way lies ahead. For the effective exercise of its powers, the Inter-American Court needs domestic courts and institutions. A lot will depend on its perceived legitimacy. An overly broad interpretation of its own powers may do more damage

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[144] Legislative Resolution No. 27.152 of 8 July 1999. *See also* Inter-Am. Court H.R., *Castillo Petruzzi y otros v. Peru,* Compliance with Judgment, Resolution of 17 November 1999, Series C, No. 59, para. 3. The situation changed some years after Fujimori had left power. For example, in 2003 Peru's Constitutional Court cited *Castillo Petruzzi* to strike down several pieces of antiterrorist legislation. *See* Peruvian Constitutional Court, *Marcelino Tineo Silva y más de 5,000 ciudadanos*, Expediente N° 010-2002-AI/TCLIMA, Judgment of 1 March 2003, available at: http://www.tc.gob.peljurisprudencia/2003/00010-2002-AI.html. For further reference, *see* Cavallaro & Brewer (note 5), 789 *et seq*. *See also* Trinidad and Tobago's withdrawal from the ACHR when confronted with its capital punishment procedures' inconsistency with the Convention. Notification of withdrawal by the *Ministerio de Relaciones Exteriores de Trinidad y Tobago* to the Secretary General of the OAS, 26 May 1998. The text of the notification is available at: http://www.oas.org/juridico/spanish/firmas/b-32.html. *See* Sergio García Ramírez, *The Inter-American Court of Human Rights and the Death Penalty*, Biblioteca Jurídica Virtual del Instituto de Investigaciones Jurídicas del UNAM, 2009, available at: http://info8.juridicas.unam.mx/pdf/mlawrns/cont/5/nte/nte5.pdf, for details.

[145] Sagüés (note 55), 3.

[146] Laurence R. Helfer & Anne-Marie Slaughter, *Toward a Theory of Effective Supranational Adjudication*, 107 YALE LAW JOURNAL 273, 300 (1997-1998).

than good.[147] In short, the future of the Inter-American Court's important lawmaking role depends not least on its well-reasoned judgments and its balanced approach to cases.[148] Perhaps, as convincingly argued by Cavallaro and Brewer, it may also prove helpful for the Court to look for public support and increasingly engage with social movements, civil society and the media to further the acceptance of its jurisprudence in the affected states.[149]

[147] *E.g.*, to apply an overly strict standard of review to state actions may be detrimental to the Court's cause.

[148] In this respect, the Court's reference to non-derogable norms when nullifying unconventional amnesty laws introduced a welcome hierarchy and indicated the required prudence in the Court's approach.

[149] Cavallaro & Brewer (note 5), 770.