

# The Merits of Coordination of International Courts on Human Rights

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The establishment of the European and the Inter-American Courts of Human Rights was provided for respectively by the 1950 European Convention on Human Rights (which entered into force in 1953) and by the 1969 American Convention on Human Rights (which entered into force in 1978). The European Court (ECHR) was constituted in early 1959, the Inter-American Court (IACHR) in mid-1979, and they have both been operating regularly ever since. The on-going dialogue which these two international human rights courts have wisely sustained over the past four-and-a-half years has generated a spirit of mutual *confidence* and paved the way for a remarkable cross-fertilization of jurisprudence. This has contributed significantly to the enhancement of international human rights law, which has, in turn, impacted upon international law in general. The resulting convergences in their respective case law are manifest in various respects, such as their methods of interpreting the respective human rights Conventions.

In addition, the two Courts have reached a common understanding, for example, that human rights treaties are endowed with a special nature (as distinguished from multilateral treaties of the traditional type); that human rights treaties have a normative character of *ordre public*; that their terms are to be autonomously interpreted; that, in their application, one ought to ensure an effective protection of the guaranteed rights (*effet utile*); that the obligations enshrined therein do have an objective character and must be duly complied with by the States Parties; and that permissible restrictions (limitations and derogations) to the exercise of rights are to be restrictively interpreted.

Moreover, the dynamic or evolutionary interpretation of the respective human rights Conventions (their intertemporal dimension) has been pursued by both the

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ECHR<sup>1</sup> and the IACHR.<sup>2</sup> In its 16th and pioneering Advisory Opinion, which inspired the international case law *in statu nascendi* on the matter, the IACHR clarified that, in its interpretation of the provisions of the American Convention, it should extend protection to new situations (such as that concerning the right to information on consular assistance) on the basis of pre-existing rights. The same vision has been propounded by the IACHR in its most recent and forward-looking 18th Advisory Opinion, based upon the concepts of *jus cogens* and *erga omnes* obligations of protection.

At the level of procedural law, one of the basic issues upon which both Courts dwelt has been that of access to justice at the international level, achieved under the two Conventions through their important provisions on international jurisdiction and on the right of individual petition. In the Strasbourg system, with the entry into force of Protocol 11, on 1 November 1998, individuals have been granted *jus standi* to bring a case directly before the ECHR. In the Inter-American system, individuals have been granted, by the historical adoption of the current Rules of the Court (effective as from 1 June 2001), *locus standi in judicio*, i.e. the entitlement to participate directly in all stages of the procedure before the IACHR.

Despite the challenges that the two Courts nowadays face, particularly with the increasing backlog of cases (the ECHR to a far greater extent than the IACHR), individuals have been raised to the status of subjects of international human rights law, endowed with full procedural capacity, and have recovered their faith in human justice when it appeared to fade away at domestic-law level. This significant procedural development strongly suggests that the old ideal of the *realisation of international justice* is finally seeing the light of day.

This is a point which deserves to be stressed, as, in some international legal circles, attention has been diverted in recent years from this fundamental achievement to the alleged ‘problem’ of the so-called ‘proliferation of international tribunals’. This depreciative expression misses the key point of the considerable advances of the old ideal of international justice in the contemporary world. The establishment of new international tribunals reflects the current search for, and construction of, an international community, guided by the rule of law rather than the rule of force in democratic societies committed to the realization of justice. The growth and consolidation of international jurisdictions of these courts are reassuring reflections of an evolving international legal order, which appears less and less state-centred and more and more responsive to the fulfilment of the basic needs of human beings and of humankind as a whole.

1 *Tyrer v. United Kingdom* (1978) Judgment of 25 April 1978, Series A, n. 26; *Airey v. Ireland* (1979) Judgment of 9 October 1979, Series A, n. 32; *Marckx v. Belgium* (1979) Judgment of 13 June 1979, Series A, n. 31; *Dudgeon v. United Kingdom* (1981) Judgment of 22 October 1981, Series A, n. 45, among others.

2 Sixteenth Advisory Opinion, on *The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law* (1999), 1 October 1999, Series A, n. 16; and the Eighteenth Advisory Opinion, on *Juridical Condition and Rights of Undocumented Migrants* (2003), 17 September 2003, Series A, n. 18.

Since the visionary writings and ideas of Nicolas Politis and Jean Spiropoulos of Greece, Alejandro Álvarez of Chile, André Mandelstam of Russia, Raul Fernandes of Brazil, René Cassin and Georges Scelle of France, Sir Hersch Lauterpacht of the United Kingdom, and John Humphrey of Canada, among others, it was necessary to wait for decades for the current developments in the realization of international justice to take place, which now enriches rather than threatens, and strengthens rather than undermines, international law. The reassuring growth of international tribunals is a sign of current times, and we have to live up to it, making sure that each of them gives its contribution to the continuing evolution of international law in the pursuit of international justice. The fruitful dialogue which the two international human rights Courts have established in recent years, in a spirit of cooperation, mutual respect and coordination in the pursuit of common causes and ideals, constitutes an inspiring example to other international tribunals.

In so far as the basis of their jurisdiction in contentious matters is concerned, eloquent illustrations of the firm stand of the two Courts in support of the integrity of the mechanisms of protection of the two Conventions are afforded by many cases.<sup>3</sup>

The contribution of the two Courts is nowadays the juridical patrimony of all states and peoples of the two continents, in the framework of the universality of human rights. The ECHR has a vast and impressive case law, for example, on the right to liberty and security (Article 5 of the European Convention), and the right to a fair trial (Article 6). The IACHR has a significant case law on the right to life, which comprises standards on living conditions, as seen in its decision in the paradigmatic case of the so-called 'Street Children'.<sup>4</sup> The two Courts have achieved a remarkable jurisprudential construction on the right of access to justice (and to reparations) at the international level. In its historic judgment in the case of the massacre of *Barrios altos*,<sup>5</sup> concerning Peru, the IACHR warned that amnesty provisions and laws on circumstances excluding responsibility intended to impede the investigation and punishment of those responsible for grave violations of human rights (such as torture, summary, extra-legal or arbitrary executions, and forced disappearances) are not permitted, they violate non-derogable rights recognized by international human rights law. This case law has been reiterated by the IACHR (with regard to the statute of limitations) in its recent decision in *Bulacio v. Argentina*.<sup>6</sup>

In the pursuit of their common cause and ideal, the ECHR and the IACHR have had

3 See, e.g. decisions of the European Court in *Belilos v. Switzerland* (1988), Judgment of 29 April 1988, Series A, n. 132; *Loizidou v. Turkey* (Preliminary Objections, 1995), Judgment of 23 March 1995, Series A, n. 310; *I. Ilascu, A. Lesco, A. Ivantoc and T. Petrov-Popa v. Moldova and the Russian Federation* (2001), Judgment of 4 July 2001, Series A, n. 2001-VI; and the landmark decisions of the Inter-American Court in *Constitutional Tribunal and Ivcher Bronstein v. Peru* (Jurisdiction, 1999), Judgments of 24 September 1999, Series C, ns. 55 and 54, respectively, and in *Hilaire, Constantine and Benjamin and Others v. Trinidad and Tobago* (Preliminary Objection, 2001), Judgments of 1 September 2001, Series C, ns. 80, 82 and 81 respectively.

4 *Villagrán Morales and Others v. Guatemala* (Merits, 1999), Judgment of 19 November 1999, Series C, n. 63.

5 *Barrios altos* (2001), Judgment of 14 March 2001, Series C, n. 75.

6 *Bulacio v. Argentina* (2003), Judgment of 18 September 2003, Series C, n. 100.

no difficulty in referring to each other's case law whenever they have deemed it appropriate. The jurisprudential cross-fertilization which they have today achieved constitutes another inspiring example for other international tribunals.

Human rights treaties, such as the European and American Conventions, have, by means of such interpretative interaction, reinforced each other mutually, to the ultimate benefit of all human beings. Interpretative interaction has, in a way, contributed to the universality of the treaty law on the protection of human rights. This has paved the way for a *uniform* interpretation of the *corpus juris* of contemporary international human rights law. Such uniform interpretation in no way threatens the unity of international law. Quite to the contrary, the two Courts have helped develop the capacity of international law to regulate efficiently relations which have a specificity of their own — at an intra-state, rather than inter-state, level, opposing states to individuals under their respective jurisdictions.