IGSD Memorandum: The Inter-American Court of Human Rights' Doctrine of Conventionality Control: Origins, Legal Status of Advisory Opinions, and Domestic

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Institute for Governance & Sustainable Development

About the Institute for Governance & Sustainable Development (IGSD)

IGSD's mission is to ensure fast cuts to the non-carbon dioxide climate pollutants and other fast climate mitigation strategies to slow near-term global warming and self-amplifying climate feedbacks, avoid or at least delay catastrophic climate and adverse societal tipping points, and limit global temperature to 1.5 °C—or at least keep this temperature guardrail in sight, limit overshoot, and return to a safe temperature as fast as possible.

IGSD's research confirms that decarbonization alone is insufficient to slow near-term warming to keep us below 1.5 °C or even the more dangerous 2 °C guardrail, and that the fastest and most effective strategy is to combine the marathon to zero out carbon dioxide (CO_2) emissions from decarbonizing the energy system *with* the sprint to rapidly cut non-CO_2 super climate pollutants and protect carbon sinks. The super climate pollutants include four short-lived climate pollutants (SLCPs)—methane (CH_4), hydrofluorocarbons (HFCs), black carbon soot, and tropospheric ozone (O_3)—as well as the longer-lived nitrous oxide (N_2O).

Combining the fast mitigation sprint with the decarbonization marathon also helps address the ethical issues of intra-generational equity by giving societies urgently needed time to build resilience and adapt to unavoidable changes. The latest science suggests that the window for exceeding the 1.5 °C guardrail could close as soon as 2030, making this the decisive decade for fast action to slow warming.

The fastest way to reduce near-term warming in the next two decades is to cut SLCPs. Because they only last in the atmosphere from days to 15 years, reducing them will prevent most of their predicted warming within a decade. Strategies targeting SLCP reductions can avoid about 0.6 °C by 2050 and 1.2 °C by 2100, which is three to four times more warming at 2050 than targeting CO_2 alone. Cutting methane emissions can avoid nearly 0.3 °C of this by the 2040s, with the potential for significant more avoided warming from emerging technologies to remove atmospheric methane faster than the natural cycle. Reducing HFCs can avoid nearly 0.1 °C of warming by 2050 and up to 0.5 °C by the end of the century. The initial HFC phasedown schedule in the Kigali Amendment to the Montreal Protocol will capture about 90 percent of this. Parallel efforts to enhance energy efficiency of air conditioners and other cooling appliances during the HFC phasedown can double the climate benefits at 2050.

Combining the fast mitigation sprint with the decarbonization marathon would reduce the rate of global warming by half from 2030 to 2050, slow the rate of warming a decade or two earlier than decarbonization alone, and make it possible for the world to keep the 1.5 °C guardrail in sight and reduce overshoot. It would also reduce the rate of Arctic warming by two-thirds. This would help slow self-amplifying climate feedbacks in the Arctic, and thus avoid or at least delay the cluster of projected tipping points beyond 1.5 °C. Reducing climate risks and staying within the limits to adaptation are critical to building resilience.

IGSD's approach to fast mitigation includes science, technology, law and policy, and climate finance. IGSD works at the global, regional, national, and subnational levels.

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Introduction

This memorandum was prepared following the Inter-American Court of Human Rights' Advisory Opinion on the Climate Emergency and Human Rights (OC-32/25) (the "Inter-American Court's Climate Advisory Opinion"). It examines States' positions on the doctrine of conventionality control and the binding effect of advisory opinions, both of which are critical to understanding the Opinion's potential implementation within domestic systems across the Latin American and Caribbean region. The memorandum is divided into two parts:

Part One introduces the Inter-American Court of Human Rights' (the "Inter-American Court") doctrine of conventionality control. Under the conventionality control doctrine, all institutions, authorities, and organs of States Parties to the American Convention on Human Rights (the "American Convention") must ensure that their national laws and practices are interpreted and applied in a manner consistent with the State's international human rights obligations.[1] This includes compliance and conformity with those obligations as interpreted by the case law and advisory opinions of the Inter-American Court.[2] Part One of the memorandum outlines the doctrine's origins and highlights two key resources on its legal foundations and obligations. The section then discusses the binding effect of Inter-American Court advisory opinions, drawing on recent scholarship and an analysis by the International Law Commission. This section also includes a brief survey of how Latin American domestic courts view the Inter-American Court's advisory opinions—specifically, whether these courts regard advisory opinions as non-binding, quasi-binding, or binding.

Part Two provides a concise review of how Argentina, Brazil, Chile, Colombia, Costa Rica, Ecuador, Mexico, Paraguay, and Peru have received the doctrine of conventionality control—that is, whether by embracing it, rejecting it, or demonstrating a mixed response. This section begins with a description of the 2019 Joint Declaration, signed by five of the countries being reviewed in this memorandum—Argentina, Brazil, Chile, Colombia, and Paraguay—and submitted to the Inter-American Commission on Human Rights (the "Inter-American Commission"). Seen by some as potential backlash to the Inter-American Court's disinclination[3] to adopt the margin of appreciation doctrine,[4] the Declaration emphasized subsidiarity, state sovereignty, adherence to international law, a margin of appreciation within conventionality control, and the binding effect of only certain Inter-American jurisprudence.[5] This section then offers a country-by-country overview of each State's stance on the doctrine. The overview here does not purport to provide a fully comprehensive analysis,[i] but rather a high-level snapshot, and a starting point for further research and dialogue.[ii]

[i] Entire books have been devoted to this complex topic, as national approaches are often inconsistent, context-dependent, and nuanced. Many of these sources focused on conventionality control in the context of contentious cases rather than non-contentious advisory opinions. While the contentious context is nevertheless informative—as conventionality control is a doctrine that operates in both contexts—it will be key to continue to search for additional precedent in the advisory opinion context.

[ii] Due to language constraints, the analysis provided in this memorandum relies primarily on English-language secondary sources. As such, the interpretations reflect the limitations of existing academic commentary. Most

1. Conventionality Control and the Legal Status of Advisory Opinions in the Inter-American System

A. Origins of Conventionality Control

Scholars trace the emergence of the doctrine of conventionality control to several factors, including State non-compliance with the American Convention,[6] and the need to confront impunity for serious human rights violations,[7] for, by the 1990s, amnesty laws were common across Latin America's democratic transitions.[8]

Judge Sergio García Ramírez, a Mexican jurist and former president of the Inter-American Court, is credited with laying the groundwork for the doctrine.[9] In his 2003 separate opinion in *Myrna Mack Chang v. Guatemala*, he first used the term "treaty control."[10] A year later, in *Tibi v. Ecuador,* he elaborated on the concept, drawing a parallel between constitutional courts and the Inter-American Court, stating: "if constitutional courts oversee 'constitutionality,' the international human rights court decides on the 'conventionality' of those acts."[11] He further refined the idea in his later opinions, including in *López Álvarez v. Honduras* and *Vargas-Areco v. Paraguay* (both 2006).[12]

The doctrine was "formally created"[13] in September 2006 in *Almonacid Arellano et al. v. Chile*; for *Almonacid Arellano* was the first time that conventionality control was stated in a full Court judgment rather than in a separate opinion by Judge García Ramírez. There, the Inter-American Court elaborated:

> *"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 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****"*[14] (emphasis added).

Since the doctrine of conventionality control's first appearance in *Almonacid Arellano et al. v. Chile*, conventionality control has been expanded by the Inter-American Court in subsequent case law to apply to all public authorities and not just the judiciary, including the executive and legislative branches of government.[15] Moreover, conventionality control has been expanded to

quotations from the Inter-American Court and domestic courts were drawn from secondary literature or translated using DeepL and should be verified by a native speaker for accuracy. To gain a fuller understanding will require consultation with regional experts familiar with each country's legal system and language.

encompass the entire "Inter-American human rights '*corpus juris*,'" including, in addition to the American Convention on Human Rights (also known as the Pact of San José): the American Declaration of the Rights and Duties of Man, the Protocol related to the Abolition of the Death Penalty, the Additional Protocol to the American Convention (also known as the Protocol of San Salvador), the Inter-American Convention to Prevent and Punish Torture, the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (also known as the Convention of Belém do Pará), and the Inter-American Convention on Forced Disappearance of Persons—with the caveat that its exercise is dependent upon the respective country having ratified the corresponding instrument.[16]

A concise overview of conventionality control is provided by the Inter-American Court of Human Rights in its case law booklet on conventionality control, available here (in Spanish) Inter-American Court of Human Rights (2d ed. 2025) CASE LAW BOOKLET OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS NO. 7: CONVENTIONALITY CONTROL, 1–68, 6-7 (translated using DeepL):

> "*(i) It consists of verifying the compatibility of domestic laws and other practices with the American Convention on Human Rights (ACHR), the jurisprudence of the Inter-American Court of Human Rights, and the other inter-American treaties to which the State is a party.*
>
> *(ii) It must be carried out ex officio by all public authorities.*
>
> *(iii) It is carried out within the scope of each authority's jurisdiction. Therefore, its implementation may involve the repeal of laws contrary to the American Convention on Human Rights or their interpretation in accordance with the Convention.*
>
> *(iv) The obligation that always underlies the review of conformity with international conventions is to engage in an interpretive exercise that makes the State's obligations compatible with its domestic laws.*
>
> *(v) The standard for assessing conformity with the Convention is international law and the case law of the Inter-American Court of Human Rights, both in contentious and advisory proceedings.*
>
> *(vi) The obligation to conduct this review [conventionality control] derives from the principles of public international law and from the State's own international obligations assumed upon becoming a party to the American Convention on Human Rights*."

Since this memorandum is focused on domestic reception of the doctrine of conventionality control,[17] it does not explore the legal foundations of the doctrine, which is not explicitly stated in the text of the American Convention, but rather arises through a process of progressive interpretation derived from a combined reading of American Convention Articles (including Arts. 1.1, 2, and 29) along with Articles of the Vienna Convention on the Law of Treaties (including Arts. 26 and 27) and international law principles. For a detailed analysis of these aspects, see the comprehensive compendium published by the Inter-American Commission, available here: Inter-American Commission on Human Rights (2021) COMPENDIUM ON THE OBLIGATION OF STATES TO

ADAPT THEIR DOMESTIC LEGISLATION TO THE INTER-AMERICAN STANDARDS OF HUMAN RIGHTS, 1–80; *see also* Inter-American Court of Human Rights (2d ed. 2025) CASE LAW BOOKLET OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS NO. 7: CONVENTIONALITY CONTROL, 1–68.

Finally, conventionality control is often connected to and closely intertwined with the "block of constitutionality" doctrine, described in the below excerpt:

> *"…[M]ost Latin American states are monist and treat international law as being equivalent to domestic law and therefore as being directly enforceable in domestic courts. Fifteen Latin American constitutions enshrine provisions that facilitate the incorporation of regional and international normative frameworks into domestic law, either from a human rights perspective or from a public interest one. This common characteristic of Latin American jurisdictions has enabled the application of international human rights standards by national courts through idiosyncratic doctrines such as the 'block of constitutionality'. The literature defines this doctrine as a set of norms and principles with constitutional rank, encompassing international human rights law, that can be invoked by parties to a litigious case and judges."*[18]

As will be seen later in this memorandum, many Latin American domestic courts discuss the block of constitutionality doctrine alongside the conventionality control doctrine.

B. The Binding Nature of Advisory Opinions

A succinct definition of Inter-American Court advisory opinions is that they are "authoritative interpretations of legally binding obligations under the American Convention on Human Rights and other human rights treaties."[19] Different sources have taken varied perspectives on the extent to which advisory opinions are legally binding on States, two of which are discussed below.

Binding Authority of Advisory Opinions: The Inter-American Court's Position and Domestic Reception

A 2025 book edited by climate and human rights law experts Dr. Maria Antonia Tigre and Armando Rocha, titled "*The Role of Advisory Opinions in International Law in the Context of the Climate Crisis,*" examines the role and authority of advisory opinions. Chapter 12 is especially relevant, as it explores "What happens to a State's domestic law after an international court or tribunal renders an advisory opinion?"[20] The following excerpts on the "binding" authority of advisory opinions are particularly helpful:

> "[*U]nanimously provided by the IACtHR in its opinion OC-21/14:*
>
> *'… the different organs of the State must carry out the corresponding control of conformity with the [ACHR],* ***based also on the considerations of the Court in exercise of its non-contentious or advisory jurisdiction****, which undeniably shares with its contentious jurisdiction the goal of the inter-American human rights system, which is 'the protection of the fundamental rights of the human being'.*

> [The authors of this chapter maintain] *[w]ith this extract, which would be continuously repeated in the following advisory rulings,* ***the IACtHR clarified its understanding of the opinions' effects*** *on the States parties to the ACHR.* ***These effects are those of the res interpretata (erga omnes) and deploy their strength in the exercise of the conventionality control that all the domestic authorities must conduct, by testing the conformity of national orders (norms, acts, omissions, etc) with the human rights corpus juris.*** *In other words, interpretations rendered in advisory opinions integrate the legal substance to be used by the authorities of all ACHR States when conducting the conformity control, regardless of whether the State has participated in the advisory proceedings.*
>
> *This is the stance of the IACtHR on the bindingness of the advisory opinions so far. Opinions are not legally binding if 'binding' means that they produce effects comparable to those of judgments on the State that is party to the case (res judicata). However,* ***they can be considered as legally binding or quasi-binding if 'binding' means that they must be followed as part of the controlling legal substance in the exercise of conventionality control****. A different question is whether, with this stance, the IACtHR has overreached its authority and/or is illegitimately interpreting the ACHR and/or altering the correct functioning of the IAHRS and whether this could be acceptable or not for the States.*
>
> ***An additional aspect is how domestic courts perceive the advisory opinions' effects.*** *In this regard, the practice of domestic courts is determined by the interplay between the IAHRS and the constitutional order of each country. Even though the practice of courts is all but consistent or constant, there seems to be a discrete majority among high courts of ACHR States in favor of a binding or quasi-binding nature of the IACtHR' case law, including its advisory opinions. A study published in 2012 by Guevara Palacios concluded that this view was common to apex courts of Argentina, Bolivia, Colombia, Costa Rica, and the Dominican Republic. The same recognition took place later on in Ecuador. On the contrary, supreme courts in Venezuela and Guatemala have specifically rejected the opinions' binding effect. Worth mentioning are the stances of high courts in Peru and Mexico. While the Constitutional Court of Peru initially aligned itself with the view of a binding nature of opinions, a 2020 decision related to the OC-24/17 showed that the majority within the Court does not favor this view anymore. In a similar vein, somehow altering a previous stance on the matter, the Mexican Supreme Court decided in a very recent resolution that IACtHR's opinions are not binding for Mexican domestic judges although having 'legal relevance' and 'high interpretative authoritativeness.' Standards contained in those opinions can become binding if used by the IACtHR or the Supreme Court in their judgments. Finally, high courts in Brazil, Chile, and Uruguay have left the issue unsettled"* (emphasis added and all internal citations omitted).[21]

It is important to note that the study cited above is from 2012. As will be illustrated in the second part of this memorandum, the positions of some courts—including those in Argentina and Colombia—are not fixed. Although this memo does not address Bolivia or the Dominican

Republic, the reception of the doctrine in the countries examined appears generally fluid and subject to change.

The International Law Commission's Perspective

Another relevant discussion on the binding nature of the Inter-American Court's advisory opinions appears in the International Law Commission's ("ILC") Seventy-fifth Session Report, in its commentary on *Conclusion 7*.[22] *Conclusion 7* states: *"**Decisions of international courts or tribunals may be followed on points of law where those decisions address the same or similar issues…[but] do not constitute legally binding precedent unless otherwise provided for in a specific instrument or rule of international law**"* (emphasis added).[23]

The Commission further clarified:

> *"**The only exceptions to the general rule that decisions do not constitute legally binding precedent is indicated by the phrase 'unless otherwise provided for'. The qualifier concerns two situations. First, where that possibility is contemplated in 'a specific instrument' or, second, where it is provided for in a specific 'rule of international law'.** A combined reading of these terms reflects the Commission's intention to capture the full range of situations where a system of bindingness to precedent in an international court or tribunal is provided for in instruments such as a treaty, statute or other constitutive or founding document of a tribunal"* (emphasis added).[24]

The Commission then provided examples of these "qualifier situations," the fourth of which was the Inter-American Court's doctrine of conventionality control. The Commission noted [referring to the Inter-American Court]:

> *"Although its founding treaties and rules do not expressly provide for this, in a rich jurisprudence that has developed and strengthened over the years, the Inter-American Court has determined on the basis of its interpretation of its constitutive documents that: 'the [j]udiciary 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.' Later judgments have held that the application by national court judges of the rulings of the Inter-American Court is obligatory. This implies that the binding nature of decisions may not be limited to the parties to the particular case.** While this interpretation has led to a lively scholarly debate, which need not be entered into by the Commission for the purpose of providing this **example of a regional court where a specific rule providing for the binding nature of its decisions has been developed through judicial decisions,** it can be noted that some States in the Americas have accepted or acquiesced to the judicial interpretation given by the Inter-American Court, while several others have expressed some doubts. In the view of the Commission, given the above practice, the general proposition contained in draft conclusion 7 that there is no system of legally binding precedent in international law*

remains valid. ***However, in some circumstances, such as those discussed above, the obligation to follow prior decisions is established in either a specific instrument or a specific rule of international law***" (emphasis added and all internal citations omitted).[25]

2. Domestic Reception of Conventionality Control

The application of conventionality control has varied significantly across jurisdictions, reflecting diverse national legal cultures, judicial makeup, and political contexts.[26] A broader trend that emerged from this research is that States' positions are not fixed; rather, they oscillate, not only with respect to whether States engage in conventionality control or regard Inter-American jurisprudence as binding or non-binding, but also these States' postures seem dependent on the issue being addressed. Therefore, another important dimension to understand in assessing whether these countries will engage in conventionality control in response to the Inter-American Court's Climate Advisory Opinion is their overall stance on environmental issues; this memorandum does not examine that dimension, but it warrants further research and analysis.

A. April 2019 Joint Declaration by Argentina, Brazil, Chile, Colombia & Paraguay

In April 2019, Argentina, Brazil, Chile, Colombia, and Paraguay issued a Joint Declaration to the Inter-American Commission. The Declaration affirmed subsidiarity, respect for state sovereignty, strict application of international law, recognition of States' margin of appreciation under the American Convention, and that Inter-American rulings should apply only to the parties involved.[27] It also called for greater consideration of each State's context in reparations.[28] Specifically, the Declaration stated [translated using DeepL]:

> *"The Argentine Republic, the Federative Republic of Brazil, the Republic of Chile, the Republic of Colombia and the Republic of Paraguay, subscribe to this Declaration, as signatories of the American Convention on Human Rights ("the Convention"):*
>
> *REAFFIRM their profound and permanent commitment to the normative value of said instrument [referring to the American Convention], inasmuch as it represents the object of the consent of the States that gave rise to the Inter- American System for the protection of Human Rights, and to the fulfillment of their obligation to ensure to all, within their respective jurisdictions, the rights and freedoms defined in the Convention…*
>
> *With the aim of perfecting the operability, functionality and efficacy of the Inter-American Human Rights System, they state the following:*
>
> *They underline that the* ***principle of subsidiarity****, which supports the legal grounds for the admissibility of a petition, has a double dimension. On the one hand, it assumes that the State concerned has the obligation to investigate any violation of the Convention that occurs in its territory and,* ***on the other hand, that the State has the right to have its own***

> ***jurisdictional system resolve the situation before being submitted to an international instance.***
>
> *They consider that* ***the legitimate space of autonomy that States have to ensure to all persons subject to their jurisdiction, through their own democratic processes, the rights and guarantees enshrined in the Convention in accordance with their constitutional systems, must be respected…***
>
> *They highlight the importance of* ***a strict application of the sources of international human rights law and the recognition of the margin of appreciation of States in the fulfillment of the obligations established in the Convention. They also recall that the resolutions and judgments of the organs of the Inter-American system only have effects for the parties to the litigation.***
>
> *They emphasize the importance of due knowledge and consideration of the political, economic and social realities of the States by the organs of the Inter-American Human Rights System. In this context, they emphasize* ***the need for forms of reparation to be duly proportionate and to respect both the constitutional and legal systems of the States*** *and the requirements of the rule of law…"* (emphasis added)[29]

Civil society groups like Amnesty International and Front Line Defenders condemned the Declaration, seeing it as an attempt to weaken the Inter-American Human Rights System's autonomy and the Inter-American Court's authority, allowing States to evade their human rights obligations and reduce protections.[30] Some viewed it as a backlash against the Inter-American Court's traditionally non-discretionary approach,[31] especially its general reluctance to adopt a margin of appreciation within conventionality control, calling instead for greater national discretion.[32]

> "*'Margin of appreciation' refers to the power of a Contracting State in assessing the factual circumstances, and in applying the provisions envisaged in international human rights instruments. Margin of appreciation is based on the notion that each society is entitled to certain latitude in balancing individual rights and national interests, as well as in resolving conflicts that emerge as a result of diverse moral convictions. In this regard, the doctrine is analogous to the concept of judicial discretion, where a judge, in line with certain constraints prescribed by legislation, precedent or custom, could decide a case within a range of possible solutions*" (all internal citations omitted). [33]

It is important to clarify and distinguish the margin of appreciation doctrine from the principle of complementarity (or subsidiarity)—as these two concepts can be conflated—where the principle of complementarity is a foundational aspect of the Inter-American System of Human Rights. The case of *Santo Domingo Massacre v. Colombia* (2012) clarified this complementarity:

> "*The State's responsibility under the Convention can only be required at the international level after the State has had the opportunity to declare the violation and to repair the damage caused by its own means. This is based on the principle of complementarity (subsidiarity), that crosscuts the inter-American human rights system, which – as stated in*

> *the Preamble to the American Convention – 'reinforce[es] or complement[s] the protection provided by the domestic law of the American States.' Thus, the State 'is the main guarantor of the human rights of the individual, so that, if an act that violates the said rights occurs, it is the State itself that has the obligation to decide the matter at the domestic level and, [as appropriate,] to make reparation, before having to respond before international instances, such as the inter-American system, which derives from the subsidiary nature of the international proceedings in relation to the national systems that guarantee human rights.' These ideas have also been incorporated in recent case law based on the opinion that all the authorities and organs of a State Party to the Convention have the obligation to ensure 'control of conformity with the Convention'*" (all internal citations omitted). [34]

Further, as the Inter-American Commission summed in its 2021 COMPENDIUM ON THE OBLIGATION OF STATES TO ADAPT THEIR DOMESTIC LEGISLATION TO THE INTER-AMERICAN STANDARDS OF HUMAN RIGHTS:

> "*…Member States are primarily responsible for the prevention of human rights violations and the guarantee of the effective enjoyment of human rights in favor of any person under their jurisdiction. The obligation to respect and guarantee human rights, and to adapt domestic legislation to the inter-American standards, are the norms that determine the linkage and articulation between inter-American law and domestic law. By adhering to the instruments that make up the Inter-American system for the protection of human rights, Member States assume the obligation to ensure that inter-American standards are observed within their organs when the provisions of domestic law are somehow contradictory to the inter-American law.*"[35]

Finally, returning to the discussion of the Joint Declaration, the phrase "that the resolutions and judgments of the organs of the Inter-American system only have effects for the parties to the litigation" should be noted. This appears to reflect on the binding nature (or, in these countries' opinions, lack thereof) of certain of the Inter-American Court's jurisprudence, namely, advisory opinions. Interestingly, however, the secondary materials reviewed focused primarily on discussing the margin of appreciation, rather than commenting on this aspect of the Joint Declaration.

The Inter-American Commission reportedly responded to the Joint Declaration via Twitter on April 23, 2019, indicating, "'it appreciated the constructive position of States' and promised to examine the content of the declaration during the next period of sessions."[36] However, preliminary research found no formal response by the Commission or mention of the Declaration in the Commission's press release detailing the next period of sessions.[37]

B. Analysis of Specific Countries

Argentina

Argentina's reception of the doctrine of conventionality control has evolved over time. Initially characterized by strong judicial engagement and embrace of the doctrine—in fact, at one time the

Argentine Supreme Court explicitly accepted the Inter-American Court's doctrine of conventionality control (doctrine of *control de convencionalidad*)[38]—Argentina's trajectory has since become more complex, reflecting periods of nuanced interpretation, selective application, and perhaps, moments of brief resistance.

Early Judicial Embrace:[39] Argentina has long engaged with international human rights law and Inter-American jurisprudence.[40] For example, Article 75(22) of its Constitution gives constitutional status to several international human rights treaties, including the American Convention.[41] In 2005, the Argentine Supreme Court ruled that this status covers not only the Convention's text but also the Inter-American Court's decisions interpreting that text—even in cases where Argentina isn't a party.[42]

Even before the Inter-American Court formally established the doctrine of conventionality control in *Almonacid Arellano et al. v. Chile* (2006), Argentina was already aligning its domestic standards with Inter-American jurisprudence. Two notable examples of this alignment involved the right to reply or correct and the issue of amnesty.[43] On the right to reply or correct: In 1992, in the case of *Ekmekdjian v. Sofovich*, the Argentine Supreme Court ruled that the right to reply or correct—previously unregulated in Argentine law—"had to be recognized and enforced by domestic law and tribunals, by applying [Inter-American Court] Advisory opinion No. 7 on enforceability of the right to reply or correction."[44] On amnesty: In *Simón* (2005), the Argentinian Supreme Court declared its amnesty laws (*Punto Final and Obediencia Debida*) unconstitutional, drawing heavily on the Inter-American Court's *Barrios Altos* decision, which found Peru's amnesty laws violated the American Convention.[45] Although not a party to *Barrios Altos*, Argentina's Court had "relied extensively" on its reasoning, faulting its own laws as ad hoc "self-amnesties" meant to block prosecution of serious human rights violations.[46] This reflected a "human rights-oriented approach" and a "pro-Inter-American approach."[47] Argentine jurisprudence continued to reflect these approaches and embraced the doctrine of conventionality control well beyond 2006.[48]

However, in 2011, in *Fontevecchia and D'Amico v. Argentina*, Argentina's relatively consistent embrace of conventionality control faltered. In *Fontevecchia*, the Inter-American Court ruled that a domestic civil judgment holding two Argentine journalists liable for defamation after publishing stories about a former president's illegitimate child violated the journalists' right to freedom of expression under Article 13 of the American Convention.[49] Among other remedies,[50] the Inter-American Court ordered Argentina to set aside the civil sentence imposed.[51]

While Argentina complied with much of the Inter-American Court's judgment, by 2016, the Court found that the Argentine State still hadn't revoked its civil judgment.[52] In 2017, the Argentine Supreme Court held it could not be forced to "nullify" a domestic sentence, asserting that the Inter-American Court lacked the authority to order such an action.[53] It viewed the requirement to "cease the effects" of the domestic judgment effectively meant "revoking" it, and that, the Argentine Court reasoned, exceeded the Inter-American Court's powers under the American Convention.[54] The Argentine Court explained:

> *"[T]o invalidate the ruling of this Court that has the authority of res judicata is one of the situations in which restitution is legally impossible in the light of the fundamental principles of Argentine public law*…[but the Court also clarified its decision, stating it]... *does not imply denying the binding nature of the decisions of the Inter-American Court, but only to understand that the obligation arising from art. 68.1 must be circumscribed to the matter over which the international tribunal has jurisdiction."*[55]

The Inter-American Court responded forcefully. In its October 2017 ruling, it reiterated that:

> *"States Parties to the Convention cannot invoke provisions of constitutional law or other aspects of domestic law to justify a lack of compliance with the obligations contained in that treaty [...] it is not a question of solving the problem of the supremacy of international law over the national one in the domestic order, but only of enforcing that to which the sovereign States committed themselves.*"[56]

The Inter-American Court elaborated further:

> *"This Court has emphasized that the obligation to comply with its decisions is a basic principle of the law of State international responsibility, supported by international jurisprudence, according to which States must fulfill their international treaty obligations in good faith (pacta sunt servanda) and cannot, for reasons of internal order, fail to assume the international responsibility already established. In accordance with Article 67 of the American Convention, 'the judgment of the Court shall be final and unappealable,' which produces the effects of international res judicata. Compliance with the provisions of the Judgment is an obligation that is not subject to conditions, since, in accordance with Article 68.1 of the American Convention, '[t]he States Parties to the Convention undertake to comply with the decision of the Court in any case to which they are parties.' These States have a treaty obligation to implement the provisions of the Court's judgments promptly and in full, both internationally and domestically, and failure to do so constitutes an international wrong. The treaty obligations of the States Parties are binding on all branches and organs of the State, that is, all branches of the State (executive, legislative, judicial, or other branches of public authority) and other public or state authorities, at any level, including the highest courts of justice, have a duty to comply in good faith with international law."*[57]

However, the Inter-American Court clarified that "to cease the effects" did not necessarily require revoking the judgment; Argentina could instead take another action.[58] The Court stated:

> *"In the present case, since it is a civil judgment that is not recorded in criminal records, the State could adopt some other type of legal measure, other than reviewing the judgment, to comply with the reparation measure ordered, such as removing it from the websites of the Supreme Court of Justice and the Judicial Information Center, or maintaining its*

> *publication but adding a note indicating that the judgment was declared to be in violation of the American Convention by the Inter-American Court."*[59]

Ultimately, the Argentine Court "set down the following legend: '*This sentence was declared incompatible with the American Convention on Human Rights by the Inter-American Court (judgment of November 21, 2011).*"'[60]

Some scholars see Argentina's resistant response to the Inter-American Court in *Fontevecchia and D'Amico v. Argentina* as an isolated case,[61] while others view it as part of a broader shift away from Argentina's initial embrace of conventionality control toward a more nationalistic approach to international law.[62] Argentina's participation in the April 2019 Joint Declaration to the Inter-American Commission, which endorsed the use of a margin of appreciation in fulfilling member States' obligations under the American Convention, may indicate a general shift by Argentina towards advocating for greater national judicial discretion in Inter-American Court rulings. Determining which view is more accurate would require a deeper review of Argentine jurisprudence.[63]

Moreover, the 2012 study discussed in Section I.B.1. above cited Argentina's apex court as among six within the region that recognized the binding or quasi-binding nature of Inter-American Court decisions, including its advisory opinions.[64] Whether this remains Argentina's stance is uncertain, especially given Argentina's endorsement of the April 2019 Joint Declaration—where one of the statements, "*that the resolutions and judgments of the organs of the Inter-American system only have effects for the parties to the litigation,"* seems to be commenting that only contentious cases (i.e. not advisory opinions) are binding—possibly signaling a more cautious approach by Argentina to the Inter-American Court's advisory authority. This trend also merits further study and ongoing monitoring.

Brazil

Brazil's reception of conventionality control has been mixed, shaped by a complex interplay between a progressive constitutional framework and a conservative judicial culture.

Brazil's 1988 Constitution is known for its "open texture,"[65] and Brazil has shown "qualified openness" to the Inter-American Court.[66] Brazil has also actively engaged with the Inter-American System over the years.[67] However, the Supreme Federal Court (STF)'s "conservative"[68] legal culture has hindered consistent implementation of the Inter-American Court's decisions.[69] Brazil also signed the April 2019 Joint Declaration to the Inter-American Commission, signaling at that time a potential posture that it viewed the Inter-American Court's non-contentious or advisory jurisdiction as non-binding, and at least a general desire by Brazil for a more flexible, State-deferential approach to conventionality control through the use of the margin of appreciation doctrine.

A positive shift in Brazil's exercise of conventionality control came with the STF's ruling in *PSB et al. v. Brazil (On Climate Fund)*. Heralded as a landmark decision, one publication characterized the decision:

> "*The Supreme Court's judgment consolidates and strengthens the jurisprudential orientation already envisioned in other rulings of the Court by engaging in a dialogue with recent jurisprudence of the Inter-American Court of Human Rights (IACHR) on environmental matters, such as Advisory Opinion 23/2017 regarding the Environment and Human Rights and the case of Indigenous Communities Members of the Lhaka Honhat (Nuestra Tierra) Association v Argentina (2020)* [affirming STF's adherence to and positive application of the conventionality control doctrine]. *Furthermore, the decision assigns to international treaties concerning environmental issues the same status and special normative hierarchy that are already acknowledged by the Supreme Court for international human rights treaties in general, namely, a supra-legal hierarchy."*[70]

As such, *PSB et al. v. Brazil* is particularly promising precedent for Brazilian practitioners looking to enforce the Inter-American Court's Climate Advisory Opinion. Further, while the assignment of supra-legal status—meaning below the Constitution but above ordinary national legislation—to environmental international treaties was only a recent development in Brazil, the American Convention has held supra-legal status in Brazil for some time.

Another illustration of Brazil's positive, or open posture, to the Inter-American Court came during the proceedings leading up to the Inter-American Court's Climate Advisory Opinion—there, Brazil reaffirmed its dedication to the Inter-American Human Rights System, stating in its submitted written observation [translated using DeepL]: *"[T]he Brazilian state takes this opportunity to reiterate its permanent commitment to the Inter-American Human Rights System."*[71]

Nonetheless, Brazilian jurisprudence has oscillated between resistance[72] and acceptance[73] of conventionality control.[74] The same oscillation can be found in Brazil's posture toward the binding effect of Inter-American Court jurisprudence, including its advisory opinions, where—as stated in the 2012 study discussed in Section I.B.1. above—"high courts in Brazil…have left the issue unsettled."[75] For, as recently as October 2024, Brazil's stance on the binding nature of Inter-American jurisprudence was illustrated in its Mission to the United Nations' submission to the General Assembly's Sixth Committee regarding Agenda Item 79 (International Law Commission Report, Cluster II). In its comments on Chapter V—"Subsidiary means for the determination of rules of international law"—Brazil stated:

> *"Additionally, the absence of 'stare decisis' in international law could be further developed in the commentaries. In this regard, we note that* ***the conventionality control by the Inter-American Court of Human Rights does not establish formally binding precedent****"* (emphasis added).[76]

While the preceding examples illustrate that Brazil's exercise of conventionality control is not fixed, an August 2025 decision by the 9th Federal Court of Porto Alegre suspending the operating licenses of the Candiota coal mine and Candiota III coal-fired power plant until climate considerations—including cumulative value-chain impacts and Scope 3 emissions—are incorporated into the licensing process, may signal that Brazil is entering a period of conventionality control embrace.[77] For, not only did the 9th Federal Court in its decision explicitly reference and apply its duty to exercise conventionality control, but it also referenced multiple

efforts by the National Council of Justice—a public institution aimed at improving the Brazilian judiciary—to strengthen domestic implementation of the Inter-American human rights system.[78] This suggests a growing effort, at least by the Brazilian judiciary, to engage in conventionality control.

Chile

Chile's engagement with conventionality control has been inconsistent, shaped by structural constraints within its domestic legal system, as well as mixed institutional attitudes towards certain issues. This has resulted in Chile's situational application of the doctrine. Nevertheless, Chile remains actively engaged in dialogue—both critical and positive—with the Inter-American Human Rights System. This is evident in its endorsement of the 2019 Joint Declaration submitted to the Inter-American Commission and its 2023 co-sponsorship with Colombia of a request for an advisory opinion from the Inter-American Court on the obligations of States in responding to the climate emergency.

Despite lacking specific implementing legislation, Chile has maintained a "comparatively good compliance record" with decisions from both the Inter-American Court and Commission.[79] However, Chile's exercise of conventionality control—in the context of contentious cases and otherwise—is far from comprehensive. Chile's unsystematic approach to conventionality control remains a broader structural issue. In addition, its inconsistent application of the doctrine—particularly in areas such as amnesty, indigenous rights, and military justice[80]—highlights specific gaps in domestic implementation. Although Chile has a relatively strong history of implementing international judgments, it lacks an effective mechanism to systematically apply international human rights law in domestic court rulings.[81] This institutional shortfall affects both the judiciary and Chile's Constitutional Tribunal, often leaving enforcement dependent on political will.[82]

The key Chilean constitutional provision regarding the incorporation of international human rights law is Article 5(2), which states:

> *"the exercise of sovereignty recognizes as a limitation the respect for the essential rights which emanate from human nature. It is the duty of the organs of the State to respect and promote those rights, guaranteed by this Constitution, as well as by the international treaties ratified by Chile and which are in force."*[83]

While debate once existed whether Article 5(2) grants constitutional or even supra-constitutional status to human rights treaties, Chile's Constitutional Tribunal has clarified that these treaties enjoy supra-legal status—meaning they are superior to ordinary legislation but subordinate to the Constitution.[84]

Chile's uneven approach to conventionality control is illustrated in the areas of amnesties and indigenous rights. Regarding amnesties: Chile has never repealed its 1978 Amnesty Decree Law[85] despite the Inter-American Court's firm opposition to such laws.[86] Instead, non-application is carried out on a case-by-case basis by Chile's ordinary courts.[87] Notably, in 2013, the Supreme Court invoked conventionality control in an extradition case where a Bolivian national was accused of drug trafficking (Case No. 9.031-2013), marking the first such reference to

conventionality control in this context.[88] However, scholars argue that the Court's interpretation diverged from Inter-American jurisprudence, treating conventionality control as a simple application of the American Convention rather than as a broader normative obligation.[89]

In the realm of indigenous rights, one scholar highlights the gap between Chile's international commitments and domestic implementation, where: Chile's "[c]ompliance with friendly settlements is usually good but finds a very stubborn exception in the Ralco case: even after 16 years of the (binding) agreement, indigenous peoples have not been constitutionally recognized in Chile, despite several motions and bills in Congress."[90]

As noted, Chile's support for the 2019 Joint Declaration suggested, at least at that time, its preference for a more flexible, State-deferential form of conventionality control with a margin of appreciation. It also may have signaled that Chile, at least in 2019, considered the Inter-American Court's non-contentious, or advisory, jurisdiction to be non-binding. The 2012 study discussed in Section I.B.1. above indicated that "high courts in…Chile…have left the [binding/non-binding] issue unsettled."[91] Yet, Chile's 2023 joint request with Colombia for an advisory opinion from the Inter-American Court indicated a more constructive and engaged approach. This joint request signaled not only Chile's willingness to engage with evolving Inter-American jurisprudence, but also a potential reaffirmation of the Inter-American Court's interpretive authority. Notably, throughout Chile's written observations—submitted during the proceedings leading up to the Inter-American Court's Climate Advisory Opinion—it referenced previous Inter-American Court advisory opinions and incorporated illustrations of "good practices in Chile." Yet Chile also referred to the "guidelines" and "guidance" of the Inter-American Court and System throughout its submission, potentially signaling that at the time of its writing, Chile favored a more discretionary interpretation of conventionality control, or viewed advisory opinions as non-binding.[92] For example, consider the following two paragraphs of Chile's "Conclusions" section in its written submission [translated using DeepL]:

> *"That said, it is important to note that the development of an international framework for responding to climate change has been gradual and built on the consensus of the Parties to the UNFCCC and the COP. The obligations and commitments included in this framework are those that regulate interaction between States.* ***Therefore, although the Court has the power to give an opinion on the matter in question, this is limited by the current obligations recognized at the multilateral level.***
>
> ***Chile appreciates the guidelines that the Inter-American Court of Human Rights may provide, consistent with those developed by other international courts, in order to assist States in their climate negotiations, as well as in the development of public policies in these areas.*** *There is no doubt that communities can no longer wait, and international human rights law is essential in identifying timely and adequate responses that protect the rights of all people, with special attention to those in situations of vulnerability and/or historical exclusion"* (emphasis added).[93]

Moreover, preliminary research found no indication that Chile differentiates between Inter-American Court advisory opinions it has requested and those requested by other States; this is in

contrast with Costa Rica, for example, which accords a greater binding effect to those advisory opinions it has requested. Nevertheless, Chile and Colombia issued a joint statement following the publication of the Inter-American Court's Climate Advisory Opinion in which they welcomed and heralded the Opinion as [translated using DeepL]: "a milestone in the regional consolidation of international human rights law with regard to environmental protection[;]"[94] they also "reiterate[d] their unwavering commitment to the effective protection of the environment through a human rights-based approach, guaranteeing an adequate and forceful response to the current climate emergency, grounded in the principles of equity, justice, cooperation, and sustainability."[95] These statements are at least promising indicators that Chile and Colombia may exercise conventionality control in this context.

Colombia

Colombia presents an inconsistent, but ultimately hopeful case in its reception and exercise of conventionality control.[96] The Colombian Constitutional Court has recognized the doctrine,[97] and was at one point "routinely" citing advisory opinions,[98] but its case law has varied over time, reflecting inconsistent views—perhaps issue-specific—on the binding nature of Inter-American jurisprudence.

Under Article 93 of Colombia's Constitution, constitutional rights and duties should be interpreted in line with international human rights treaties ratified by Colombia.[99] This provision gave rise to the concept of the "constitutional block," which accords constitutional status to certain international treaties and has, at times, included the jurisprudence of the Inter-American Court.[100]

A key early example of Colombia's embrace of conventionality control came in decision C-370 of 2006, where the Constitutional Court used the Inter-American *corpus juris* to analyze the constitutionality of Colombia's Justice and Peace Act (Law 975 of 2005).[101] The Justice and Peace Act regulated amnesty for paramilitary forces responsible for crimes against humanity.[102] Drawing on Inter-American jurisprudence—including *Barrios Altos v. Peru*, *Bámaca Velásquez v. Guatemala*, *Gomez Paquiyauri v. Peru*, *Mapiripán Massacre v. Colombia*, and *Moiwana Community v. Suriname*—the Court established standards for victims and found Colombia's amnesty laws incompatible with Inter-American Court standards.[103] This case demonstrated a robust application of conventionality control by Colombia's highest court. Moreover, and especially promising, Colombia's Constitutional Court has "routinely cite[d] advisory opinions both in [its] judicial review cases and also in judgments regarding individual petitions for the protection of human rights (acción de tutela)."[104]

In recent years, however, the *Petro Urrego v. Colombia* (2020) case perhaps signals that Colombia has taken a "more critical" stance in exercising conventionality control—at least in certain contexts.[105] In the *Petro Urrego* case, the Inter-American Court ruled that Colombia violated Article 23 of the American Convention when it allowed for a mayor's dismissal and 15-year disqualification by way of an administrative disciplinary procedure. The Inter-American Court noted that, although Colombia remedied the violation of the mayor's rights, it failed to make full reparation for the violation because it hadn't amended the legal provision that permitted those

sanctions in the first place. This ruling sparked debate among Colombian scholars and judges who criticized the Inter-American Court for failing to consider an evolving interpretation of political rights and the legitimacy of certain administrative procedures.[106] According to one academic: "This decision prompted Colombian legal scholars and Constitutional Court judges to discuss the need to embrace deference criteria that could ground a horizontal dialog *[sic]* between national and international courts."[107]

In an effort to comply with *Petro Urrego*, Colombia's Congress subsequently passed Law 2094 of 2021, amending the Disciplinary Code to establish a revised model for the investigation and adjudication of popularly elected officials. This law expanded the disciplinary authority of the PGN, a public institution charged with monitoring the conduct of public officials. However, shortly thereafter, Law 2094 was challenged as violating the American Convention and Colombian Constitution and contravening the *Petro Urrego* ruling, which found that only a conviction imposed by a *competent judge in criminal proceedings* could impose restrictions on the political rights of public officials (including removal and disqualification). The Colombian Constitutional Court in *C-030 of 2023* ultimately compromised and allowed the PGN to retain its authority to investigate and impose sanctions, but found disciplinary sanctions (including removal, suspension, and disqualification) against elected officials would be subject to an automatic review and final determination by an *administrative* judge.[108] This case is important in the context of conventionality control as it signaled that the Colombian Constitutional Court—at least some of the justices at that time—favored a form of conventionality control that allowed a margin of appreciation.

As part of its rationale, the Constitutional Court stated that while the American Convention forms part of the domestic constitutional framework by way of the "constitutional block," it rejected the suggestion that the Inter-American Court's *jurisprudence* automatically forms part of this framework. Instead, the Court asserted that the Inter-American Court's decisions must be harmonized with the particularities of the domestic legal system.[109] The Constitutional Court characterized the relationship between it and the Inter-American Court as one based on horizontal dialogue, rather than hierarchy. It characterized the goal of the relationship as harmonization of legal systems in accordance with the *pro persona* principle, to most effectively ensure the realization of human rights through protections implemented on the national level and tailored to the domestic context. In its discussion, the Court stated that "this joint construction requires the search for interpretations that are tailored to different contexts and harmonize constitutional texts with the inter-American standard,"[110] and noted that under the pro persona principle, "in the event of a discrepancy, the judge must always apply the rule or interpretation that is most favorable to the protection of the human rights at stake."[111] It explicitly stated that "there is no hierarchical relationship between the provisions comprising the constitutional block and the rest of the Constitution," and that "no standard can claim the final say solely on the basis of the authority that issued it," but that "disagreements must be resolved through an equal dialogue guided by the duty of harmonization."[112] Therefore it was through this reasoning that the Court arrived at the compromise found in *C-030 of 2023*.

Further, the Colombian Constitutional Court's position on the binding nature of Inter-American jurisprudence has also shifted over time. In 1996, the Court held that Article 93 of Colombia's Constitution required the Court to follow the interpretations established by the Inter-American Court not only in contentious cases, but also in advisory opinions.[113] Further, in 2001, the Court stated:

> *"For the purposes of the present case [concerning freedom of expression], the constitutional block relating to freedom of expression must be composed of international norms, in particular the San José Pact and the International Covenant on Civil and Political Rights, together with the interpretations of those texts presented by the Inter-American Commission on Human Rights, the Inter-American Court of Human Rights, and the United Nations Human Rights Committee.* ***Different weight must also be given to opinions, since the judicial nature of the Inter-American Court of Human Rights and its jurisdiction over Colombia means that its opinions, rather than being taken into account, cannot be ignored internally"*** (emphasis added).[114]

The 2012 study discussed in Section I.B.1. above also identified Colombia as one of six "apex courts" in the region that favored "a binding or quasi-binding nature of the IACtHR' case law, including its advisory opinions."[115]

However, by 2014, Colombia's Constitutional Court adopted a more restrained approach, holding that Inter-American Court jurisprudence is of interpretative relevance, but not *per se* binding unless particular requirements are met, such as uniformity and reiteration.[116] That same outlook appeared to be reflected in Colombia's endorsement of the April 2019 Joint Declaration, where the phrase *"that the resolutions and judgments of the organs of the Inter-American system only have effects for the parties to the litigation"* appears to indicate that the signatory countries viewed the Inter-American Court's contentious case decisions as binding, but perhaps not its non-contentious decisions or advisory opinions.

Despite these lackluster developments, Colombia remains actively engaged with the Inter-American System. In January 2023, Colombia joined Chile in requesting an advisory opinion from the Inter-American Court on the obligations of States to respond to the climate emergency. Moreover, during the proceedings leading up to the Inter-American Court's Climate Advisory Opinion, Colombia submitted a written observation affirming the Inter-American Court's authority and explicitly endorsing the binding nature of its jurisprudence [translated using DeepL]:

> *"This Advisory Opinion, which will interpret the scope of States' obligations in the face of the climate emergency, will be the cornerstone of future judgments issued by the Inter-American Court on the protection of human rights related to climate stability. and to that extent, it will guide not only the course of legal discussion in future contentious cases before the Inter- American Court, but also all decisions of the judicial, legislative, and executive branches of the member countries of the Inter-American Human Rights System (hereinafter "IAHRS") that apply conventionality review.* ***For its part, the doctrine of conventionality control establishes that the jurisprudence of the Inter-American Court of Human Rights constitutes binding precedent for States and bodies that are part of the inter-American***

> ***human rights system. For this reason, this Advisory Opinion will guide the Inter-American Court of Human Rights, as well as other national and local courts, in the challenges arising from climate change****"* (emphasis added).[117]

This statement explicitly reaffirmed Colombia's stance on the binding nature of Inter-American jurisprudence[118] and illustrated a positive posture towards the doctrine of conventionality control. Moreover, since the Inter-American Court issued its Climate Advisory Opinion, Colombia has responded favorably, commending the Opinion in a joint statement with Chile.[119]

Costa Rica

Costa Rica has widely embraced the doctrine of conventionality control and routinely recognized the Inter-American Court's advisory opinions as binding—although it has not uniformly held this position.

Costa Rica has maintained a long-standing and positive relationship with the Inter-American Court: It was the first country to accept the Inter-American Court's jurisdiction, as well as the first country to use the Court's advisory function.[120] Further on September 9, 1983, by Law 6889, Costa Rica ratified the Headquarters Agreement, establishing the Inter-American Court's seat in San José, Costa Rica, and "recogniz[ing] that the decisions issued by the full [Inter-American] Court or by its President had the same binding nature as the decisions delivered by Costa Rican courts."[121]

Costa Rica has generally been receptive to the doctrine of conventionality control. Two decisions issued by its Constitutional Chamber in 2013 and 2014 demonstrate this receptiveness: For, the Constitutional Chamber explicitly recognized its duty to exercise conventionality control when it stated [translated using DeepL]:

> *"…the Judiciary must exercise a kind of 'conventionality control' between the domestic legal norms that apply in specific cases and the American Convention on Human Rights. In this task, the Judiciary must take into account not only the treaty [the Convention], but also the interpretation of it by the Inter-American Court, the ultimate interpreter of the American Convention."*[122]

The Constitutional Chamber further clarified the "parameters" for Costa Rican courts in exercising conventionality control, stating that courts must consider not only the American Convention, "*but also the jurisprudence of the Inter-American Court*" when reviewing domestic provisions. [123]

An example of Costa Rica's embrace of conventionality control came after the Inter-American Court issued its landmark Advisory Opinion OC 24/17 on Gender Identity, and Equality and Non-Discrimination. This Opinion was prompted by Costa Rica's request for clarification "concerning the interpretation and scope of Articles 11(2), 18 and 24 of the American Convention on Human Rights[,]"[124] and among other progressive steps, OC 24/17 extended the right of access to the institution of marriage to persons of the same sex.[125] Following Advisory Opinion OC 24/17, the Constitutional Chamber of the Supreme Court of Costa Rica, in Decision No. 2018-012782, ruled that Costa Rica's Family Code—specifically Article 14(6), which prohibited same-sex marriage—

was unconstitutional, and set a deadline for the national legal framework to be adapted and brought into compliance within 18 months.[126] On May 26, 2020, same-sex marriages became lawful throughout Costa Rica.[127]

Although Costa Rica has been fairly consistent in its exercise of conventionality control, this consistency has not been absolute, and Costa Rica has at times fallen short. One such example of a shortfall was the case of *Artavia Murillo et al. v. Costa Rica* (2012). In that case, the Inter-American Court ruled that a 2000 decision by Costa Rica's Constitutional Chamber rendering the country's program of in-vitro fertilization (IVF) unconstitutional was in violation of American Convention Articles 5(1), 7, 11(2), and 17(2)—relating to the right to humane treatment, the right to personal liberty, the right to privacy and the rights of the family, respectively; the Inter-American Court ordered Costa Rica to "adopt, as soon as possible, appropriate measures to annul the prohibition to practice IVF."[128] Subsequently, in an amparo proceeding seeking to have the Constitutional Chamber compel government officials to comply with the Inter-American Court's judgment, the Chamber rejected the petition, indicating that enforcement of the judgment was not within its competence.[129] Further, Costa Rica's Legislative Assembly also continually failed to implement the Inter-American Court's judgment; it was only in 2015, after a presidential decree, Executive Decree No. 39210-MP-S, that IVF was finally allowed, where IVF services ultimately became operational in Costa Rica in 2017.[130]

In addition to its overall positive reception of conventionality control, Costa Rica has also generally held the position that Inter-American Court advisory opinions are binding. As the 2012 study discussed in Section I.B.1 above noted, Costa Rica was among six "apex courts" in the region with a view that favored "a binding or quasi-binding nature of the IACtHR' case law, including its advisory opinions."[131] Costa Rica's Sala Constitucional, or the Constitutional Chamber of Costa Rica's Supreme Court has explicitly described its stance on the bindingness of Inter-American jurisprudence; it stated [translated using DeepL]:

> *"[T]he **Advisory Opinions** of the Inter-American Court of Human Rights **have full value in this country and… in matters of human rights, its decisions are binding on the Costa Rican State**..."(*emphasis added).[132]

While Costa Rica has typically held a favorable position toward the binding effect of Inter-American Court advisory opinions, it has also traditionally differentiated between those advisory opinions that were *requested by Costa Rica* versus those *requested by other States*, assigning a stronger binding effect to the former. For, although Costa Rica's Sala Constitucional was the first domestic court to hold that Costa Rica is bound by Inter-American Court advisory opinions, it caveated that this binding effect was in the event the country was the *requesting country* of the advisory opinion.[133]

Further, Costa Rica's view on the bindingness of the Inter-American Court's advisory opinions has not been wholly consistent, and Costa Rica has at times diverged from its pro-stance. As one scholar noted: "*The separate votes attached to the judgments rendered by the Sala Constitucional after the publication of ...OC-24/17 evince that at least a minority of the Chamber no longer supports the thesis of the binding effect of the Court's advisory opinions, or at least the binding*

effect for the requesting state,"[134] reflecting concerns regarding the separation of powers and overreach or encroachment of international jurisprudence.

More recently, however, in Costa Rica's written observation submitted to the Inter-American Court in the lead up to its Climate Advisory Opinion, Costa Rica reaffirmed the Court's contentious and advisory authority: Costa Rica's Acting Minister of Foreign Affairs and Worship, Alejandro Solano Ortiz, wrote [translated using DeepL]:

> *"True to its tradition of support, respect, and firm commitment to the contentious and advisory powers vested in the Honorable Inter-American Court of Human Rights, the Costa Rican State welcomes all processes and initiatives that are developed precisely within the framework of the powers established by convention and that have an impact on the protection and promotion of human rights in accordance with the principle of progressivity and non-regressivity."*[135]

Ecuador

Ecuador has also generally embraced the doctrine of conventionality control, and for several years its Constitutional Court has regarded the Inter-American Court's advisory opinions as warranting due consideration.[136] In 2019, it went a step further, formally recognizing the Inter-American Court's advisory opinions as legally binding.

The Ecuadorian Constitution affirms the supremacy of the Constitution above international treaties,[137] but allows international human rights protections to prevail under the *pro persona* principle. Article 417 of the Constitution states:

> *"The international treaties ratified by Ecuador shall be subject to the provisions set forth in the Constitution. In the case of treaties and other international instruments for human rights, principles for the benefit of the human being, the nonrestriction of rights, direct applicability, and the open clause as set forth in the Constitution shall be applied."*[138]

Article 424 elaborates that international human rights treaties form part of the "block of constitutionality":[139]

> *"The Constitution is the supreme law of the land and prevails over any other legal regulatory framework…The Constitution and international human rights treaties ratified by the State that recognize rights that are more favorable than those enshrined in the Constitution shall prevail over any other legal regulatory system or action by public power."*[140]

Article 11(3) affirms that rights enshrined in the Ecuadorian Constitution and ratified international human rights treaties are "directly and immediately" enforceable, and that the "[a]bsence of a legal regulatory framework" cannot justify their violation:

> *"The rights and guarantees set forth in the Constitution and in international human rights instruments shall be directly and immediately enforced by and before any civil,*

> *administrative or judicial servant, either by virtue of their office or at the request of the party.*
>
> *For the exercise of rights and constitutional guarantees, no conditions or requirements shall be established other than those set forth in the Constitution or by law.*
>
> *Rights shall be fully actionable. Absence of a legal regulatory framework cannot be alleged to justify their infringement or ignorance thereof, to dismiss proceedings led as a result of these actions or to deny their recognition."*[141]

For several years, the Constitutional Court of Ecuador has consistently referenced the Inter-American Court's advisory opinions, emphasizing the importance of taking them into account.[142] However, in 2018, Ecuador's Constitutional Court went a step further by formally recognizing that advisory opinions are part of the "block of constitutionality" and require "preferential application":

> *"In this regard, the Inter-American Court, in Advisory Opinion OC 24/17, an international instrument which, by express provision of Article 424 of the Constitution of the Republic and as it constitutes the official interpretation of the Inter-American body responsible for determining the meaning and scope of the provisions of the Convention relating to the protection of human rights, is understood to be incorporated into the text of the Constitution and is* ***directly, immediately, and preferentially applicable****, insofar as its content is more favorable to the effective exercise and protection of the recognized rights…"* (emphasis added)[143]

Based on Advisory Opinion OC 24/17, the Constitutional Court ruled that Ecuador had to recognize same-sex marriage, despite the fact that the Ecuadorian Constitution, Civil Code, and other domestic laws defined marriage as between a man and a woman.[144] The Court did not find a conflict between its Constitution and the American Convention however, reasoning that the international human rights treaty complemented, rather than contradicted, the Constitution.[145]

The following year marked another key step in the integration of Inter-American jurisprudence into Ecuadorian law. In a 2019 decision, the Constitutional Court affirmed that domestic authorities are required to exercise conventionality control *and* that advisory opinions are binding:

> "… ***State authorities in general, and justice operators in particular, are obliged to carry out conventionality control within the framework of their powers and procedures.*** *That is, when in the exercise of their functions, they find more favorable norms or international standards in treaties, international instruments, advisory opinions, general observations, and more, they* ***must*** *apply the norm that best ensures the exercise of rights.*
>
> *It is important to clarify the scope of constitutional and conventionality control. First, in order to give effect to the supremacy of the Constitution and the most favorable human rights instruments, the direct application of constitutional norms and international instruments is a normative guarantee that must have jurisdictional impact; otherwise, it would have no practical effect.* ***Justice operators must incorporate constitutional and conventional norms and the doctrine of international human rights protection***

> ***mechanisms, including advisory opinions, into the Ecuadorian legal system****"* (emphasis added).[146]

However, this decision was not without its critics. A strong dissent, signed by four justices, argued against the binding nature of advisory opinions, emphasizing a clear contradiction between the Constitution and the Inter-American Court's OC 24/17, and finding OC 24/17 inapplicable. The dissent stated:

> *"[I]t should be noted that advisory opinion OC 24/17 'urges' States to make the corresponding internal modifications, which confirms that it has no direct or indirect effect.*
>
> *[S]ince Article 67 of the Constitution[147] is a legal provision with a highly specific structure, this rule does not allow interpretations contrary to the literal meaning of its text. One of the principles of legal hermeneutics is that it is not appropriate to give a different meaning to a rule whose content and scope are clear and precise.*
>
> *I must emphasize that the purpose of constitutional review is not to comment on the appropriateness or otherwise of constitutional provisions, but to safeguard their text.*
>
> *[T]he only way to establish a modification to the concept of marriage, other than that provided for in the second paragraph of Article 67 of the Supreme Law, is through a constitutional amendment procedure and not through various interpretations that ultimately lead to arbitrary changes. The Legislative Branch is the competent body for such an amendment…*
>
> *No ruling can be made on the constitutionality of Advisory Opinion OC 24-17 or of the constitutional provision itself, and therefore no opinion can be expressed in this regard."*[148]

Ultimately, the majority decision prevailed by a narrow five-to-four margin, affirming—for the time being—Ecuador's position that advisory opinions are legally binding, and reinforcing Ecuador's overall positive posture towards exercising conventionality control.

Mexico

Mexico's initial reception of conventionality control was muted. However, a subsequent constitutional restructuring fostered the integration of Inter-American jurisprudence into Mexican domestic law and ushered in positive momentum including at least one instance where the Mexican Supreme Court held that Inter-American Court jurisprudence is binding, even in cases to which Mexico was not a party. Unfortunately, recently the Mexican Supreme Court has regressed, finding that Inter-American Court advisory opinions are not legally binding. Nevertheless, the Mexican Supreme Court continues to recognize Inter-American Court advisory opinions' legal relevance and high authority and appears receptive to conventionality control at least in the contentious jurisdiction context—as Mexico recognizes the binding authority of the Inter-American Court's contentious judgments.

Prior to 2009, Mexico accorded only nominal recognition to international human rights treaties, which played little practical role in protecting the rights of Mexican citizens.[149] This began to shift

with the landmark *Radilla Pacheco* case. In 2001, the family of Radillo Pacheco—an activist who was forcibly disappeared by the Mexican military in 1974—brought a case before the Inter-American Court after their repeated efforts to obtain justice from the Mexican state and its military had failed.[150] The case centered on the transfer of proceedings to military jurisdiction, which obstructed justice and accountability.[151] In its decision, the Inter-American Court ordered Mexico to enact legislative reforms aligning its military jurisdiction laws with international human rights standards.[152]

The judgment served as a catalyst for constitutional reform. In 2011, Mexico amended Article 1 of its Constitution to state:

> *"In the United Mexican States, all individuals shall be entitled to the human rights granted by this Constitution and the* ***international treaties signed by the Mexican State****, as well as to the guarantees for the protection of these rights. Such human rights shall not be restricted or suspended, except for the cases and under the conditions established by this Constitution itself.*
>
> *The provisions relating to human rights* ***shall be interpreted according to this Constitution and the international treaties on the subject****, working in favor of the broader protection of people at all times"* (emphasis added).[153]

This constitutional reform placed international human rights treaties and interpretations of those treaties by the relevant bodies on equal footing with the human rights explicitly mentioned in the Mexican Constitution.[154]

Following *Radilla Pacheco*, the Mexican Supreme Court issued a non-binding opinion in 2010 clarifying the Mexican judiciary's obligations under the Inter-American Court's judgment.[155] In that opinion, the Mexican Supreme Court confirmed that Mexico is bound by the judgments of the Inter-American Court in contentious cases. It stated:

> *"Therefore, when the Mexican State has been a party to a dispute or controversy before the Inter-American Court,* ***the judgment issued by that Court, together with all of its reasoning, constitutes res judicata****…*
>
> *Thus, the decisions of this international court whose jurisdiction has been accepted by the Mexican government are binding on all agencies of the Mexican State in their respective areas, given that Mexico is a party state to a particular controversy. Therefore, not only are the specific paragraphs of rulings binding on the federal courts, but the entirety of the reasoning contained in the judgment resolving this dispute"* (emphasis added).[156]

However, for Inter-American Court jurisprudence in which Mexico is *not* a party, the Mexican Supreme Court determined that this jurisprudence should be considered as "guiding criteria":

> *"On the other hand, the rest of the Inter-American Court's jurisprudence which involves cases where Mexico is not a party shall be considered as* ***guiding criteria*** *for decisions by Mexican courts, but always to the extent that is most favorable to the person, in accordance*

> *with Article 1 of the Constitution…particularly in its second paragraph…"* (emphasis added)[157]

Shortly thereafter, the Mexican Supreme Court seemingly reversed course again: In resolving a conflict between two federal courts, it held that Inter-American Court jurisprudence was in fact binding regardless of whether Mexico was a party in the case. However, the Court qualified that it interpreted the 2011 constitutional reform as using the *pro persona principle* to determine which human rights source, international or domestic, would ultimately be applied.[158] It emphasized, the *pro persona* principle requires applying the interpretation of the norm that provides either the greatest protection or least restriction of rights.[159] The most protective interpretation, whether derived from a domestic or international source, must be applied, unless expressly restricted by the Mexican Constitution.[160] In its ruling, the Mexican Supreme Court elaborated:

> *"[I]t is concluded that the* ***criteria emanating from the case law of the Inter-American Court of Human Rights are binding on national judges regardless of whether the Mexican State was a party to the litigation*** *since they give substance to the human rights established in the American Convention on Human Rights. However, the application of such case law must be done in a spirit of cooperation and not in contradiction with national case law, always in accordance with the pro persona principle. In this sense, the binding force of the jurisprudence of the Inter-American Court derives from the constitutional mandate established in Article 1 of the Constitution, since the pro persona principle obliges national judges to decide in accordance with the interpretation most favorable to the individual"* (emphasis added).[161]

The constitutional reform and these developments positioned Mexico as a regional leader, earning Mexico's Supreme Court the United Nations Prize in the Field of Human Rights in 2013 and securing the inclusion of the *Radilla Pacheco* proceedings in UNESCO's Memory of the World Programme.[162]

However, in recent years, this positive trajectory has slightly shifted. In 2024, the Mexican Supreme Court issued a new opinion—*Contradicción De Criterios* 175/2022—holding that Inter-American Court advisory opinions are not legally binding, though they still carry "legal relevance and high authority":

> "*…this Full Court concludes that the* ***advisory opinions of the Inter-American Court of Human Rights are not legally binding on Mexican judges****…*
>
> *[I]t is possible to identify the way in which this Supreme Court of Justice of the Nation cites and constantly uses the advisory opinions of the Inter-American Court, but not because it is obliged to do so, but because, recognizing their* ***legal relevance and high authority****, this Constitutional Court decides to adopt those interpretations and parameters in order to maximize the protection of human rights.*
>
> *…[A]lthough the advisory opinions of the Inter-American Court of Human Rights are not legally binding on Mexican judges, this Full Court* ***recognizes their legal relevance*** *and*

> *reaffirms that they can serve as* ***interpretative criteria to the extent that they are progressive and beneficial to individuals****.*
>
> *The interpretations contained in advisory opinions may be incorporated into domestic law in a binding manner in two ways:*
>
> *1) International route. If the Inter-American Court of Human Rights uses parameters from its advisory opinions in its contentious cases, these, as they are now part of the reasoning of a contentious judgment, will become part of the case law that all Mexican judges must follow whenever it is more favorable to the individual.*
>
> *2) National route. When this Supreme Court of Justice of the Nation, in rulings, either in plenary session or through its Chambers, incorporates inter-American advisory opinions as part of its ratio decidendi in its binding precedents, then those criteria will undoubtedly become binding, based on paragraph 12 of Article 94 of the Political Constitution of the United Mexican States"* (emphasis added).[163]

Further reflecting Mexico's shifting posture, on October 22, 2024, the Mexican Federal Congress attempted to amend Mexico's Constitution to limit the application of conventionality control and international human rights norms as described in Article 1.[164] Although that proposal was ultimately revised and withdrawn,[165] it underscores a potential shift toward a less receptive or more restrained approach to conventionality control.

However, according to Mexican legal experts, there are other international human rights mechanisms apart from conventionality control—such as the Escazú Agreement, the *pro persona* principle and the progressive principle—that Mexican courts may be more amenable to using in their rulings. No matter the mechanism, undoubtedly litigation will be key to instituting changes, and lawyers must strategically raise these arguments in their briefs.

Paraguay

Paraguay has, at best, a mixed reception of conventionality control.

As one scholar noted, [translated using DeepL]:

> "*[M]any resolutions issued by this supranational body* [referring to the Inter-American Court] *have not yet been complied with by the Paraguayan State.*"[166]

Moreover, even in the contentious case context Paraguay has a poor compliance record, where one scholar remarked that:

> *"Paraguay [has only] partially or fully complied with two out of five cases."*[167]

Article 137 of Paraguay's Constitution establishes the hierarchy of law that the country recognizes, placing its own constitution as supreme:

> *"The supreme law of the Republic is the Constitution. [The Constitution], the treaties, conventions and international agreements approved and ratified, the laws dictated by the*

> *Congress and other juridical provisions of inferior hierarchy, sanctioned in consequence, integrate the positive national law [derecho positivo] in the enounced order of preference [prelación]."*[168]

Paraguay was also a signatory to the April 2019 Joint Declaration. As discussed throughout this memorandum, the content of the Joint Declaration signaled—at least at that time—that its signatories, including Paraguay, may prefer a more flexible, State-deferential form of conventionality control which incorporates a margin of appreciation. The Joint Declaration also signaled that its signatories may consider the Inter-American Court's non-contentious, or advisory, jurisdiction to be non-binding.

More recently, in its written observations submitted in the proceedings leading up to the Inter-American Court's Climate Advisory Opinion, Paraguay made encouraging—albeit ambiguous—remarks, suggesting a potentially evolving and more receptive stance toward the doctrine of conventionality control, stating that:

> *"…[I]t should be noted that when it comes to addressing the challenges posed by the climate emergency, Paraguay is in a very particular situation, as it is a developing country, landlocked and vulnerable to the adverse effects of climate change, despite the country's negligible contribution to it. Despite this,* ***the State's commitment to the defense, promotion, and protection of human rights, as well as respect for its obligations in all matters arising from the various treaties and conventions to which Paraguay is a party is firm, and therefore, at the national level, the Government promotes constant actions to give effect to them****"* (internal citations omitted and emphasis added).[169]

In general, Paraguay's present stance on conventionality control and the bindingness of Inter-American Court advisory opinions merits further study and consult of in-country experts, as it proved especially challenging to find secondary sources on this topic.

Peru

Peru was initially receptive to the jurisdiction of the Inter-American Court and adhered to the doctrine of conventionality control. However, it has become increasingly resistant— evidenced by its inconsistent application of conventionality control, a recent trend of retrenchment in its stance on the binding nature of Inter-American Court jurisprudence, and a growing discourse around potential disengagement from the Inter-American Human Rights System altogether.

Under Article 55 of the Peruvian Constitution, treaties are incorporated into national law, although this Article does not specifically mention *international human rights* treaties:

> *"Treaties formalized by the State and in force are part of national law"*[170]

According to the Peruvian Constitution, treaties are incorporated into national law on the same level as legislation:

> *"The following are the constitutional guarantees…The writ of unconstitutionality, which operates against rules with the status of a law: laws, legislative decrees, emergency*

> *decrees, treaties, standing rules of Congress, regional general regulations, and municipal ordinances that infringe upon the Constitution either in form or in substance."*[171]

However, there is a provision within the Peruvian Constitution mandating that rules concerning rights must be "construed" in line with international human rights instruments ratified by Peru:

> *"…rules concerning the rights and freedoms recognized by this Constitution are construed in accordance with the Universal Declaration of Human Rights and the international treaties and agreements regarding those rights that have been ratified by Peru."*[172]

This interpretative approach is reaffirmed in Peru's New Code of Constitutional Procedure, which explicitly references contentious decisions by international human rights courts and reinforces the *pro persona* principle:

> *"The content and scope of the constitutional rights protected by the procedures regulated in this code shall be interpreted in accordance with the Universal Declaration of Human Rights, the human rights treaties to which Peru is a party, and the judgments adopted by international human rights courts in proceedings to which Peru is a party.*
>
> *In the event of incompatibility between a conventional norm and a constitutional norm, or incompatibility between decisions of international courts and the Constitutional Court, judges shall give preference to the norm or decision that most favors the person and their human rights."*[173]

In the late 1990s and early 2000s, Peru's courts implicitly followed conventionality control, even before the doctrine was formally recognized.[174] Peru's Constitutional Court effectively practiced conventionality control when it issued decisions in cases related to the death penalty, amnesty laws, and access to judicial remedies in matters concerning elections, referendums, and other popular votes.[175]

In 2007, the Constitutional Tribunal explicitly affirmed that Inter-American Court advisory opinions were binding, citing their incorporation into national law through Article 55 of the Peruvian Constitution:

> "*…when the judgments of the Inter-American Court of Human Rights relating to the violation of Article 25 of the Convention—in particular, that issued in the Yatama v. Nicaragua case—and its* ***advisory opinions on the same matter are binding on the Peruvian State****, and as part of the national legal system, according to Article 55 of the Political Constitution of Peru, disregarding such international resolutions could constitute a constitutional violation or, worse still, a crime in the exercise of public office, in accordance with Article 99 of the Fundamental Law"* (emphasis added).[176]

However, starting in the late 2000s, the Constitutional Court began issuing decisions that were not aligned with standards expressed by the Inter-American Court, beginning with its rulings in military justice cases.[177] This marked the onset of an inconsistent and issue-specific application of conventionality control—a trend that has persisted in subsequent years. A recent example of this inconsistency is reflected in Peru's handling of same sex marriage:

In 2019, in a victory for same-sex marriage, the Superior Court of Justice of Lima explicitly invoked the doctrine of conventionality control and affirmed the binding nature of Inter-American Court advisory opinions, including OC 24/17 on gender identity, equality and non-discrimination in same-sex relationships, when it recognized and upheld the validity of a lesbian couple's marriage performed abroad:

> *"It should also be borne in mind that, in the theory of conventionality control, developed by the Inter-American Court itself and accepted at the national level, that it is not only the treaty that is binding, that is, not only the founding charter, but also the decisions or reasoning of this Court, handed down through its Resolutions, and also the Advisory Opinions, even those in which the State has not been a party."*[178]

However, just one year later in 2020, the Peruvian Constitutional Tribunal ruled that advisory opinions are not binding. In a four-to-three decision, the Court declined to recognize a gay couple's marriage, upholding the decision of the National Identity and Civil Registry, which had declined to recognize the marriage.[179] Although three of the judges within the majority expressly mentioned that advisory opinions, specifically OC-24/17, should not be binding,[180] the remainder of the majority expressed similar views as the dissent seen in Ecuador, relying on textualist interpretations of the Peruvian Constitution and OC 24/17 to argue for their incompatibility and lack of binding force. Among the dissenting judges, two did not assert that advisory opinions are binding per se, but emphasized that they must be reviewed, and that their parameters must be "taken seriously" by judges:

> *"…advisory opinions are pronouncements that must be reviewed by justice operators, since they allow the various national actors to adopt all measures they deem appropriate to avoid a possible case in which the international responsibility of the State arises. On the other hand, as stated above, insofar as national authorities must adopt all measures aimed at ensuring, to the extent possible, the proper fulfillment of the international obligations assumed by the State, it is essential that the criteria set forth in advisory opinions not be mere programmatic aspirations, but rather parameters that are taken seriously by judicial officials."*[181]

The third dissenting judge went further, affirming Inter-American Court advisory opinions as binding:

> *"…the nature of an advisory opinion of the Court must be clearly understood: it is not a recommendation, but a binding pronouncement for all States that recognize the jurisdiction of the Court, made in response to a question asked in the abstract (hence the name "advisory opinion", to distinguish it from the Court's contentious jurisdiction, which is based on the resolution of specific disputes). It concerns how a rule or a present or future interpretation of a rule should be interpreted by one of the bodies obliged to follow the Court's interpretation. Given an Advisory Opinion, the ruling is immediately enforceable, as demonstrated by the actions of the Supreme Court of Costa Rica and even the Constitutional Court of Ecuador, a State that did not request the Advisory Opinion."*[182]

2023 marked further Peruvian resistance to the Inter-American Court's jurisdiction, wherein Peru's Constitutional Court openly defied the Inter-American Court by refusing to comply with a resolution ordering that former president Alberto Fujimori remain imprisoned for human rights violations he committed.[183] Instead, the Constitutional Court issued a judicial writ reinstating a 2017 presidential pardon, leading to Fujimori's release in December 2023.[184]

There has been even more evidence of resistance recently: In June 2025, the former President of the Council of Ministers, Eduardo Arana Ysa, expressed interest in evaluating whether Peru should withdraw from the Inter-American Human Rights System all together, and legislation was proposed to that effect.[185] Moreover, in July 2025, the Peruvian Congress passed a new amnesty law that provided amnesty for human rights violations committed during the internal conflict from 1980 to 2000—directly contravening established Inter-American precedent.[186] Further, in August 2025, former President of Peru, Dina Boluarte, made concerning statements in a speech she delivered at a rally honoring the armed forces and police, in which she said, "*we are not going to allow international organisms to interfere in our sovereign decisions…we will not accept attempts to undermine the independence of our state institutions with calls not to apply legislation emanating from a free nation, irresponsible calls suspiciously disseminated by entities with an interest in destroying our democratic system*."[187] The sentiments in Boluarte's speech were potentially made in response to a statement issued by the President of the Inter-American Court, Nancy Hernández López, ordering Peru to "*immediately suspend the processing* [of the amnesty bill][.]"[188] Both Eduardo Arana Ysa and Dina Boluarte have subsequently been removed from their positions. José Jerí—also allegedly in support of Peru withdrawing from the Inter-American system[189]—temporarily assumed Boluarte's position, however Jerí was later removed in February 2026. On June 7, 2026 a runoff election was held; while it was a tight race between right-wing candidate, Keiko Fujimori, and leftist candidate, Roberto Sanchez,[190] Fujimori narrowly defeated Sanchez, and took office as President on July 28, 2026.[191] Like José Jerí, Fujimori has also expressed a desire for Peru to withdraw from the Inter-American Court of Human Rights.[192]

3. Conclusion

This memorandum highlights a broad trend across the countries studied: an often-fluctuating reception of and engagement with the doctrine of conventionality control, accompanied by a fluid stance on the binding authority of the Inter-American Court's jurisprudence, including its advisory opinions. This variability is likely context-and issue-specific, influenced by factors such as the country's prevailing political posture[193] and the composition of its domestic courts. While these dynamics undoubtedly add layers of complexity to the overall analysis, they also highlight promising precedents that can serve as valuable reference points in future litigation.

The context of the Inter-American Court's Climate Advisory Opinion is also promising: For the first time, three of the world's leading judicial bodies have converged in affirming that States indeed have legal obligations in respect of climate change. This judicial unison may prove particularly key in influencing the countries discussed to engage in conventionality control in response to the Inter-American Court's Opinion; whether these and other countries across the Latin American and Caribbean region will do so, however, remains unsettled. For a continuing list of

domestic courts that are citing the Inter-American Court Climate Advisory Opinion, *see* *Judicial Responses to the Advisory Opinion from the Inter-American Court of Human Rights on the Climate Emergency*, Institute for Governance & Sustainable Development (Last update: July 27, 2026).

Annex I. Further Reading

- Burgorgue-Larsen L. (2018) *Conventionality Control: Inter-American Court of Human Rights (IACtHR)*, Max Planck Encyclopedias of International Law.
    - This resource provides a thorough discussion of the origins of conventionality control and the surrounding scholarly discourse, including a detailed account of its criticisms. [This resource was also referenced by the International Law Commission in its Seventy-fifth session report. *See* ILC report at 47.]
- Contesse J. (2017) *The international authority of the Inter-American Court of Human Rights: a critique of the conventionality control doctrine*, THE INT'L J. OF HUMAN RIGHTS, 22 (9): 1168–1991 (but in publicly accessible copy 1–33).
    - This critique of the doctrine offers insight into the strategies and arguments used to resist or reject the doctrine.
- Carozza P. G. & González P. (2017) *The final word? Constitutional dialogue and the Inter-American Court of Human Rights: A reply to Jorge Contesse*, INT'L J. OF CONST'L LAW, 15 (2): 436–442.
    - This rebuttal to Contesse's critique offers valuable insight into the strategies and reasoning that can be employed to counter arguments against the doctrine. [This resource was also referenced by the International Law Commission in its Seventy-fifth session report. *See* ILC report at 47].
- Inter-American Commission on Human Rights (2021) COMPENDIUM ON THE OBLIGATION OF STATES TO ADAPT THEIR DOMESTIC LEGISLATION TO THE INTER-AMERICAN STANDARDS OF HUMAN RIGHTS, 1–80.
    - According to the Inter-American Commission on Human Rights: "With this compendium, the Commission intends to provide a tool for strengthening the capacities of state actors at all levels and civil society both at the local level and at the level of the inter-American System to disseminate the standards and recommendations of the IACHR regarding the obligation of States to adapt their domestic legislation and thus contribute to the incorporation of inter-American human rights law in the regulations, practices and public policies of the region, thus complying with international human rights commitments."
- Falcón G. C. (2022) *Standard of Review: Inter-American Court of Human Rights (IACtHR)*, Max Planck Encyclopedias of International Law.
    - For a comprehensive discussion of the Inter-American Court of Human Rights' standard of review refer to this resource.
- Gonzalez-Ocantos E. & Sandholtz W. (2021) *Constructing a regional human rights legal order: The Inter- American Court, national courts, and judicial dialogue, 1988–2014*, INT'L J. OF CONST'L LAW, 19 (5): 1559-1596.
    - This article examines the citation practices of thirteen national courts in referencing Inter-American Court case law—and vice versa—and highlights the importance of judicial dialogue between the Inter-American Court and national court judges as a key mechanism for "constructing a regional human rights legal order."

References

[1] *See* Advisory Opinion OC-29/22, Inter-Am. Ct. H.R. (30 May 2022), ¶ 30 ("The Court deems it necessary to reiterate that, under international law, when a State is a party to an international treaty, such as the American Convention, that treaty obligates all State institutions, including the judicial and legislative branches to the extent that a violation by a part of any of those bodies creates international responsibility for that State. Thus, the various State institutions must carry out the corresponding control of conventionality for the protection of all human rights, also on the basis of the considerations of the Court in the exercise of its non-contentious or advisory jurisdiction, which undeniably shares with its contentious jurisdiction the purpose of the inter- American system of human rights, which is 'the protection of the fundamental rights of the human being.'") (internal citations omitted); *see also* *Fernández Prieto and Tumbeiro v. Argentina*, Inter-Am. Ct. H.R., Merits and Reparations (1 September 2020), ¶ 99 ("The Court recalls that Article 2 of the Convention establishes the general duty of the States Parties to adapt their domestic laws to its provisions in order to ensure the rights that it recognizes. This duty involves the adoption of two types of measures. On the one hand, the elimination of laws and practices of any kind that entail a violation of the guarantees established in the Convention; on the other, the enactment of laws and the implementation of practices leading to the effective observance of the said guarantees. It is precisely with regard to the adoption of these measures that the Court has recognized that all the authorities of a State Party to the Convention have the obligation to exercise a control of conventionality, so that the application and interpretation of domestic law is consistent with the State's international obligations in the area of human rights.") (internal citations omitted) *and* Advisory Opinion OC-24/17, Inter-Am. Ct. H.R. (24 November 2017), ¶ 28 ("Given the broad scope of the Court's advisory function, which, as previously indicated, encompasses not only the States Parties to the American Convention, everything indicated in this Advisory Opinion also has legal relevance for all OAS Member States, as well as for the organs of the OAS whose sphere of competence relates to the matter that is the subject of this request.") (internal citations omitted) *and* Advisory Opinion OC-32/25, Inter-Am. Ct. H.R. (29 May 2025), ¶ 560 ("Finally, the Court recalls that, when deciding litigations and legal issues that may arise in the context of the climate emergency, the competent authorities should conduct due control of conventionality based on the standards developed by the Court in its case law and, in particular in this Advisory Opinion, to ensure adequate protection of human rights. These standards also result from the American Declaration, the OAS Charter, and the Inter-American Democratic Charter and are, therefore, applicable in all member countries of the inter-American system.").

[2] *See id.*

[3] *See* Bertelsen S. (2021) *A margin for the margin of appreciation: Deference in the Inter-American Court of Human Rights*, INT'L J. OF CONST'L L., 19 (3): 887–913, 888 ("Even though the IACtHR frequently borrows doctrines from the ECtHR, it has been cautious when referring to the margin of appreciation. Former judges of the IACtHR reject the doc-trine based on such different factors as the type of violations that the inter-American system deals with, the weaker levels of democracy in the region, and the aim for uniformity.") (internal citations omitted).

[4] *See* Vila M. I. (2022) *The conventionality control and the Fontevecchia case: Is the margin of appreciation the panacea?*, REVUS, 46: ¶¶ 1–36, 14 ("In recent years, however, the role of the Inter-American System bodies and, in particular, the I/A Court's traditional reluctance to adopt the margin of appreciation doctrine are under pressure. In April 2019, the governments of Argentina, Brazil, Chile, Colombia and Paraguay issued a significant Joint Declaration to the Inter-American system of Human Rights… These statements react to an interventionist Court whose maximalist approach has been subject to criticism.").

[5] *See* Argentina, Brazil, Chile, Colombia & Paraguay (23 April 2019) *Joint Declaration on the Inter-American Human Rights* System *retrieved from* Argentina (2021) *Declaración sobre el Sistema Interamericano de Derechos*

Humanos, FORUM, (7): 115–17; *see also* Ministry of Foreign Affairs, Chile (23 April 2019) *Ministry of Justice and Human Rights on the Inter-American human rights system*, Press Release.

[6] *See* Mac-Gregor E. F. (2015) *Conventionality Control the New Doctrine of the Inter-American Court of Human Rights*, AJIL UNBOUND, 109: 93–99, 93 ("One of the most recent and most effective efforts of the Inter-American Court of Human Rights (Inter-American Court) to increase the level of compliance with the American Convention on Human Rights (ACHR) has been the creation of the 'conventionality control' doctrine. The Inter-American Court describes this as a 'mechanism for the application of International Law,' mainly 'International Human Rights Law, and specifically the American Convention and its sources, including this Court's jurisprudence.'") *citing Gelman v. Uruguay*, Inter-Am. Ct. H.R., Order of the Court (20 March 2013), ¶ 65; *see also* Dulitzky A. E. (2015) *An Inter-American Constitutional Court? The Invention of the Conventionality Control by the Inter-American Court of Human Rights*, TEX. INT'L L. J., 50 (1): 45–93, 55 ("Some but not all of those problems could be attributed to the lack of use of the American Convention by domestic courts.").

[7] *See* Dunkelberg A. G. (2023) *The Inter-American Human Rights System*, Göttingen Handbook on Latin American Public Law and Criminal Justice, 709–734, 713 ("The conventionality control doctrine was developed by the IACtHR in the context of one of its most important overarching themes: the Inter-Ameri- can law of anti-impunity, related to the process of democratization that Latin American nations underwent between 1970–1990.") (**Note:** Refer to this source for discussion of the "Barrios Altos standard" which was developed by the Inter-American Court, and effectively annulled certain domestic amnesty laws: *"Owing to the manifest incompatibility of self-amnesty laws and the American Convention on Human Rights, the said laws lack legal effect and may not continue to obstruct the investigation of the grounds on which this case is based or the identification and punishment of those responsible, nor can they have the same or similar impact with regard to other cases that have occurred in Peru, where the rights established in the American Convention have been violated."* *Barrios Altos v. Peru*, Inter-Am. Ct. H.R., Judgment, Merits (14 March 2001), ¶ 44).

[8] *See id.* ("By the 1990s, so-called 'amnesty laws' were a common feature of Latin America's process of democratic transition. While some features varied from country to country, generally these laws barred the prosecution of human rights violators as a precondition for either peace (as was predominantly the case in Central America) or democracy (the predominant goal in South America). These laws prevented victims and their families from obtaining a legal remedy for past gross human rights violations, including torture and forced disappearance, making them clear targets for strategic human rights litigation at the IACtHR.").

[9] *See* Contesse J. (2017) *The international authority of the Inter-American Court of Human Rights: a critique of the conventionality control doctrine*, THE INT'L J. OF HUMAN RIGHTS, 22 (9): 1168–1991 (but in publicly accessible copy 1–33), 9 ("Sergio García Ramírez, a Mexican jurist and a former judge on and president of the Inter-American Court of Human Rights, is traditionally credited for the creation of the doctrine.")

[10] *See* Mac-Gregor, *supra* note 6 at 94 *and Myrna Mack Chang v. Guatemala*, Inter-Am. Ct. H.R., Merits, Reparations, and Costs, Separate Opinion of Judge Sergio García Ramírez (25 November 2003), ¶ 27 (*"For the effects of the American Convention and of the exercise of the contentious jurisdiction of the Inter-American Court, the State is considered integrally, as a whole. Accordingly, responsibility is global, it concerns the State as a whole and cannot be subject to the division of authority established in domestic law. At the international level, it is not possible to divide the State, to bind before the Court only one or some of its organs, to grant them representation of the State in the proceeding – without this representation affecting the whole State – and excluding other organs from this treaty regime of responsibility, leaving their actions outside the "treaty control" that involves the jurisdiction of the international court."*).

[11] *Tibi v. Ecuador,* Inter-Am. Ct. H. R., Preliminary Objections, Merits, Reparations, and Costs, Separate Opinion of Judge Sergio García Ramírez (7 September 2004), ¶ 3 *("In a certain sense, the task of the Court is similar to that of the constitutional courts. The latter examine the challenged acts –decisions with a general scope- in light of the legal*

standards, principles, and values of the basic laws The Inter-American Court, in turn, analyzes the acts that are brought before it in connection with the legal standards, principles, and values of the treaties on which it bases its adjudicatory jurisdiction. In other words, if constitutional courts oversee "constitutionality," the international human rights court decides on the "conventionality" of those acts. By controlling constitutionality, the domestic bodies seek to ensure that activities of the public authorities –and, perhaps, of other social agents- are in accordance with the order that is inherent to the Rule of Law in a democratic society. The inter-American Court, in turn, seeks to ensure that this activity is in accordance with the international order set forth in the convention that founded the inter-American jurisdiction and was accepted by the States Party exercising their sovereignty."); *see also* Burgorgue-Larsen L. (2018) *Conventionality Control: Inter-American Court of Human Rights (IACtHR)*, Max Planck Encyclopedias of International Law, ¶¶ 1–66, ¶ 5 *and* Mac-Gregor *supra* note 6 at 94.

[12] *See* Burgorgue-Larsen *supra* note 11 at ¶ 5; *see also López Álvarez v. Honduras*, Inter-Am.Ct. H. R., Merits, Reparations, and Costs, Separate Opinion of Judge Sergio García Ramírez (1 February 2006), ¶ 30 ("*When analyzing the complexity of the matter, the Court that verified the compatibility between the State's behavior and the stipulations of the Convention –that is, the body that practices the 'control of conventionality'— must explore the circumstances de jure and de facto of the case. It is possible that the judicial analysis may be relatively simple, once the facts regarding which the lawsuit has occurred have been established, but these may be extraordinarily complex and be subject to tests that are difficult, necessarily prolonged, or of complicated, costly, risky or late recollection. The contrary may also occur: relative clarity and simpleness of the facts, in contrast with severe problems in the judicial appreciation or in their classification: different opinions, changes in the case-law, inexact legislation, reasons worthy of consideration in different or dissenting senses."*) *and Vargas-Areco v. Paraguay*, Inter-Am.Ct. H. R., Merits, Reparations, and Costs, Separate Opinion of Judge Sergio García Ramírez (26 September 2006), ¶ 6 ("*The Inter-American Court, which is responsible for performing a 'control of compliance' based on the confrontation of the facts at stake and the provisions of the American Convention, cannot and does not intent –indeed, it never did- to become a new and last resort to hear a controversy originated in the domestic jurisdiction. The idea that the Inter-American Court constitutes a third or fourth instance, and eventually a jurisdiction of last resort, arises from a popular belief that is rooted in reasonable grounds; however, this idea has absolutely no connection with the jurisdiction of the Court, the legal conflict brought before it, the parties to the corresponding proceedings and the nature of international proceedings for the protection of human rights."*).

[13] Mac-Gregor *supra* note 6 at 95 ("The doctrine was formally created by the decision in *Almonacid Arellano et al v. Chile* in 2006.").

[14] *Almonacid Arellano et al. v. Chile*, Inter-Am. Ct. H. R., Preliminary Objections, Merits, Reparations, and Costs, Judgment (Sep. 26, 2006), ¶ 124.

[15] *See Gelman v. Uruguay*, Inter-Am. Ct. H.R., Order of the Court (20 March 2013), ¶ 66 ("But when a state is Party to an international treaty such as the American Convention, all its organs, including judges and other bodies responsible for the administration of justice at all levels, are bound by the treaty, which requires them to ensure that effects of the provisions of the Convention are not impaired by the application of standards contrary to their object and purpose, so that their judicial or administrative decisions do not render total or partial compliance with international obligations illusory. In other words, all state authorities have the obligation to exercise ex officio a 'control of conventionality' between domestic standards and the American Convention, within the framework of their respective spheres of competence and of the corresponding procedural rules. Both the treaty and its interpretation the Inter-American Court, the final arbiter of the American Convention, must be taken into account in this task."); *see also Almonacid Arellano et al. v. Chile*, Preliminary Objections, Merits, Reparations, and Costs, (26 September 2006) ¶ 124 ("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 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.")*; and citing Gomes Lund et al v. Brazil (Guerrilha do Araguaia)*, Preliminary Objections, Merits, Reparations and Costs (24 November 2010) ¶ 176 ("However, when a State is a Party to an international treaty such as the American Convention, all of its organs, including its judges, are also subject to it, wherein they are obligated to ensure that the effects of the provisions of the Convention are not reduced by the application of norms that are contrary to the purpose and end goal and that from the onset lack legal effect. The Judicial Power, in this sense, is internationally obligated to exercise "control of conventionality" ex officio between the domestic norms and the American Convention, evidently in the framework of its respective jurisdiction and the appropriate procedural regulations. In this task, the Judicial Power must take into account not only the treaty, but also the interpretation that the Inter-American Court, as the final interpreter of the American Convention, has given it.").

[16] *See* Burgorgue-Larsen *supra* note 11 at ¶¶ 18-20 ("The *material scope* and *raison d'être* of conventionality control were announced in 2006 by Sergio García Ramírez in his separate opinion on the case of the *Dismissed Congressional Employees*. The then President of the Court took up his pen to clarify two fundamental points. **Regarding the scope of conventionality control he clearly indicated that the Inter-American human rights '*corpus juris*' as a whole should be taken into consideration, not just the ACHR** (*Dismissed Congressional Employees v Peru*, Separate Opinion of Judge García Ramírez, para 2). As to its *raison d'être*, he considered that that new phase in Inter-American litigation proceedings—marked by the increasing use of conventionality control—was linked to the vital importance of making the mechanism's subsidiarity effective so that it is perennial (*Dismissed Congressional Employees v Peru*, Separate Opinion of García Ramírez, para 8): *[I]n keeping with the jurisdictional logic that underpins the Court's establishment and operation, it could not be considered that it would need to hear hundreds or thousands of cases on a single treaty-based issue […], in other words, all the litigations that are ever filed in all the countries, resolving one by one the facts that violate rights, and guaranteeing, also one by one, the specific rights and freedoms. The only reasonable possibility of protection implies that once the 'interpretation and application criteria' have been established, the States will include them in their legal system, through policies, laws and judgments that give transcendence, universality and effectiveness to the rulings of the Court.* Such approaches were visionary as the Court's jurisprudence later integrated them *expressis verbis*. Indeed, these two elements can be found in two rulings of November 2012. First, the *Gudiel Álvarez* ruling put the whole **Inter-American *corpus juris* at the centre of conventionality control, the condition being that the respondent State had ratified specific Inter-American Conventions** (*Gudiel Álvarez v Guatemala*). What was initially a desire of the former President became jurisprudential reality in a case that brought to light the enforced disappearance of 26 people in the darkest years of the armed conflict that plagued Guatemala between 1962 and 1996: *330. In addition, this Court has established in its case law that* ***when a State is a party to international treaties such as the American Convention on Human Rights, the Inter-American Convention on Forced Disappearances, the Inter-American Convention to Prevent and Punish Torture, and the Convention of Belém do Pará, these treaties are binding on all of its organs, including the Judiciary, whose members must ensure that the effects of the provisions of the said treaties are not impaired by the application of laws or interpretations contrary to their object and purpose. Judges and organs related to the administration of justice at any level are obliged to exercise ex officio control of 'conformity' between domestic law and the human rights treaties to which the State is a party;*** *evidently, within their respective spheres of competences and in keeping with the corresponding procedural regulations. In this task, the judges and organs related to the administration of justice, such as the Public Prosecution Service, must take into account not only the American Convention and other inter-American instruments, but also the Inter-American Court's interpretation of them…*" (emphasis added)); *see also* Inter-American Commission on Human Rights (2021) COMPENDIUM ON THE OBLIGATION OF STATES TO ADAPT THEIR DOMESTIC LEGISLATION TO THE INTER-AMERICAN STANDARDS OF HUMAN RIGHTS, 1–80, 25 ("The obligation to adapt domestic legislation must be carried out in accordance with international human rights obligations that are acknowledged in all the inter-American treaties on the subject, i.e. the American Declaration of the Rights and Duties of Man; the American Convention on Human Rights, or Pact of San José; the Protocol related to the Abolition of the Death Penalty; the Additional Protocol to the American Convention, or Protocol of San Salvador, as well as other

human rights treaties that have been adopted within the Organization of American States, such as, among others, the Inter-American Convention to Prevent and Punish Torture; the Inter-American Convention on Forced Disappearance of Persons, and the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, or Convention of Belém do Pará.").

[17] *See* Part Two of this memorandum.

[18] Auz J. (2022) *Human Rights-Based Climate Litigation: A Latin American Cartography*, J. HUM. RTS. & ENV'T, 13(1): 114–136, 122-3.

[19] *Greenpeace International*, Maria Alejandra Serra & Chris Greenberg, Inside a climate justice case at the Inter-American Court of Human Rights, 3 July 2024.

[20] *See generally,* Medici-Colombo G. & Rocha A. (2025) *Chapter 12: The Impact on Domestic Law of Climate Change-Related Advisory Opinions: The Experience of the IACtHR and the ITLOS* *in* THE ROLE OF ADVISORY OPINIONS IN INTERNATIONAL LAW IN THE CONTEXT OF THE CLIMATE CRISIS, Tigre M. A. & Rocha A. (eds.), Brill, 306–25 (Note: When you access the link, click "download pdf" in upper right-hand corner).

[21] Medici-Colombo & Rocha *supra* note 20 at 313-15.

[22] *See* International Law Commission (2024) REPORT OF THE INTERNATIONAL LAW COMMISSION, SEVENTY-FIFTH SESSION, 1–162, 43-47.

[23] *Id.* at 43.

[24] *Id.*

[25] *Id.* at 46-7 ¶¶ 11-12.

[26] *See* Zúñiga N. T. (2024) *Chapter 13: Conventionality control in the Inter-American system of human rights and its reception in the Peruvian legal order* *in* RESEARCH HANDBOOK ON INTERNATIONAL LAW AND DOMESTIC LEGAL SYSTEMS, Aust H. P., Krieger H. & Lange F. (eds.), Edward Elgar Publishing, 245 ("Beyond theoretical or normative proposals on the doctrine or its linkage with the doctrine of the constitutional block, what determines the real impact of the canon or parameters of conventionality (the ACHR, jurisprudence, advisory opinions) is judicial practice. Scholars have also suggested that the application of the conventionality control depends on factors such as formalism, the composition of judicial bodies, and the backlash some states have experienced against the IACtHR.").

[27] *See* Argentina, Brazil, Chile, Colombia & Paraguay *supra* note 5 at 115-7; *see also* Ministry of Foreign Affairs, Chile *supra* note 5.

[28] *See* Argentina, Brazil, Chile, Colombia & Paraguay *supra* note 5 at 116.

[29] *Id.* at 115-6.

[30] *See Amnesty International*, Americas: Inter-American system is crucial for guaranteeing human rights in the region, 24 April 2019 ("'The statement signed by Argentina, Brazil, Colombia, Paraguay and Chile is a major blow for the victims of human rights violations on our continent because it seeks to reduce the independence and autonomy of the organs of the Inter-American system,' said Erika Guevara-Rosas, Americas director at Amnesty International. 'Instead of complying with its resolutions in good faith, the governments of Argentina, Brazil, Colombia, Paraguay and Chile are making another blatant attempt to weaken and shackle the Inter-American system.'"); *see also Front Line Defenders*, Argentina, Brazil, Chile, Colombia and Paraguay seek to undermine the role of the Inter-American Human Rights System, 7 May 2019 ("On 11 April 2019, the governments of Argentina, Brazil, Chile, Colombia and Paraguay

sent a joint communication to the Inter-American Commission on Human Rights, expressing concern over their institutional autonomy in the context of the statements and decisions made by the Commission and Inter-American Court of Human Rights regarding the application of human rights standards. The communication represents an effort towards restricting the role of the Inter-American System, and is particularly concerning in the context of the regional trends of attacks against human rights defenders and growing authoritarianism… Front Line Defenders remains concerned about the attempts at restricting the role of the Inter-American System. Front Line Defenders is further worried that states might use the principle of subsidiarity as a way of shirking their human rights obligations and denying access to justice for victims of human rights violations.").

[31] *See* Falcón G. C. (2022) *Standard of Review: Inter-American Court of Human Rights (IACtHR)*, Max Planck Encyclopedias of International Law at ¶ 75 ("In sum, the institutions of the system have advanced a form of non-deferential review…") and regarding "backlash" *see* ¶¶ 74-5 ("Another interesting development concerning review was the in the case of Órdenes-Guerra et al. v Chile. Despite recognizing that no statute of limitations prevailed when criminally prosecuting those responsible for gross human rights violations during the Pinochet regime, Chilean courts ruled that statutes of limitations imposed by civil law prevented victims from claiming damages against the State. This doctrine had been supported by domestic courts until 2011. Since then, Chilean tribunals progressively changed their approach, awarding recovery for plaintiffs. However, a group of victims whose civil actions were rejected by national courts applied to the system. The IACommHR condemned the Chilean State, and referred the case to the Court, which also condemned the State. The Court did not afford deference to domestic tribunals. It concluded that, under the Convention, and other international soft-law norms, statutes of limitations could not prevent civil law courts from awarding damages to victims. In this respect, the Chilean courts had infringed their duty to disapply legislation inconsistent with the Convention (Órdenes-Guerra et al. v. Chile, 2018, para 90). Finally, the IACtHR not only condemned the State, but it also directly awarded recovery for the 26 victims, which amounted to almost US$ 5 million. These new developments provoked a backlash. Some South American States delivered a formal declaration to former Executive-Secretary of the Commission Pablo Abrao on 11 April 2019. This declaration, which later became public, was signed by Argentina, Brazil, Chile, Colombia, and Paraguay. Even though the signatories of the declaration only addressed the IACommHR in their communication, most of its reflections also applied to the Court by implication. Among other considerations, States insisted on the necessity to reinforce the complementary character of the Inter-American system. According to the five States, this required reassessing the standard under which the institutions of the system scrutinized cases. In general terms, the declaration pointed out that the Commission had to distinguish between cases when resolving what standard of review to apply. In this respect, the States continued, not all cases had to be reviewed under the same strict standards. On the contrary, they concluded that deference should be afforded to them in cases where regional consensus, technical expertise, or democratic legitimacy offered grounds for State action.").

[32] *See* Vila *supra* note 4 at ¶ 14 ("In recent years, however, the role of the Inter-American System bodies and, in particular, the I/A Court's traditional reluctance to adopt the margin of appreciation doctrine are under pressure. In April 2019, the governments of Argentina, Brazil, Chile, Colombia and Paraguay issued a significant Joint Declaration to the Inter-American system of Human Rights… These statements react to an interventionist Court whose maximalist approach has been subject to criticism.").

[33] Bakircioglu O. (2007) *The Application of the Margin of Appreciation Doctrine in Freedom of Expression and Public Morality Cases*, GERMAN LAW JOURNAL, 8(7): 711-733, 711; *see also generally* Falcón *supra* note 31.

[34] *See Santo Domingo Massacre v. Colombia*, Inter-Am. Ct. H.R., Preliminary Objections, Merits and Reparations (30 November 2012).

[35] Inter-American Commission on Human Rights (2021) COMPENDIUM ON THE OBLIGATION OF STATES TO ADAPT THEIR DOMESTIC LEGISLATION TO THE INTER-AMERICAN STANDARDS OF HUMAN RIGHTS, 1–80, 17.

[36] *See* Falcón *supra* note 31 at ¶ 75 ("The Commission's reply came by Twitter on 23 April 2019. The Commission stated that 'it appreciated the constructive position of States' and promised to examine the content of the declaration during the next period of sessions.") **(Note:** This source also mentioned that "The Commission invited the States to participate in a dialogue that took place during 2019 and 2020," but more could not be found after an initial search on this dialogue.).

[37] *See* Organization of American States (4 October 2019) *IACHR Completes 173rd Period of Sessions*, Press Release.

[38] Binder C. (2024) Part II.11 *The Inter-American Human Rights System's/ICCAL's Impact on Transitions to Democracy from the Perspective of Transitional Justice in* THE IMPACT OF THE INTER-AMERICAN HUMAN RIGHTS SYSTEM: TRANSFORMATIONS ON THE GROUND, von Bogdandy A., Piovesan F., Mac-Gregor E. F., Antoniazzi M. M, Cunha Cruz J. C. D. (eds.), Oxford Academic, 421 ("The Inter- American Court's doctrine of *control de convencionalidad* was explicitly accepted by the Argentine Supreme Court.") *citing* Argentine Supreme Court cases *Mazzeo Julio Lilo y otros*, Judgment of July 13, 2007, in Jurisprudencia Argentina 2007- III- 573, ¶21 *and Recurso de hecho deducido por la defensa de Julio Héctor Simón en la causa Simon, Julio Hector y otros s/ privación ilegitima de la libertad, etc.*, June 14, 2005.

[39] *See* Zúñiga, *supra* note 26 at 245 ("Early on, Argentina embraced the conventionality control doctrine through various rulings, in particular in cases concerning the invalidity of amnesty laws and the prosecution of perpetrators of human rights violations during the Argentinian dictatorship.").

[40] *See* Burgorgue-Larsen *supra* note 11 at ¶ 42 ("[Referring to Argentina] After being one of the most celebrated countries for its open approach to international human rights law and Inter-American Human rights case law, the *Fontevecchia* ruling changed everything (3 February 2017, Supreme Court of Argentina).").

[41] República Argentina (1853 (reinst. 1983, rev. 1994) THE CONSTITUTION OF THE REPUBLIC OF ARGENTINA, Art. 75(22) ("To approve or reject treaties concluded with other nations and international organizations, and concordats with the Holy See. Treaties and concordats have a higher hierarchy than laws. 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 Woman; 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 no 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 House. In order to attain constitutional hierarchy, the other treaties and conventions on human rights shall require the vote of two-thirds of all the members of each House, after their approval by Congress.").

[42] *See* Grote R. (2024) *Part I.4 Current Issues and Common Challenges for the Protection of Human Rights in Europe, the Americas, and Africa in* THE IMPACT OF THE INTER-AMERICAN HUMAN RIGHTS SYSTEM: TRANSFORMATIONS ON THE GROUND, von Bogdandy A., Piovesan F., Mac-Gregor E. F., Antoniazzi M. M, Cunha Cruz J. C. D. (eds.), Oxford Academic, 95 ("In 2005, the Argentine Supreme Court ruled that the constitutional rank that Article 75 of the national Constitution accords to international human rights treaties not only applies to the provisions of the ACHR but also to the decisions of the IACtHR, which determine the meaning and scope of these provisions regardless of whether Argentina had been a party to the relevant case or not."); *see also Caso Simon*, Suprema Corte de la Nación Argentina (2005).

[43] *See* Burgorgue-Larsen *supra* note 11 at ¶ 34 ("Before the inception of conventionality control in 2006 by the IACtHR, the Supreme Court of Justice of Argentina (Espósito Miguel Ángel, Supreme Court of Argentina, 23

December 2004; Simon, Julió Hector and others, Supreme Court of Argentina, 14 June 2005; L Pittier, 2016, 311–45; A Santiago, 2017, 371–89) and its counterparts in Peru (Santiago Martin Rivas, Constitutional Court of Peru, 29 Nov 2005, Case No 4587-2004-AA/TC; JM Rivas, 2016, 621–766), had already complied fully with Inter-American standards regarding amnesty laws, implementing rulings as well as taking into account Inter-American standards.").

[44] Arévalo-Ramírez W. & Siri A. R. (2023) *Compliance with Advisory Opinions in the Inter-American Human Rights System*, AJIL UNBOUND 117: 298-302, 301 *referencing* *Miguel Angel Ekmekdjian v. Gerardo Sofovich et. al.*, Argentina Supreme Court (7 July 1992) *and* *Enforceability of the Right to Reply or Correction (Arts. 14(1), 1(1) and 2 American Convention on Human Rights)*, Inter-Am. Ct. H.R., Advisory Opinion OC-7/85 No. 7 (29 August 1986) ("The judgment of Argentinian Supreme Court in the *Ekmekdjian v. Sofovich* case held that the right to reply or correction (which was not regulated in Argentine law) had to be recognized and enforced by domestic law and tribunals, by applying Advisory opinion No. 7 on enforceability of the right to reply or correction." (internal citation omitted)).

[45] *See* Binder *supra* note 38 at 421 ("The case of Argentina demonstrates that, in States that are not party to a case, the reception of the Inter- American Court's judgments is generally good and the Court's impact on transitions to democracy are considerable, from a Transitional Justice perspective. The Inter- American Court's doctrine of *control de convencionalidad* was explicitly accepted by the Argentine Supreme Court. For example, the Argentine Supreme Court relied extensively on the Barrios Altos decision of the Inter- American Court when stating that Argentina's amnesty laws (*Punto Final and Obediencia Debida*) were unconstitutional.") (internal citations omitted); *see also Recurso de hecho deducido por la defensa de Julio Héctor Simón en la causa Simon, Julio Hector y otros s/ privación ilegitima de la libertad, etc.*, June 14, 2005 (Binder: "the Argentine Supreme Court relied extensively on the Barrios Altos decision of the IACtHR when stating that Argentina's amnesty laws (Punto Final and Obediencia Debida) were unconstitutional.").

[45] *See* Binder *supra* note 38 at 421 ("For example, the Argentine Supreme Court relied extensively on the Barrios Altos decision of the Inter- American Court when stating that Argentina's amnesty laws (*Punto Final and Obediencia Debida)* were unconstitutional.").

[46] *See id.* ("The Argentine Supreme Court drew on the Inter- American Court's reasoning especially when finding that the Argentine amnesty laws had the same deficiencies as the Peruvian ones: being "self- amnesties," ad hoc, and intended to prevent the prosecution of grave human rights violations.") *referencing* Rodríguez *Pereyra v. Ejército* Nacional, Argentina Supreme Court (27 November 2012), ¶ 24 *and* *Mazzeo Julio Lilo y otros*,, Argentina Supreme Court, Judgment (13 July 2007).

[47] Clérico L. & Novelli C. (2021) *Chapter 12: Argentina: strong linkage between IHRL and domestic law in* RESEARCH HANDBOOK ON COMPLIANCE IN INTERNATIONAL HUMAN RIGHTS, Grote R., Antoniazzi M. M., & Paris D. (eds.), Edward Elgar Publishing, 269.

[48] *See* Orunesu C. (2020) *Conventionality control and international judicial supremacy*, REVUS, 20: ¶¶ 1–45, ¶ 28 ("As indicated above, Argentina for many years embraced through different rulings, and practically without reserve, the conventionality control doctrine elaborated by the Inter-American Court."); *see also* *Mazzeo Julio Lilo y otros*,, Argentina Supreme Court, Judgment, Recurso de casación e inconstitucionalidad. M. 2333. XLII. y otros, (13 July 2007) §20 ("20) That the primacy of treaties over laws had already been upheld by this Court in the Ekmekdjian case (Decisions: 315:1492), in which it held that the interpretation of the American Convention on Human Rights must be guided by the jurisprudence of the Inter-American Court of Human Rights. This is an unavoidable guideline for interpretation by the Argentine constitutional authorities within their sphere of competence and, consequently, also for the Supreme Court of Justice of the Nation, for the purpose of safeguarding the obligations assumed by the Argentine State in the inter-American system for the protection of human rights." [Translated using DeepL]).

[49] *See* Fontevecchia and D'Amico v. Argentina, Inter-Am. Ct. H.R., Merits, Reparations, and Costs, Judgment (29 November 2011); *see also* Grote R. *supra* note 45 at 95.

[50] Orunesu *supra* note 48 at fn. 30 ("In terms of reparations, the Inter-American Court also ruled that the decision was per se a form of reparation, that the State should carry out the publications set forth in the Judgment on Merits, Reparations and Costs, in accordance with the provisions of paragraph 108 thereof, and that it should provide the amounts referred to in paragraphs 105, 128 and 129 of the Judgment within a period of one year counted from legal notice.").

[51] *See* Fontevecchia and D'Amico v. Argentina, Inter-Am. Ct. H.R., Merits, Reparations, and Costs, Judgment (29 November 2011); *see also* Orunesu supra note 46 at ¶ 29 ("For this reason, it ordered, among other measures, that the Argentine State *"must set aside the civil sentence imposed on Mr. Jorge Fontevecchia and Mr. Hector D'Amico, as well as all of its consequences"*).

[52] *See* Orunesu *supra* note 48 ¶ 29 *referencing* "Ministerio de Relaciones Exteriores y Culto s/informe sentencia dictada en el caso '*Fontevecchia y D'Amico vs. Argentina'* por la Corte Interamericana de Derechos Humanos", (majority vote).

[53] *See id.* at ¶ 30 *citing* "Ministerio de Relaciones Exteriores y Culto s/informe sentencia dictada en el caso *'Fontevecchia y D'Amico vs. Argentina'* por la Corte Interamericana de Derechos Humanos", (majority vote).

[54] *See id.* at ¶ 30.

[55] *Id.* at ¶ 30 *quoting* CSJN, "Ministerio de Relaciones Exteriores y Culto s/informe sentencia dictada en el caso 'Fontevecchia y D'Amico vs. Argentina' por la Corte Interamericana de Derechos Humanos", Fallos 340: 47, majority vote.

[56] Fontevecchia and D'Amico v. Argentina, Inter-Am. Ct. H.R., Monitoring Compliance with Judgement, Order (18 October 2017) ¶ 14 *as quoted in* Orunesu *supra* note 48 at ¶ 31.

[57] Fontevecchia and D'Amico v. Argentina, Inter-Am. Ct. H.R., Monitoring Compliance with Judgement, Order (18 October 2017) ¶¶ 12-13 (internal citations omitted) [translated using DeepL].

[58] *See* Orunesu *supra* note 48 at ¶ 32 ("However, the Inter-American Court recognized the necessity of clarifying the expression 'to cease the effects' used in its decision, and said that in order to comply with it, the State did not need to 'revoke' such rulings. Furthermore, the Inter-American Court added that Argentina could adopt some other type of legal act, different from the review of the sentence, such as the elimination of its publication from the web pages of the Supreme Court of Justice and Judicial Information Center, or that its publication be maintained but some type of annotation be made indicating that this judgment was declared in violation of the American Convention by the Inter-American Court.") *summarizing* Fontevecchia and D'Amico v. Argentina, Inter-Am. Ct. H.R., Monitoring Compliance with Judgement, Order (18 October 2017).

[59] Fontevecchia and D'Amico v. Argentina, Inter-Am. Ct. H.R., Monitoring Compliance with Judgement, Order (18 October 2017) at ¶ 21 (internal citations omitted) [translated using DeepL].

[60] Orunesu *supra* note 48 at ¶ 33 *citing* Resolution 4015/17, 5/12/2017.

[61] *See* Clérico & Novelli *supra* note 47 at 270 ("Subsequent pronouncements of the Supreme Court show that *Fontevecchia* (2017) remains an isolated case.").

[62] *See* Orunesu *supra* note 48 at ¶ 28 ("As indicated above, Argentina for many years embraced through different rulings, and practically without reserve, the conventionality control doctrine elaborated by the Inter-American Court.

However in 2017, in an unexpected decision that position seems to have changed."); *see also* Burgorgue-Larsen *supra* note 11 at ¶ 42 ("The most striking example of critical evolution over time is that of Argentina. After being one of the most celebrated countries for its open approach to international human rights law and Inter-American Human rights case law, the *Fontevecchia* ruling changed everything (3 February 2017, Supreme Court of Argentina). The apex Court of Argentina refused to implement the Fontevecchia y D'Amico decision (IACtHR, 2011). The reasons? Macri's new neoliberal government—for which the human rights agenda is not a priority—and the appointment of conservative members (Carlos Rosenkrantz and Horacio Rosatti) to the Supreme Court (Rossi, 2017, 296–304). Many domestic → non-governmental organizations ('NGOs') and numerous members of the legal academy strongly criticized this change (Abramovich, 2017, 85–98; → Human Rights, Role of Non-Governmental Organizations) but, until now, the Supreme Court is still developing a nationalistic approach to international and Inter-American case law ('Muiña Case', Supreme Court of Argentina, 3 May 2017).") *and* Clérico L. & Novelli *supra* note 47 at 270 ("Some scholars sustain that the new com- position of the tribunal produced an ideological shift at the Court. Others cited policy-based reasons. Accepting immediate application of IHRL jurisprudence might lead in some cases to obligations that prove difficult to fulfill in times of austerity measures.") *citing in part* CESCR Committee 'Concluding observation on the fourth periodic report of Argentina' (12 October 2018) E/C.12/ARG/CO/4, ¶ 5 (expressing the concern 'that the levels of effective protection of the (ESCR) rights enshrined in the Covenant, in particular disadvantaged individuals and groups, have been reduced as a result of inflation and austerity measures').

[63] *See* *Gorigoitía v. Argentina*, Inter-Am. Ct. H.R., Preliminary Objection, Merits, Reparations and Costs, Judgment (2 September 2019).

[64] Medici-Colombo & Rocha *supra* note 20 at 313 *citing* *Mazzeo Julio Lilo y otros*,, Argentina Supreme Court, Judgment, Recurso de casación e inconstitucionalidad. M. 2333. XLII. y otros, (13 July 2007), §20.

[65] Daly T. G. (2017) *Brazilian 'Supremocracy' and the Inter-American Court of Human Rights: Unpicking an Unclear Relationship* *in* LAW AND POLICY IN LATIN AMERICA, Fortes P., Boratti L., Palacios Lleras A., Daly T. G. (eds.), Palgrave Macmillan, 6 ("The enormore and ambitious 1988 Constitution, with its 'open texture, programmatic norms and indeterminate provisions' set the scene for the judicialisation of Brazilian politics.").

[66] *Id.* at 10.

[67] *See id.* ("Moreover, despite significant progress in the last 16 years, and Brazil's 'increasingly intense'" participation in the Inter-American System, domestic 'conventionality control' by public officials and judicial actors, under which they themselves ensure that state action is compatible with the ACHR, remains absent.").

[68] Burgorgue-Larsen *supra* note 11 at ¶ 37 ("In Brazil, there are both legal and sociological aspects which explain the refusal of the Supreme Court to accept conventionality control: the Constitution is not as open to international human rights law as in other countries and the legal culture of the Supreme Court's members is quite conservative (de Carvalho Ramos, 2016, 11–32; Caletti, 2016, 189–214).").

[69] Piovesan F. & Cortez de Cunha Cruz J. (2021) *Chapter 13: A multi-level process: compliance with international human rights law in Brazil in* RESEARCH HANDBOOK ON COMPLIANCE IN INTERNATIONAL HUMAN RIGHTS, Grote R., Antoniazzi M. M., & Paris D. (eds.), Edward Elgar Publishing, 280 ("Decisions of the IACtHR against Brazil are binding upon the Brazilian State. Nevertheless, although legislative bills have attempted to change this situation, currently there is no domestic legislation making them enforceable before national courts. Therefore, the implementation of measures required by these decisions (as well as by recommendations from the Commission and other international human rights mechanisms) has been highly dependent on the agents within the justice system involved with each case. Consequently, judges and public prosecutors hold a decisive influence on whether each decision will be implemented or not. In general, they tend to apply the *supra-legality* standard discussed in section 2, according to which inter- national human rights law has higher status than all non-constitutional norms.").

[70] *British Institute of International and Comparative Law,* Gabriel Wedy & Patricia Iglecia, The Brazilian Supreme Court and the Climate Fund Case, 11 December 2024 (**Note:** "Regarding this matter, it is important to clarify that the Supreme Court, when interpreting Article 5, paragraph 2, of the 1988 Federal Constitution, in its judgment in *Extraordinary Appeal 466,343* in 2008, consolidated the understanding that international human rights treaties ratified by Brazil—such as, for example, the American Convention on Human Rights (1969), the San Salvador Protocol (1988), and the treaties of the UN global system—possess supra-legal normative status.").

[71] Federative Republic of Brazil (19 December 2023), Written Observations of the Federative Republic of Brazil at ¶ 117.

[72] *See* Dulitzky *supra* note 6 at 69 ("For instance, in *Gomes Lund v. Brazil*, a case challenging the validity of the Brazilian amnesty law, the Brazilian Supreme Court did consider the arguments brought against the amnesty law, including those arguing its incompatibility with international law and Inter-American case law. The Brazilian court decided that the Inter-American precedents were not applicable, as it understood that the Brazilian amnesty law was different from the other cases decided by the Court. Nevertheless, the Inter-American Court stated that the Brazilian Supreme Court did not exercise control of conventionality. **It appears that, for the Court, the only valid conventionality control is the one that coincides with its own decisions. In other words, a domestic judicial interpretation of the Convention differing from the Court's previous decisions is not an acceptable conventionality control**." (internal citations omitted) (emphasis added)) *citing* *Gomes Lund et al v. Brazil*, Inter-Am.Ct.H.R., Preliminary Objections, Merits, Reparations and Costs, Judgment (24 November 2010), ¶ 177.

[73] *See* Dunkelberg *supra* note 7 at 727 *citing Case No. 0500068–73.2018.4.02.510* by 2nd Regional Federal Tribunal (TRF2) (But note: status of appeal) ("One significant change in the status quo happened in 2019, when the 2nd Regional Federal Tribunal (TRF2), based in Rio de Janeiro, decided Case No. 0500068–73.2018.4.02.5106, against Antônio Waneir Pinheiro Lima, a retired army sergeant accused of raping and torturing Inês Etienne Romeu, the sole survivor of a clandestine torture centre known as the 'House of Death'. In deciding the case, the TRF2 made specific reference to the conventionality control doctrine, stating that 'the conceptual differences between both institutions allow us to conclude that the constitutionality of a rule does not necessarily impact on its conventionality.' In fact, the judge noted that 'it is beyond question that the [2010 STF] judgment (…) did not exhaust and could not exhaust the discussion regarding the amnesty law's enforcement, in particular, because of Brazil's condemnation by the Inter-American Court of Human Rights in the following years' However, at the time of writing, this decision remains subject to appeal before the STF where it is unlikely to succeed.").

[74] Daly *supra* note 65 at 6.

[75] Medici-Colombo & Rocha *supra* note 20 at 313-15.

[76] *See* Mission of Brazil to the UN (24 October 2024) *Brazil Submission on Agenda Item 79 Cluster II: International Law Commission Report submitted to UN General Assembly Sixth Committee*, 1–9, at 7.

[77] *See* *Núcleo Amigos da Terra Brasil et al. v. União et al.*, Public Civil Action No. 5050920-75.2023.4.04.7100 (9ª Vara Federal de Porto Alegre [9th Federal Court of Porto Alegre] (22 August 2025) (translated using DeepL).

[78] *See id.*

[79] Schönsteiner J. & Zúñiga M. (2021) *Chapter 14: Chile: compliance after 'kind' reminders in* RESEARCH HANDBOOK ON COMPLIANCE IN INTERNATIONAL HUMAN RIGHTS, Grote R., Antoniazzi M. M., & Paris D. (eds.), Edward Elgar Publishing, 289–312, 310 ("Chile has a quite positive record of compliance with decisions issued by the Inter-American Commission on Human Rights (IACmHR) and the Inter-American Court of Human Rights (IACtHR), despite the absence of a law on implementation.") *and* 289 ("Despite a comparatively good record of implementation

of international judgments, the country also lacks a consistent and efficient mechanism to apply IHRL in its domestic judicial decisions, both in the judiciary and in the Constitutional Tribunal.").

[80] *See id.* at 289 ("Nevertheless, several measures related to specific issues, namely amnesties, indigenous rights and military justice have not been implemented for years or even decades.").

[81] *See id. and* at 310.

[82] *See id.* at 310.

[83] *Id. at* 290 *quoting* Nogueira H. (2017) El *control de convencionalidad por los Estados parte de la Convención Americana sobre derechos humanos y tribunales chilenos, Revista de Derecho* (UCUDAL) 15: 151.

[84] *Id.* at 291 ("This rule generated controversy about whether the new paragraph raised human rights treaties to constitutional status, and some even argued that the status is supra-constitutional. The Supreme Court also referred to human rights treaties as supra-constitutional in several cases. It was the Constitutional Tribunal that resolved the issue,1 without however calming the debate, likely to be controversial also in the pending process of elaborating a new constitution. The agreement to call for a referendum on a constitutional process only establishes that any new Magna Carta will need to be in conformity with Chile's international obligations. It leaves details about how to achieve this to the constitutional body once constituted. The position adopted by the Constitutional Tribunal is the thesis of supra-legality that is based mainly on the following arguments: The constitution does not explicitly mention the legal rank that should be afforded to inter- national treaties, nor to those dealing with human rights. International treaties have an infra-constitutional rank because they are subject to mandatory preventive control of constitutionality when they deal with matters of constitutional organic law, including fundamental rights, which would not be possible if their value were equal to or higher than the Constitution itself. Permitting treaties to take on constitutional or supra-constitutional hierarchy would provide for another means of constitutional reform, which would contradict Chapter XV of the Constitution." (all internal citations omitted)).

[85] *See* Schönsteiner & Zúñiga *supra* note 79 at 310.

[86] *See for e.g.* *Almonacid Arellano et al. v. Chile*, Preliminary Objections, Merits, Reparations, and Costs, (26 September 2006).

[87] *See* Schönsteiner & Zúñiga *supra* note 79 at 310 ("However, compliance with the decisions of the IACtHR finds its main challenge in the Amnesty Decree Law: its non-application is assured by the ordinary courts on a case-by-case basis, since the legislature has not repealed it.").

[88] *See id.* at 307 *citing* Henríquez M. & Núñez J. I. (2017) *Control de Convencionalidad en Chile. Un Soliloquio en "el laberinto de la Soledad' in* El Control de Convencionalidad: Un balance comparado a 10 años de Almonacid Arellano vs. Chile (Henríquez M. & Morales M. (eds)), DER Ediciones, 394 ("A case that has generated much discussion about the application of conventionality control in the Supreme Court is case No. 9.031-2013, which involved the extradition of a Bolivian citizen who was accused of drug trafficking. This is the first ruling in which the Chilean Supreme Court has expressly applied the conventionality control.").

[89] *See id. citing* Henríquez M. (2017) *'La Sentencia Rol N.° 9.031-2013 de la Corte Suprema de Chile. ¿Una aplicación del control de convencionalidad en el análisis de la extradición pasiva por el delito de transporte de estupefacientes?*'Revista Criminalidad, 59: 139, 141 *and* 148 ("She bases her position on the observation that 'although the Supreme Court ruled on the grounds, elements and effects of conventionality control, it did not resolve the request for passive extradition applying the control of conventionality ... the normative conflict between the internal rule and the Inter-American corpus juris was not resolved.").

[90] *Id. referring to Ralco*, Inter-Am. Ct. H.R., Petition 4617/02, Report No. 30/04, Mercedes Julia Huenteao Beroiza y Otras (Chile).

[91] Medici-Colombo & Rocha *supra* note 20 at 313-15.

[92] *See generally*, State of Chile (18 December 2023), Written Observations by the State of Chile.

[93] *Id.* at p. 103.

[94] Ministry of Foreign Affairs, Chile (Ministerio de Relaciones Exteriores de Chile) (3 July 2025), *The Inter-American Court of Human Rights Issues an Advisory Opinion Requested by Chile and Colombia on the Climate Emergency and Human Rights*, Press Release.

[95] *Id.*

[96] *See* Zúñiga *supra* note 26 at 246 (On the Court has shown an "ambivalent approach" to the Inter-American Court and the incorporation of its *corpus juris)*; *but see* Nash C. (2013) *Control de Convencionalidad. Precisiones Conceptuales y Desafíos a La Luz de La Jurisprudencia de La Corte Interamericana de Derechos Humanos,' XIX Anuario de Derecho Constitucional Latinoamericano* 489-509, 502 ("The jurisprudence of Colombia's Constitutional Court demonstrates 'a commitment to incorporate inter-american standards into national rulings.'").

[97] *See* Dunkelberg *supra* note 7 at 722 ("Other courts, such as those in Colombia, Costa Rica and Peru, have also explicitly or implicitly recognised the doctrine.") *citing* Nash C. (2013) *Control de Convencionalidad. Precisiones Conceptuales y Desafíos a La Luz de La Jurisprudencia de La Corte Interamericana de Derechos Humanos XIX Anuario de Derecho Constitucional Latinoamericano*, 489-509, 502.

[98] *See* Arévalo-Ramírez & Siri *supra* note 44 at 301-302 ("In Colombia, the Constitutional Court routinely cites advisory opinions both in judicial review cases and also in judgments regarding individual petitions for the protection of human rights (acción de tutela). In Judgment C-731/05 under judicial review, the Colombian Constitutional Court invalidated several sections of Law 820/2003 regarding housing since the law restricted several rights of the defendant in civil procedures, invoking Advisory opinion No. 8 on due process. The Court stated that: The extensive references that this Court has allowed itself to make of Advisory opinion OC-8/87 of the IACtHR is just a small sample of the importance and scope of the approaches of this International Court regarding the effective guarantee of the right to due process, something that complements and deepens what is established in the Colombian constitutional order and contributes to reinforcing the task that the Constitutional Court has been constantly carrying out in this sense. In Judgment T-006/20, a decision on an individual petition, the Constitutional Court revoked the rulings of municipal judges that denied human rights protection to a migrant child due to the absence of nationality, and ordered the Registry Office to grant Colombian nationality to the child within a period of twenty-four hours, invoking the criteria set in Advisory opinion No. 21 that clarified the obligations of states parties regarding child- hood statelessness.") *citing* *Colombia Judgment C-731/05*, Constitutional Court (2005).

[99] Zúñiga *supra* note 26 at 244 ("Article 93 of the Constitution of Colombia includes the rule that rights and duties mentioned in the constitutional text should be interpreted in accordance with international treaties on human rights that Colombia has ratified.")

[100] *See id.* at 245-6 *citing* Decision C-225/95, Constitutional Court of Colombia, Derecho Internacional Humanitario-Naturaleza imperativa/ius cogens, Corte Constitucional (18 May 1995) *and citing* Ramírez M. Q (2009) *El control de convencionalidad y el sistema colombiano*, Revista Iberoamericana de Derecho Procesal Constitucional, 163, 175 ("The country's Constitutional Court has thus used the concept of the constitutional block as a mechanism to award

international treaties constitutional rank. This constitutional block has included the jurisprudence of the IACtHR." (internal citations omitted)).

[101] *See id.* at 246 ("Colombia's Constitutional Court has likewise shown an ambivalent approach towards the IACtHR and the incorporation of the IACtHR corpus juris. In Ruling C - 370 of 2006, it used the Inter-American canon to assess the constitutionality of Law 975 of 2005 (Justice and Peace Act) – which regulated the amnesty of paramilitary forces, the perpetrators of crimes against humanity in the Colombian conflict – using different IACtHR case law, such as *Barrios Altos vs. Peru, Bámaca Velásquez vs. Guatemala, Gomez Paquiyauri vs. Peru, Mapiripán Massacre vs. Colombia, and Moiwana Community vs. Suriname*. These decisions helped the Constitutional Court build standards concerning duties of prevention, investigation, punishment, and reparation of the rights of victims, the right of victims to effective remedies, and incompatibility of amnesty laws and impunity with the IASHR standards, and the right of victims to the truth, among others." (internal citations omitted)).

[102] *See id. citing* Congreso de Colombia (25 July 2005) *Law 975 of 2005*.

[103] *See* Zúñiga *supra* note 26 at 246 ("These decisions helped the Constitutional Court build standards concerning duties of prevention, investigation, punishment, and reparation of the rights of victims, the right of victims to effective remedies, and incompatibility of amnesty laws and impunity with the IASHR standards, and the right of victims to the truth, among others.").

[104] Arévalo-Ramírez & Siri *supra* note 44 at 301.

[105] *See* Zúñiga *supra* note 26 *summarizing* *Petro Urrego vs Colombia*, Inter-Am. Ct. H.R., Merits, Reparations, and Costs, Judgment (8 July 2020) ("In recent years, however, the Colombian Constitutional Court has become more critical of the doctrine of conventionality. In Petro Urrego vs. Colombia (2020), the IACtHR declared unconventional the Colombian legislation that allows administrative authorities to impose dis-ciplinary sanctions that limit political rights. It also stated that the Colombian Constitutional Court should interpret the provisions related to the disciplinary powers of administrative authorities in accordance with the conventional principles related to political rights established in Article 23 ACHR. In the IACtHR's view, the fact that the Colombian legal order had dismissed an official chosen by popular election – the major of Bogota – and disqualified him for 15 years through an administrative disciplinary procedure was contrary to the Inter-American standards regard- ing the right to participate in the government (Article 23.2 IACHR). The IACtHR repeated its standards from the case López Mendoza vs. Venezuela,64 which stated that a political authority can be only dismissed by a criminal court decision, as ACHR Article 23.2 states.").

[106] *See id.* at 246-7 ("This decision prompted Colombian legal scholars and Constitutional Court judges to discuss the need to embrace deference criteria that could ground a horizontal dialog between national and international courts. In their view, the IACtHR omitted an evolutionary interpretation of the right to participate in government and the measures limiting that right. They argued the IACtHR could have adopted an interpretation that allowed administrative authorities, not only criminal tribunals, that fulfilled the judicial guarantees of Articles 8 and 25 ACHR – compe- tent, impartial, independent, with right to appeal – to impose disciplinary sanctions that could limit political rights. They also claimed that the IACtHR could have analysed the Colombian Legislation, which allows dismissal of authorities and their disqualification from the exercise of public office and political rights through disciplinary proceedings by considering the legal design of other national orders." (internal citations omitted)).

[107] *Id.* at 246.

[108] Ruling C-030/23, *Constitutional Court of Colombia* (2023). Presiding Justices: Juan Carlos Cortés González and José Fernando Reyes Cuartas.

[109] *See id.* at ¶¶ 181-82 ("On this point, it is important to clarify that, while the American Convention on Human Rights (ACHR) forms part of the constitutional framework, the *jurisprudence* of the Inter-American Court of Human Rights does not form part of it, much less its compliance rulings (Art. 68.1 ACHR). In this regard, it should be noted that these decisions cannot be automatically transposed to the Colombian context without taking into account the particularities of the domestic legal system. The Full Chamber reiterates that comparing a law with an international treaty does not automatically result in a declaration of constitutionality or unconstitutionality. As indicated, these human rights instruments should only be considered to interpret the content and scope of constitutional mandates and to harmonize them with the norms that constitute the constitutional bloc in the strict sense.") (internal citations omitted) (translated using DeepL).

[110] *Id.* at ¶ 197 ("In particular, the Chamber clarifies that this joint construction requires the search for interpretations that are tailored to different contexts and harmonize constitutional texts with the inter-American standard. Thus, the application of the *pro persona* principle must be understood within the framework of the contexts and specificities of the particular case.") (translated using DeepL).

[111] *Id.* at ¶ 198 ("The Full Chamber has referred to the *pro persona* principle as one that 'requires the interpretation of legal norms that is most favorable to the individual and his or her rights; that is, the prevalence of the interpretation that promotes respect for human dignity and, consequently, the protection, guarantee, and promotion of human rights and fundamental rights enshrined at the constitutional level.' Consequently, the *pro persona* principle implies that 'in the event of a discrepancy, the judge must always apply the rule or interpretation that is most favorable to the protection of the human rights at stake.'") (internal citations omitted) (translated using DeepL).

[112] *Id.* at ¶ 199; *see also* ¶¶ 201-4 describing the process of "harmonization."

[113] Benz E. (2024) THE ADVISORY FUNCTION OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS, Nomos, 375 *citing Constitutional Court of Colombia,* Judgment C-408/96 of 4 September 1996 ¶ *24* ("For example, the Colombian Constitutional Court in 1996 once held that Article 93 of the Colombian Constitution required it to follow the interpretations established by the LACtHR in both, contentious cases and in advisory opinions.") *referencing* Judgment C-408/96, Constitutional Court of Colombia (4 September 1996) ¶ 24.

[114] Judgment c-1319/2001, Consideration 13, *Colombian Constitutional Court* (2001), *as cited in* Nash C (2013) *Control de Convencionali dad. Precisiones Conceptuales y Desafíos a La Luz de La Jurisprudencia de La Corte Interamericana de Derechos Humanos,'* XIX Anuario de Derecho Constitucional Latinoamericano 489-509, 503.

[115] Medici-Colombo & Rocha *supra* note 20 at 315 *citing* Judgment No T-1319/01, Constitutional Court of Colombia (7 Dec 2001).

[116] *See id.* at n. 42. *citing* Benz *supra* note 113 at 375 *referring to* Judgments No. C-500/14 (16 July 2014) *and* No C-327/16 (22 June 2016).

[117] Republic of Colombia (18 December 2023), Written Observations of the Republic of Colombia at 2, ¶ ¶ 5, 6.

[118] Note: Preliminary research found no indication that Colombia distinguishes between the binding effect of advisory opinions it has requested and those requested by other States.

[119] *See* Ministry of Foreign Affairs, Chile (Ministerio de Relaciones Exteriores de Chile) (3 July 2025), *The Inter-American Court of Human Rights Issues an Advisory Opinion Requested by Chile and Colombia on the Climate Emergency and Human Rights*, Press Release.

[120] *See* Inter-American Court of Human Rights (2020) DIALOGUE BETWEEN REGIONAL HUMAN RIGHTS COURTS, 30-31 ("Costa Rica has always been a promoter and defender of the inter-American system. This country was one of the

two States that signed the Convention on November 22, 1969; it was the first country to adhere to the Convention on March 2, 1970, and it was the first to deposit the ratification instrument on April 8, 1970. These facts form part of Costa Rica's historical legacy to the international community as a defender of human rights… It was also the first State to accept the jurisdiction of the Inter-American Court on July 2, 1980… The State was the first to use the advisory function under Article 64(2) of the Convention…").

[121] *Id.* at 31.

[122] Decision No. 12703, Constitutional Chamber of the Supreme Court of Justice, Costa Rica, Judgment (1 August 2014).

[123] Decision No. 12801, Constitutional Chamber of the Supreme Court of Justice, Costa Rica, Judgment (25 September 2013).

[124] Advisory Opinion OC-24/17, Inter-Am. Ct. H.R. (24 November 2017), ¶ 1.

[125] *Id.* at ¶¶ 172-199, 200-228.

[126] *See* Decision No. 12782-2018, Constitutional Chamber of the Supreme Court of Justice, Costa Rica, Judgment (8 August 2018); *see also* Human Rights Council (2024) NATIONAL REPORT SUBMITTED PURSUANT TO HUMAN RIGHTS COUNCIL RESOLUTIONS 5/1 AND 16/21 COSTA RICA, WORKING GROUP ON THE UNIVERSAL PERIODIC REVIEW FORTY-SEVENTH SESSION, 1–24, 3 ¶¶ 18-19.

[127] *See* Human Rights Council (2024) NATIONAL REPORT SUBMITTED PURSUANT TO HUMAN RIGHTS COUNCIL RESOLUTIONS 5/1 AND 16/21 COSTA RICA, WORKING GROUP ON THE UNIVERSAL PERIODIC REVIEW FORTY-SEVENTH SESSION, 1–24, 3 ¶¶ 18-19.

[128] Case of Artavia Murillo et al. ("In vitro Fertilization") v. Costa Rica, Inter-Am. Ct. H.R., Judgment, Preliminary objections, merits, reparations and costs (28 November 2012), ¶ 381, *also see generally.*

[129] *See* Barker R.S. (2016) *Inverting Human Rights: The Inter-American Court versus Costa Rica*, 47 U. MIAMI INTER-AM.L. REV., 47(1): 1-19, 17 ("The Chamber observed that under the American Convention on Human Rights, and the statute and Regulations of the Inter-Ameri-can Court, that Court itself is empowered to supervise compliance with its judgments. The Chamber concluded, "the relief requested by the petitioner is not within the scope of the competence of this [*i.e.*, the Constitutional] Jurisdiction, since it is not for this Chamber to provide supervision of compliance with the judgments of the In- teramerican Court of Human Rights.").

[130] *See id.* at 19 ("Various proposals in the Legislative Assembly have not prospered… On September 10, 2015, the President of Costa Rica, Luis Guillermo Solís Rivera, the Minister of the Presidency, Sergio Iván Alfaro Salas, and the country's Minister of Health, Fernando Llorca Castro, issued a decree re-establishing in vitro fertilization in Costa Rica and regulating that procedure…").

[131] Medici-Colombo & Rocha *supra* note 20 at 315 *citing* Constitutional Chamber of the Supreme Court of Justice of Costa Rica, Judgment No. 2313–95, 9 May 1995.

[132] Constitutional Chamber of the Supreme Court of Justice. San José, at 4:18 p.m. on May 9, 1995. Judgment 2313-95. File: 0421-S-90 *as cited in* Salon Piedra J. D. (2015) Control de convencionalidad: Es possible un Sistema de aplicacion difuso dentro ordenamiento juridico costarricense?, Universidad de Costa Rica, 1-175, 93.

[133] See Benz *supra* note 113 at 375 ("Apart from this, the Costa Rican Sala Constitucional was the first domestic court - and is still the most prominent example - to hold that advisory opinions are binding on Costa Rica, at least if the state has been the requesting state."; *see also* at 377 ("The Costa Rican Sala Constitucional dealt already in 1995 with the

legal effects of advisory opinions of the lACtHR and concluded that Costa Rica was bound by such opinions at least in case it had itself requested the opinion.").

[134] Benz *supra* note 113 at 380; *see also* Decision No. 12782, Constitutional Chamber of the Supreme Court of Justice, Costa Rica, Judgment (8 August 2018).

[135] Republic of Costa Rica (10 October 2023), Written Observations of the Republic of Costa Rica, 1.

[136] *See* Benz *supra* note 113 at 382 *citing* Judgment N° 003–14-SIN-CC, Constitutional Court of Ecuador (17 September 2014) at 59; *idem*; Decision 0038–07-TC (5 March 2008), considerando 9; *idem*, Judgment N° 0005-TC (26 September 2006).

[137] *See* Republic of Ecuador (2008 (rev. 2021)) Ecuadorian Constitution, Art. 425 ("The order of precedence for the application of the regulations shall be as follows: the Constitution; international treaties and conventions; organic laws; regular laws; regional regulations and district ordinances; decrees and regulations; ordinances; agreements and resolutions; and the other actions and decisions taken by public authorities. In the event of any conflict between regulations from different hierarchical levels, the Constitutional Court, judges, administrative authorities and public servants, it shall be settled by the application of the standard of higher order of precedence.").

[138] *Id.* at Art. 417.

[139] *See* Benz *supra* note 113 at 382 ("The Ecuadorian Constitutional Court held that the lACtHR is the competent interpreter of the Convention and that its advisory opinions form, due to Article 424 of the Ecuadorian Constitution, part of the so-called "block of constitutionality.").

[140] Republic of Ecuador (2008 (rev. 2021)) Ecuadorian Constitution, Art. 424.

[141] *Id.* at Art. 11(3).

[142] Benz *supra* note 113 at 382 ("For several years, the Constitutional Court of Ecuador frequently referred to advisory opinions of the lACtHR, noting that it was necessary to consider them.") *citing* Judgment N° 0D3-14-SIN-CC, Constitutional Court of Ecuador (17 September 2014) at 59; *idem;* Decision 0038-07-TC (5 March 2008), considerando 9; *idem.* Judgment N° 0005-TC (26 September 2006), considerando 19.

[143] Judgment 184-18-SEP-CC, Constitutional Court of Ecuador (29 May 2018), Case No. 1692-12-EP, at 58-59 (translated using DeepL).

[144] *See* Benz *supra* note 113 at 382 ("Since the ACHR, as interpreted by the lACtHR in OC-24/17, contained more favorable rights than the Ecuadorian Constitution, the interpretation made by the lACtHR had to prevail. Consequently, Ecuador had to allow and recognize the marriage of same-sex couples in line with OC-24/17 even though the Ecuadorian Constitution, the Civil Code and another domestic law defined marriage explicitly as union between a man and a woman.").

[145] *See id.* at 382-83 ("The Constitutional Court further held that the Ecuadorian Constitution and the Convention, as interpreted by the IACtHR, did not contradict each other, but that the Constitution was complemented by the international human rights instruments.").

[146] Judgment 11-18-CN/19, Constitutional Court of Ecuador (12 June 2019), case No. 11-18-CN, ¶¶ 282, 286 (translated using DeepL).

[147] Republic of Ecuador (2008 (rev. 2021)) Ecuadorian Constitution, Art. 67, ¶ 2 ("Marriage is the union of man and woman and shall be based on the free consent of the persons entering into this bond and on the equality of rights, obligations and legal capacity.").

[148] Judgment 11-18-CN/19, Constitutional Court of Ecuador (12 June 2019), Case No. 11-18-CN, Dissenting Opinion of Judge Hernan Salgado Pesantes, supported by Judges Carmen Corral Ponce, Enrique Herreria Bonnet and Tersa Nuques Martinez, ¶¶ 92, 7, 94-96 (translated using DeepL).

[149] Adán G. & Marín P. (2021) *Reparation without access to justice: the incomplete compliance with the judgements of the Inter-American Court of Human Rights in Mexico, in* RESEARCH HANDBOOK ON COMPLIANCE IN INTERNATIONAL HUMAN RIGHTS, Grote R., Antoniazzi M., and Paris D. (eds.), Edward Elgar, 329 ("The importance of international human rights treaties in Mexico has changed in the last 20 years, from first playing only a nominal and impractical role to their current status as an essential tool for guaranteeing the human rights of all citizens. In particular, the Inter-American Court of Human Rights' (IACtHR) judgments have furthered the creation of institutions meant for achieving compliance with international human rights obligations.").

[150] *See* Cerna C. (2019) *Implementation of Inter-American Court of Human Rights Judgments in Latin America: Examples from Argentina and Mexico, in* JUDGING INTERNATIONAL HUMAN RIGHTS: COURTS OF GENERAL JURISDICTION AS HUMAN RIGHTS COURTS, Kadelbach S., Rensmann T., and Rieter E. (eds.), Springer 399-400.

[151] *See id.*

[152] *See id.* at 401 ("In the *Radilla Pacheco* case, the Inter-American Court concluded that the Mexican military had not conducted an effective investigation into Mr. Radilla Pacheco's disappearance or applied the appropriate due diligence required. On November 23, 2009, the Inter-American Court issued its judgment, ruling that the forced disappearance of the victim at the hands of the Mexican military and the transfer of the investigation of the crime from civilian jurisdiction to a military court violated, inter alia. Articles 8 and 25 ACHR. The Court found that 'upon expanding the competence of the military jurisdiction to crimes that are not strictly related to military discipline or with juridical rights characteristic of the military realm,' the state had violated the rights of the next of kin to a competent tribunal and to a recourse that allowed them to contest the exercise of military jurisdiction.' In order to prevent repetition of this violation, the Court ordered Mexico to 'adopt, within a reasonable period of time, the appropriate legislative reforms in order to make Article 57 of the CMJ compatible with the international standards in this subject and the American Convention of Human Rights.'").

[153] United States of Mexico (1917 (rev. 2015)) MEXICAN CONSTITUTION, Art. 1.

[154] *See* Adán & Marín *supra* note 149 at 330-31 ("The incorporation into domestic law of 'human rights recognized in this Constitution and international treaties to which Mexico is party' works as an openness clause which directly incorporates international human rights into the domestic legal order, in addition to the traditional constitutional rights already recognized in the Mexican Constitution.12 The phrasing of the article has a consequence that human rights contemplated in all international treaties signed by Mexico have the highest constitutional hierarchy in the domestic order alongside human rights explicitly contemplated in the Constitution."); *see also* Miscellaneous Case 912/2010, Mexican Supreme Court of Justice (14 July 2011), ¶ 29 ("In their jurisdictional role, judges, in accordance with the last part of Article 133 as regards Article 1, are required to give precedence to human rights as set out in the Constitution and International Treaties, even if these run counter to provisions contained in any lower legislation.").

[155] *See* Cerna *supra* note 150 at 403 ("In 2010, the Inter-American Commission presented-two additional cases against Mexico to the Court… In an attempt to clarify Mexico's obligations in the face of an adverse judgment from the Inter-American Court, on May 26, 2010, the President of the Mexican Supreme Court requested the plenary of the Court to determine the obligations on the Mexican judiciary with regard to the lACtHR's *Radilla Pacheco* judgment.").

[156] Miscellaneous Case 912/2010, Mexican Supreme Court of Justice (14 July 2011), ¶¶ 15, 19.

[157] *Id.* at ¶ 20

[158] *See* Adán & Marín *supra* note 149 at 332 ("Therefore, the legal standard developed in the *Contradicción de tesis 293/2011* structures the relationship between human rights derived from domestic and international sources as based on the *pro persona principle*, rather than hierarchical criteria.").

[159] *See id.* at 331 ("The [pro persona] principle requires employing the interpretation of the norm that grants either the greatest protection of a human right to an individual or the least restriction possible. Therefore, in case of a conflict between norms (including constitutional norms or between constitutional and international norms), the one that best protects or allows the enjoyment of human rights must be preferred.").

[160] *See id.* at 333 ("…the Supreme Court was able to add a restriction to this general rule: the preference for the most protective rule is subject to the absence of an express restriction in the constitutional text. As a consequence of this restriction, the progress of the *pro persona* principle is nullified when a restriction in the Constitution is expressly articulated. Unfortunately, this has led to the persistence or the incorporation in the Constitution of several norms that are not consistent with the most protective international human rights standards.").

[161] Contradicción de Tesis 293/2011, Mexican Supreme Court of Justice, Entre las Sustenadas por el Primer Tribunal Colegiado en Materias Administrativa y de Trabajo del Décimo Primer Circuito y el Séptimo Tribunal Colegiado en Materia Civil del Primer Circuito (3 September 2013), ¶¶ 96, 63-64 (translated using DeepL).

[162] *See* Tardif E. (2015) *The Radilla-Pacheco v. Mexico Case: A Paradigmatical Shift Towards Conventionality Control in Mexico*, *in* THE INTER-AMERICAN COURT OF HUMAN RIGHTS: THEORY AND PRACTICE, PRESENT AND FUTURE, Haeck Y., Ruiz-Chiriboga O., and Burbano-Herrera C. (eds.), Intersentia, 677 ("As a consequence of a decision issued by the Inter-American Court of Human Rights in 2009, Mexico has carried out a profound constitutional reform on human rights that has received international attention, and in which the Mexican Supreme Court has played a key role. The *Radilla* decision initially caused the members of such tribunal to express extreme positions regarding the reception, in the national sphere, of international case law; however, it finally adopted a resolution in 2011 which is considered to be one of the most important decisions of Mexico's judicial history, as it paved the way for the establishment of a completely new model of constitutional regularity control for the Mexican legal system. At the end of 2013, the Supreme Court was rewarded with the United Nations Prize in the Field of Human Rights for its leadership in the promotion of human rights in Mexico, and the United Nations Educational, Scientific and Cultural Organization (UNESCO) decided to include the Court's proceedings related to its treatment of the *Radilla* decision in its Memory of the World Programme.").

[163] Contradicción De Criterios 175/2022, Mexican Supreme Court of Justice, Suscitada Entre El Primer Tribunal Colegiado En Materias Civil Y Administrativa Del Noveno Circuito Y El Cuarto Tribunal Colegiado En Materia Administrativa Del Segundo Circuito Con Apoyo Del Octavo Tribunal Colegiado De Circuito Del Centro Auxiliar De La Primera Región, Con Residencia En Naucalpan De Juárez, Estado De México (17 June 2024) ¶¶ 82, 86, 90, 92-94 (translated using DeepL); *see also* Supreme Court of Justice of the Nation (17 June 2024), Las Opiniones Consultivas De La Corte Interamericana De Derechos Humanos No Son Vinculantes Para Las Personas Juzgadoras Mexicanas, Pero Gozan De Relevancia Jurídica, Press Release ("The Plenary of the Supreme Court of Justice of the Nation (*The Court*), in resolving a conflict of criteria between two Collegiate Circuit Courts, determined that the advisory opinions of the Inter-American Court of Human Rights (IACHR) are not legally binding nor do they, in themselves, have direct binding force on Mexican judges, but that they retain legal relevance and may be used in judicial decisions.") (translated using DeepL).

[164] *See* Office of the High Commissioner for Human Rights (2024) REPORT 2024, 229 ("On 22 October, in the context of judicial reform, the Federal Congress presented a so-called "Constitutional Supremacy" proposal, which sought to

restrict the application of international human rights norms and conventionality control, outlined in Article 1 of the Constitution. OHCHR undertook technical analysis and extended assistance to different stakeholders, including members of the Government. As a result, the proposal was revised and withdrawn, eliminating the modification to Article 1 and conventionality control.").

[165] *See id.*

[166] Marecos Gamarra A.R. (2012) *El Control de Convencionalidad Reflexiones Sobre su Aplicabilidad en el Paraguay*, REVISTA JURIDICA DE LA UNIVERSIDAD AMERICANA, *3*(1), 335–347, 339 ("Sin embargo, muchas resoluciones emanadas de este órgano supraestatal no han sido cumplidas aún por el Estado paraguayo y se desconoce, a nivel interno cuál sería el mecanismo eficaz para ejecutarlas.").

[167] Reid R. A. (2015) *The Domestic Adoption of International Human Rights Law: The Roles of Regional and National High Courts in Latin America*, Doctoral Dissertation, University of South Carolina, 1-316, 177.

[168] Republic of Paraguay (1992 (rev. 2011)), Paraguayan Constitution, Art. 137 ("Article 137. Of the Supremacy of the Constitution: The supreme law of the Republic is the Constitution. [The Constitution], the treaties, conventions and international agreements approved and ratified, the laws dictated by the Congress and other juridical provisions of inferior hierarchy, sanctioned in consequence, integrate the positive national law [derecho positivo] in the enounced order of preference [prelación]. Whoever attempts to change that order, outside [al margen de] the procedures specified in this Constitution, would incur in the crimes that will be classified and punished in the law. This Constitution will not lose its force or stop being observed because of acts of force nor may [it] be abrogated [derogada] by any other means different from the ones it provides [dispone]. All the provisions or acts of authority opposed to that established in this Constitution lack validity [validez].").

[169] Republic of Paraguay (18 December 2023), Written Observations of the Republic of Paraguay at ¶ 64-65.

[170] Republic of Peru (1993 (rev. 2021)) Peruvian Constitution, Art. 55.

[171] *Id.* at 200(4); *see also* Hennebel L. & Tigroudja H. (2022) THE AMERICAN CONVENTION ON HUMAN RIGHTS: A COMMENTARY, Oxford University Press, 1367, 1367 n. 109 ("The 1993 Political Constitution is elliptical regarding the place of treaties in the internal order, providing them mere legislative value (Article 200-4)."); ("However, in practice the Constitutional Tribunal affirmed that in the event of a contradiction between an ordinary law and a Peruvian international commitment, the latter must prevail and, in general, Peruvian doctrine considers that among the international commitments, those protecting human rights have a constitutional value.") *citing* F. Novak et al. (2000) *Las obligaciones internacionales del Peru en materia de derechos humanos*, Lima: Pontificia Universidad Catolica del Peru, 120, 123.

[172] Republic of Peru (1993 (rev. 2021)) Peruvian Constitution, Final and Transitory Provisions, Fourth.

[173] New Code of Constitutional Procedure (Rev. 2024), Act No. 31307, Art. VIII (translated using DeepL).

[174] *See* Zúñiga N. (2021) *Conventionality control in the Inter-American system of human rights and its reception in the Peruvian legal order*, *in* RESEARCH HANDBOOK ON COMPLIANCE IN INTERNATIONAL HUMAN RIGHTS, Grote R., Antoniazzi M., and Paris D. (eds.), Edward Elgar, 248-49 ("Indeed, the conventionality control in Peru dates back to the mid-1990s and has taken place implicitly. The judicial proceeding against the perpetrators of the 1991 Barrios Altos massacre is one example of the early application of the conventionality control: in 1995, Judge Antonia Sacquicuray of the Sixteenth Criminal Court of Lima initiated an investigation against some members of the 'death squad' known as the Colina Group for their responsibility in the extrajudicial killing of 15 people. That same year a parliament dominated by dictator Alberto Fujimori's party approved law No. 26479 of 1995 granting amnesty to those who had been accused, investigated, prosecuted, or convicted, or who were carrying out prison sentences for human

rights violations in the context of the Peruvian armed conflict. This law had a direct impact on closing the proceeding carried out by the Judge Sacquicuray, but in light of Article 138 PC concerning the diffuse control of constitutionality, Judge Saquicuray ruled that the law did not apply since it violated the Constitution and human rights treaties – namely Article 8 and 25 of the ACHR. In response, the parliament approved another amnesty law (Law 26492) that stated the amnesty could not be 'revised' by a judicial instance and that its application was obligatory. A superior tribunal that issued the appeal against the decision of Judge Sacquicuray closed the case."); *see also generally* Barrios Altos v. Peru, Inter-Am. Ct. H.R., Judgment, Merits (14 March 2001).

[175] *See* Zúñiga (2021) *supra* note 174 at 249-52, *citing* cases about *amparo electoral*: Ruling No 5854-2005-PA/TC, Pedro Andres Lizana Puelles, (8 November 2005); Ruling No 2730-2006-PA/ TC, Arturo Castillo Chirinos (21 July 2006); Ruling No 00007-2007-PI/TC, Colegio de Abogados del Callao (demandante) c. Congreso de la República (demandado); *death penalty*: Constitutional Court of Peru, Ruling 0010-2002-AI/TC, *Marcelino Silva y mas de 5000 ciudadanos*, ¶ 181; Constitutional Court of Peru, Ruling 0489-2006-PHC/TC, *Rafael Caceres Neira y Otros* (25 January 2007), ¶ 22; *amnesty laws and res judicata*: Constitutional Court of Peru, Ruling 4587-2004-AA /TC, *Santiago Enrique Martín Rivas*, 29 November 2005; Constitutional Court of Peru, Ruling No 0004-2006-PI/TC, Fiscalia General de la Nación vs. Congreso de la Republica (29 March 2006), ¶ 68; No 2798–04–HC/TC, 9 Dec 2004.

[176] Colegio de Abogados del Callao (demandante) c. Congreso de la Republica (demandado) (19 June 2007), Constitutional Tribunal of Peru, Resolution 00007-2007-PI/TC, ¶ 41 (translated using DeepL).

[177] *See* Zúñiga (2021) *supra* note 174 at 252 ("Since the late 2000s, Peru's Constitutional Court has issued some controversial decisions in which it detached itself from previous case-law on military justice."); *see also* Ruling No 001-2009-PI/TC Colegio de Abogados de Lima, Constitutional Court of Peru (04 December 2006).

[178] Judgment of 22 March 2019, Superior Court of Justice of Lima, Eleventh Constitutional Court, Exp. 10776-2017, ¶ 44 (Aside: The Court refrained from enforcing its civil code which defined marriage as between a man and a woman, allowing for a lesbian couple to register their marriage).

[179] *See* Judgment No. 676/2020, Constitutional Tribunal of Peru (3 Nov 2020).

[180] *See id.* Judge Ferrero Costa ("The fact that the [OC-24/17] report indicates that this Advisory Opinion has no binding effect relieves me of further comment, since this is indeed the case."); Judge Blume Fortini, ¶ 9 ("Furthermore, Advisory Opinion OC-24/17 is not binding, as stated by Judge Eduardo Vio Grossi in his individual opinion issued in the aforementioned advisory opinion, which was issued at the request of Costa Rica. Therefore, as an opinion, it is not binding on the States but would be a mandatory and coercive decision, which should have been translated into a resolution."); Judge Sardón de Taboada ("This advisory opinion of the Inter-American Court, issued urbi et orbi, constituted a clear excess on the part of the six judges who signed it. Three years after it was issued, we can see that none of the thirty-four member countries of the Organization of American States— to which its supposed mandate was addressed—has heeded it, except for Ecuador, which is the exception that proves the rule. Certainly, some other American countries have recognized "marriage equality," but they have done so by decision of their governing bodies, not in compliance with the alleged mandate of the Inter-American Court. Peru, therefore, has no reason to feel bound by an advisory opinion it never requested."); the fourth judge, Miranda Conales, voted with the majority for procedural reasons (all quotes translated using DeepL).

[181] *Id.* Judges Ledesma Narvaez and Ramos Nunez, minority, ¶ 119 (translated using DeepL).

[182] *Id.* Judge Espinosa-Saldana Barrera, minority, ¶ 63 (translated using DeepL).

[183] *See* Zúñiga (2021) *supra* note 174 at 253-54 ("After the IACtHR's pronouncement the Peruvian Supreme Court opened a special procedure to examine the merits of the presidential pardon, declaring its unconventionality and reinstating Fujimori's imprisonment. The Supreme Court referred directly to the conventionality control and stated

that the power to grant pardons must be exerted in line with human rights treaties. In its perspective, the enforcement of a condemnatory judgment was also part of the core content of the right to access to a judicial remedy. Thus the pardon implied a direct breach of that right, and lacked legal effects. Fujimori returned to prison and filed a habeas corpus against the Supreme Court's decision. In 2021, the Constitutional Court issued a ruling in which it declared the unconstitutionality of the Supreme Court's ruling and ordered Fujimori's release…In April 2022 the IACtHR issued a resolution of supervision of compliance ordering the Peruvian state to 'refrain' from executing the judgment of the Constitutional Court. It concluded that the Constitutional Court had not carried out a proportionality test to determine the conventionality of the pardon, as suggested in the supervision Resolution of 30 May 2018. It also stated the Peruvian court did not take into account that pardons must be exceptional when related to gross violations of human rights.").

[184] *See id.* at 254 ("In November 2023 the Constitutional Court issued a judicial writ that its ruling on the presidential pardon be executed by the judicial authorities."). Fujimori died shortly after in September 2024. Briceno F. (12 Sept. 2024) Alberto Fujimori, a former president of Peru who was convicted of human rights abuses, dies at 86, AP NEWS.

[185] *See* United Nations Human Rights Office of the High Commissioner (17 July 2025) Peru: Bill establishing amnesty for atrocity crimes violates international standards, say UN experts, Press Release ("The experts noted that the passing of the bill occurred against the backdrop of a series of human rights setbacks, including the enactment of Law No. 32107 on 9 August 20924, which introduced a statute of limitations for war crimes and crimes against humanity committed prior to 1 July 2002, as well as the introduction of several bills proposing Peru's withdrawal from the Inter-American System for the protection of human rights."); *see also* Congrezoo.pe (12 June 2025), X (previously Twitter) ("Premier Eduardo Arana propone al Congreso "una Comisión integrada por el Ejecutivo, el Legislativo (...), para evaluar, estudiar y proponer de manera seria una decisión consensuada sobre la continuidad del Perú" en el Sistema Interamericano de Derechos Humanos." [Prime Minister Eduardo Arana proposes to Congress "a Commission composed of the Executive and Legislative branches (...) to seriously evaluate, study, and propose a consensual decision on Peru's continued membership" in the Inter-American Human Rights System.] (translated by Google)); *and* Centro Por La Justicia y El Derecho Internacional (16 June 2025) Peru Abandons Democratic and Human Rights Principles Days Before the OAS General Assembly, Press Release ("On June 12, the newly appointed President of the Council of Ministers Eduardo Arana Ysa made a deeply concerning statement before Congress, proposing that Peru reconsider its membership in the Inter-American Human Rights System (IAHRS).").

[186] *See* ICTJ, Peru's New Amnesty Law for Human Rights Abuses Sparks Anger and International Appeal (*last visited* 1 Aug. 2025).

[187] *Peru Support Group*, Boluarte Trumpets Plan to Withdraw Peru from the American Convention on Human Rights, 30 August 2025.

[188] *Genocide Watch*, Peru: President Slams Court's Call to Suspend Amnesty Law, 5 August 2025.

[189] *See Peru Support Group*, Inter-American Court Calls on Peruvian Jurists to Ignore Amnesty Law, 2 August 2025. ("Meanwhile José Jerí, the newly elected president of Congress, has joined the chorus in support of Peru leaving the San José Pact and the Inter-American system of justice. He also intimated that he is in favour of the death penalty, a hardy perennial of the populist right outlawed by the American Convention. Jerí is from Somos Perú, but his candidacy for the presidency of Congress was backed by Fuerza Popular, the party of Keiko Fujimori.")

[190] *See* Aquino M. (18 June 2026) *Fujimori edges toward Peruvian presidency as Sanchez calls for protests*, REUTERS.

[191] *See* Aquino M. & Elliott L. (28 July 2026) *Peru's Fujimori takes power, extending Latin America's rightward tilt*, REUTERS.

[192] *See* Meglioli L. E. (12 June 2026) *Peru's new President promises a crackdown on extortion and contract killings*, DIGITALSHIELD.

[193] *See* Benz *supra* note 113 at 376 ("One explanation for this somewhat erratic domestic jurisprudence is that there are several political factors that sometimes lead national courts to be willing to give great importance to pronouncements of the IACtHR, and at other times lead national courts to feel pressured to distance them- selves from findings of the IACtHR.") *citing in part EJIL: Talk!*, Alejandro Chehtman, The relationship between domestic and international courts: the need to incorporate judicial politics into the analysis, 8 June 2020.