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COMPLIANCE WITH JUDGMENTS AND DECISIONS – THE EXPERIENCE OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS: A REASSESSMENT[1]

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SUMMARY: I. Preliminary Observations.. II. Referral of Non-Compliance to the Main Organs of the OAS.. III. Supervision of Compliance with IACtHR Judgments and Decisions. IV. Supervision Motu Propio by the IACtHR Itself: the Leading Case of Baena Ricardo and Others (270 Workers versus Panama, 2003). V. A Setback in the Practice of the IACtHR: "Partial Compliances". VI. Final Observations.

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I. PRELIMINARY OBSERVATIONS

1. It is a source of great satisfaction to me to participate in this Seminar of the European Court of Human Rights (ECtHR): it affords me the occasion to renew the expression of my links of affection with the Tribunal, which go back to the early seventies. I keep a live and good memory of the two previous occasions I took the floor herein, namely, in the ceremony of the opening of the Judicial Year of 2004, under the Presidency of Judge Luzius Wildhaber, and then in the first joint meeting of the three international human rights tribunals (the ECtHR, the Inter-American Court of Human Rights [IACtHR], and the African Court of Human and Peoples´ Rights) in 2008, under the Presidency of Judge Jean-Paul Costa. It is a great pleasure to me to come back to the *siège* of the ECtHR, now under the Presidency of Judge Dean Spielmann, to participate in the present Seminar on a subject of great relevance and topicality, – the *Implementation of Judgments of the European Court of Human Rights*, and to share this panel with Judge Linos-Alexandre Sicilianos.

2. May I start with a note of gratitude to the organizers of this Seminar. When I was approached by them and suggested, as the topic of my contribution, the experience on the matter of the sister institution, the IACtHR, so that lessons could perhaps be extracted therefrom by my colleagues of the ECtHR in order to tackle the dilemmas they face today, I was touched by their receptiveness. Being engaged in the dialogue between international tribunals already for many years, and being a strong believer in it, I wish to express my deep appreciation for the open-mindedness of the ECtHR in taking into account the experience of its homologue Court in Latin America on the subject-matter under reassessment in this Seminar.

3. To start with, it may be recalled that, unlike the ECtHR, the homologue IACtHR does not count on a Committee of Ministers for the implementation of its Judgments. Given this gap in the mechanism under the American Convention on Human Rights (ACHR), I deemed it fit to insist, during my years of Presidency of the IACtHR (1999-2004), on the need to establish a *permanent* mechanism of supervision of the execution of, or compliance with, the judgments and decisions of the IACtHR. In successive *Reports* that I presented to the main organs of the Organization of American States (OAS), I advanced

concrete proposals to that effect. In my *Report* of 17.03.2000, for example, I warned that, in case of "non-compliance with a Judgment of the Court, the State concerned incurred into an additional violation of the Convention"[3].

4. Despite the attention with which the Delegations of member States of the OAS listened to me, the gap has persisted up to date. On one particular occasion, a respondent State (which had denounced the ACHR), availing itself of the gap, felt free not to provide any information at all concerning compliance with Judgments in the case of *Hilaire, Benjamin and Constantine versus Trinidad and Tobago* (2001-2002). This omission occurred despite the fact that, as President of the IACtHR, I had communicated such non-compliance to the OAS General Assembly (held in Santiago of Chile in 2003), – just as I had done, three years earlier, in relation to the *Peruvian cases*, in the General Assembly of 2000 of Windsor in Canada[4], in conformity with Article 65 of the ACHR.

II. REFERRAL OF NON-COMPLIANCE TO THE MAIN ORGANS OF THE OAS

5. Within the IACtHR, I constantly insisted on the pressing need of having the non-compliance with Judgments (partial or total) by the respondent States submitted to the consideration of the *competent organs of the OAS*, in order to take due measures so as to preserve the integrity of the mechanism of protection of the IACtHR. The supervision of the execution of the Judgments of the IACtHR could not keep on taking place only once a year, and in a very rapid way, by the OAS General Assembly itself.

6. A proposal which I advanced and insisted upon, during my Presidency of the IACtHR (1999-2004), was the creation, within the

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[3] *Report* presented to the Commission on Legal and Political Affairs (CAJP) of the Permanent Council of the OAS, reproduced *in*: A.A. Cançado Trindade, *Informe: Bases para un Proyecto de Protocolo a la Convención Americana sobre Derechos Humanos, para Fortalecer Su Mecanismo de Protección*, vol. II, 2nd. ed., San José of Costa Rica, IACtHR, 2003, p. 125.

[4] As documented in the OAS General Assembly's *Annual Reports of* 2000 and 2003.

Commission on Legal and Political Affairs (CAJP) of the OAS, of a nuclear Commission, composed of representatives of the States Parties to the ACHR, to be in charge of the supervision, on a *permanent* basis, within the OAS, of the execution of the Judgments of the IACtHR, so as to secure compliance with them, and, thereby, the realization of justice[5]. In successive *Reports* to the main organs of the OAS, I stressed the pressing need of providing mechanisms – of both domestic and international law – tending to secure the faithful and full execution of the Judgments of the IACtHR at domestic law level.

7. The ACHR expressly provides that the part of the Judgments of the IACtHR, pertaining to indemnizations, can be executed in the respective State by the domestic process in force for the execution of Judgments against the State (Article 68(2)); the Convention adds that States Parties are bound to comply with decisions of the IACtHR in every contentious case to which they are parties (Article 68(1) of the ACHR). By the end of the last decade, at *domestic law* level, only two States Parties to the ACHR had in effect adopted *permanent* mechanisms for the execution of international Judgments[6]. Throughout the last decade, five other States Parties have adopted norms relating to the execution of the Judgments of the IACtHR[7].

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[5] Cf. A.A. Cançado Trindade, *Informe: Bases para un Proyecto de Protocolo a la Convención Americana sobre Derechos Humanos*..., *op. cit. supra* n. (1), pp. 47-49, 111, 125, 234-235, 664, 793-795 y 918-921, esp. pp. 793-794.

[6] They are, respectively, Peru, which attributes to the highest judicial organ in domestic law (the Supreme Court of Justice) the faculty to determine the execution of, and compliance with, the decisions of organs international protection to the jurisdiction of which Peru has engaged itself (judicial model); and Colombia, which has opted for the attribution to a Committee of Ministers of the same function (executive model).

[7] Namely, Costa Rica, Guatemala, Brazil, Venezuela and Honduras. - Moreover, the duty of compliance with the judgments and decisions of the IACtHR has been expressly acknowledged by the Supreme Courts of a couple of States Parties: it was done so, e.g., in 2007, by the Supreme Court of Justice of Argentina, as well as the Constitutional Tribunal of Peru, among others. - Despite these advances, there subsists to date the problem of *undue delays* in the full compliance by respondent States with the IACtHR´s judgments and decisions.

III. SUPERVISION OF COMPLIANCE WITH IACTHR JUDGMENTS AND DECISIONS

8. In the other States, the Judgments of the IACtHR kept on being executed pursuant to empirical – or even casuistic – criteria, in the absence of a permanent mechanism of domestic law to that end. Given the absence of legislative or other measures to that effect, in my *Tratado de Direito Internacional dos Direitos Humanos*, I expressed the hope that States Parties seek to equip themselves to secure the faithful execution of the Judgments of the IACtHR in their domestic legal orders[8]. And even if a given State Party to the ACHR has adopted a procedure of domestic law to this effect, it cannot be inferred that the execution of the Judgments of the IACtHR is *ipso jure* secured, in the ambit of its domestic legal order. The measures of domestic law are to be complemented by those of international law, particularly by the creation of a permanent mechanism of international supervision of the execution of the Judgments of the IACtHR, – as I sustained throughout the whole period of my Presidency of that Court (1999-2004).

9. Thus, in my extensive *Report* of 05.04.2001, in which I presented to CAJP (of the OAS Permanent Council) the document I had prepared, as *rapporteur* of the Court, containing the "*Bases for a Draft Protocol to the American Convention on Human Rights, to Strengthen Its Mechanism of Protection*", I proposed the creation of a mechanism of international supervision, in the ambit of the OAS (in the form of a Working Group of CAJP), of the Judgments of the IACtHR, to operate on a *permanent* basis, so as to overcome a gap in the inter-American system of human rights protection[9]. Such supervision, – I pointed out, – is incumbent upon all the States Parties to the ACHR, in the exercise of their *collective guarantee*, so as to give due application to the basic principle *pacta sunt servanda*[10].

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[8] Cf. A.A. Cançado Trindade, *Tratado de Direito Internacional dos Direitos Humanos*, vol. II, Porto Alegre/Brazil, S.A. Fabris Ed., 1999, p. 184.

[9] A.A. Cançado Trindade, *Informe: Bases para un Proyecto de Protocolo...*, *op. cit. supra* n. (1), pp. 369. For a recent reassessment of that and other proposals, cf. A.A. Cançado Trindade, *Le Droit international pour la personne humaine*, Paris, Pédone, 2012, pp. 169-214.

[10] *Ibid*., p. 378.

10. Subsequently, in my *Report* of 19.04.2002, to the CAJP of the Permanent Council of the OAS, I insisted on my proposal (which I had taken to the consideration of the Permanent Council itself and of the General Assembly of the OAS in 2001), aiming at filling a gap in the inter-American system of human rights, and thus strengthening the mechanism of protection of the ACHR[11]. Once again the matter was taken to the attention of the OAS Permanent Council in 2002, and also in 2003. Faced with the imobilism of the OAS in this respect, I retook the subject with special emphasis in my *Report* of 16.10.2002 to the Permanent Council of the OAS, on "*The Right of Access to International Justice and the Conditions for Its Realization in the Inter-American System of Protection of Human Rights*"; on that occasion, I again pondered that States Parties are *individually* bound to comply with the Judgments and decisions of the IACtHR, "as established by Article 68 of the ACHR in application of the principle *pacta sunt servanda*, and, moreover, as an obligation of their own domestic law". They are likewise *jointly* bound to guarantee the integrity of the ACHR; "the supervision of the faithful execution of the sentences of the Court is a task that falls upon all the States Parties to the Convention"[12].

11. I then recalled that the ACHR, in creating obligations for States Parties *vis-à-vis* all human beings under their respective jurisdictions, requires the exercise of the *collective guarantee* for the full realization of its object and purpose, whereby its mechanism of protection can be enhanced. "The faithful compliance with, or execution of, their judgments is a legitimate preoccupation of all international tribunals", and is a "special concern" of the IACtHR[13]. It so happens that, in general, States Parties have been satisfactorily complying with the determinations of reparations in the forms of indemnizations, satisfaction to the victims, and harmonization of their domestic laws with the provisions of the ACHR; but the same has not happened in respect of the duty to investigate the facts and to sanction those responsible for grave violations of the protected human

[11] Cf. *ibid*., pp. 794-795.
[12] *Ibid*., pp. 919-920.
[13] *Ibid*., pp. 919-920.

rights (as the *cycle of cases of massacres* was to disclose clearly along the last decade)[14]. This remains cause for concern, as one cannot prescind from such investigation and sanction in order to put an end to impunity (with its negative and corrosive consequences for the social tissue as a whole).

12. Still in my aforementioned *Report* of 19.04.2002, I observed that, in view of the persisting institutional gap in the inter-American system of protection in this domain, the IACtHR took the initiative of supervising, *motu propio*, the execution of its judgments, in the course of its periods of sessions. Yet this was without prejudice to the *collective guarantee* – by all States Parties to the ACHR – of the faithful execution of judgments and decisions of the Court. My reiterated proposal to the OAS for the creation of a "nuclear Commission" of CAJP to undertake the supervision of compliance with the IACtHR´s judgments and decisions on a *permanent* basis did not, unfortunately, see the light of the day. Such measure was to be complemented by measures to be taken by States Parties at domestic law level; the principle *pacta sunt servanda* would thus become effective with measures that were to be taken, *pari passu*, at both international and national levels"[15].

13. The gap persists to date (beginning of 2014). The OAS took note of my proposal in successive resolutions till early 2007. The only point which materialized was another proposal I had made to create a fund of free legal assistance to petitioners in need of it. The other points have remained presumably "under study", – and the IACtHR keeps on taking nowadays the additional task of supervision of execution of its Judgments at the domestic law level of the respondent States. It has been doing so by means of successive resolutions (on State compliance), at times preceded by post-adjudicative public hearings.

14. Earlier examples – and remarkable ones – of compliance with IACtHR´s judgments can be found, e.g., in the cases of *Barrios Altos*

[14] Cf. A.A. Cançado Trindade, *The Access of Individuals to International Justice*, Oxford, Oxford University Press, 2011, ch. X, pp. 179-191; A.A. Cançado Trindade, *State Responsibility in Cases of Massacres: Contemporary Advances in International Justice*, Utrecht, Universiteit Utrecht, 2011, pp. 1-71.

[15] *Ibid*., pp. 919-921.

(2001), *cas célèbre* on the incompatibility of amnesties with the ACHR, and of *Loayza Tamayo* (1997), both concerning Peru. In this latter, the respondent State promptly complied (on 20.10.1997) with the Court´s determination (Judgment of 17.09.1997) to set free a political prisoner. In the case of *Juan Humberto Sánchez versus Honduras* (Judgment of 07.06.2003), the IACtHR recalled its own case-law to the effect that acts or omissions in breach of the protected rights can be committed by any power of the State (Executive, Legislative or Judicial), or any public authority.

IV. SUPERVISION *MOTU PROPIO* BY THE IACTHR ITSELF: THE LEADING CASE OF *BAENA RICARDO AND OTHERS* (*270 WORKERS VERSUS PANAMA*, 2003)

15. The supervision, assumed *motu propio* by the IACtHR, of the execution of its Judgments, is what has been occurring in successive cases in recent years. As a pertinent illustration, may I again recall the leading case of *Baena Ricardo and Others (270 Workers) versus Panama* (cf. *supra*). In its memorable Judgment on competence (of 28.11.2003) to supervise the compliance with its previous Judgment (on merits and reparations, of 02.02.2001) in that case, the IACtHR determined that

> "(...) The jurisdiction comprises he faculty of imparting justice; it is not limited to declaring the law, but also encompasses the supervision of compliance with the judgment. (...) The supervision of compliance with the judgments is one of the elements which compose the jurisdiction. (...) Compliance with the reparations ordered by the Court in its decisions is the materialization of justice for the concrete case and, thereby, of the jurisdiction (...).

Compliance with the Judgments is strongly linked to the right of access to justice, which is set forth in Articles 8 (judicial guarantees) and 25 (judicial protection) of the ACHR" (pars. 72-74).

16. And the IACtHR lucidly added, in the same line of thinking, that to guarantee the right of access to justice, it was not sufficient to have only the final decision, declaring rights and obligations and

extending protection to the persons concerned. It was, morevoer, necessary to count on the existence of

> "effective mechanisms to execute the decisions or judgments, so as to protect effectively the declared rights. The execution of such decisions and judgments is to be considered as an integral part of the right of access to justice, this latter understood *lato sensu*, comprising also full compliance with the respective decision. The contrary would assume the denial itself of this right.
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> (...) If the responsible State does not execute at national level the measures of reparation determined by the Court, it would be denying the right of access to international justice" (pars. 82-83).

17. Next, in the same Judgment on competence in the case of *Baena Ricardo and Others (270 Workers) versus Panama* (cf. *supra*), the IACtHR, to my particular satisfaction, endorsed the understanding that I had expressed in my Concurring Opinion in its Advisory Opinion n. 18 (del 17.09.2003), on the *Juridical Condition and Rights of Undocumented Migrants*, – even expressly citing my Individual Opinion (n. 70)[16], – in the sense that the faculty of the IACtHR of supervision of execution of its Judgments was grounded on its "constant and uniform practice" (keeping in mind Articles 33, 62(1) and (3), and 65 of the ACHR, and 30 of the Statute) and the "resulting *opinio juris communis* of the States Parties to the Convention" (reflected in its several resolutions on compliance by them with the IACtHR´s judgments). And the IACtHR added, retaking my own doctrine on the *universal juridical conscience* as the ultimate *material* source of international law and of all Law[17] (cf. *infra*):

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[16] For the complete text of my aforementioned Opinion, cf. A.A. Cançado Trindade, *Derecho Internacional de los Derechos Humanos - Esencia y Trascendencia (Votos en la Corte Interamericana de Derechos Humanos, 1991-2006)*, Mexico, Edit. Porrúa/Univ. Iberoamericana, 2007, pp. 52-87.

[17] Cf., on this issue: A.A. Cançado Trindade, "International Law for Humankind: Towards a New *Jus Gentium* - General Course on Public International Law

> "The *opinio juris communis* means the manifestation of the universal juridical conscience[18] by means of the observance, by the generality of the members of the international community, of a given practice as obligatory. The aforementioned *opinio juris communis* has manifested itself in the generalized and reiterated attitude shown by [such] States of acceptance of the supervising function of the Court, what has been clearly and widely demonstrated by the presentation on their part of reports requested to them by the Court, as well as the observance of what was resolved by the Tribunal in addressing them instructions or identifying aspects on which there existed controversy between the parties, pertaining to the compliance with the reparations" (par. 102)[19].

18. In effect, – the Court proceeded, – the sanction foreseen in Article 65 of the ACHR assumes the free exercise by the IACtHR of its inherent faculty of supervision of the execution of its Judgments in the ambit of the domestic law of the respondent States (pars. 90, 113 and 115). Such exercise corresponds to its constant practice, from 1989 until the end of 2003 (pars. 103-104 and 107). In the concrete case of *Baena Ricardo and Others (270 Workers) versus Panama*, the IACtHR recalled that the respondent State had not questioned its competence of supervision earlier on, and already in its Judgment of 02.02.2001 the Court had pointed out that it would supervise compliance with it (par. 121).

19. And it concluded, in this respect, that the conduct itself of the State showed "beyond doubt" that this latter had recognized the competence of the IACtHR to supervise "the compliance with its

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- Part I", 316 *Recueil des Cours de l'Académie de Droit International de la Haye* (2005) pp. 177-202; A.A. Cançado Trindade, *A Humanização do Direito Internacional*, Belo Horizonte/Brazil, Edit. Del Rey, 2006, pp. 3-106 and 394-409.

[18] Cf. IACtHR, *Juridical Condition and Rights of Undocumented Migrants*, Advisory Opinion n. 18 (of 17.09.2003), Concurring Opinion of Judge A.A. Cançado Trindade, par. 81.

[19] The IACtHR added that its function of supervision has been accepted by the States and the Inter-American Commission of Human Rights (IAComHR), as well as by the victims or the legal representatives; the IACtHR has thus been able to exercise regularly and consistently its function of supervision of complience with its own judgments (par. 103).

decisions", along "the whole process of supervision" (par. 127). After summarizing its conclusions on the question at issue (pars. 128-137), the IACtHR firmly reasserted that it was endowed with competence to "keep on supervising" the "full compliance" with the Judgment of 02.02.2001 in the *cas d'espèce* (pars. 138-139). It thereby thus discharged, categorically, the challenge of the State concerned, which was never again formulated before the IACtHR. And the respondent State then proceeded to give compliance with the respective Judgment.

V. A SETBACK IN THE PRACTICE OF THE IACTHR: "PARTIAL COMPLIANCES"

20. Despite the earlier application (in 2000 and 2003) of Article 65 of the ACHR in cases of manifest non-compliance with judgments of IACtHR (*supra*), from 2004 onwards, up to now, the IACtHR has no longer applied Article 65 of the ACHR (as it should), thus rendering it impossible in the last decade the exercise of the *collective guarantee* (underlying the ACHR). This, in my perception, is affecting ultimately the inter-American system of protection as a whole. It reveals that there is no linear progress in the operation of an international tribunal (or of any other institution of domestic public law or of international law).

21. If the non-compliance (total or parcial) by States of the judgments of the IACtHR is not discussed and considered in the ambit of the competent organs of the OAS, – as it is happening in the present, – this generates a mistaken impression or assumption that there is a satisfactory degree of compliance with judgments of the IACtHR on the part of respondent States. Regrettably, currently there is not, – to the detriment of the victims. I thus very much hope that the IACtHR will return to its earlier practice, of principle, of applying, in cases of manifest non-compliance of its judgments, Article 65 of the ACHR.

22. The new majority viewpoint prevailing in the IACtHR in recent years (since the end of 2004), avoiding the application of the sanction foreseen in Article 65, has been a "pragmatic" one, in the sense of avoiding "undesirable" clashes with the respondent States, and of "stimulating" these latter to keep on giving compliance, gradually, with the judgments of the IACtHR. Hence the current practice of adoption, on the part of the IACtHR, of successive resolutions of

supervision of compliance with Judgments of the IACtHR, taking note of one or other measure taken by the States concerned, and "closing" the respective cases partially in respect of such measure(s) taken, and in this way avoiding discussions on the matter within the OAS.

23. In effect, this gives the wrong impression of efficacy of the "system" of protection, as the cases cannot be definitively "closed" because the degree of partial compliance is very high, just as is also the degree of partial non-compliance. And all this is taking place to the detriment of the victims. The cases already decided by the IACtHR are thus kept in the Court´s list, for an indeterminate period of time, waiting for definitive "closing", when full compliance is met, – pursuant to a "pragmatic" approach, seeking to foster "good relations" with the States concerned, and thus eluding the problem. The IACtHR is an international tribunal, not an organ of conciliation, which tries to "persuade" or "stimulate" States to comply fully with its judgments.

VI. FINAL OBSERVATIONS

24. If there is a point in relation to which there persists in the inter-American protection system a very high degree of non-compliance with judgments, it lies precisely – as already indicated – on the investigation of the facts and sanction of those responsible for grave violations of human rights. In my times in the Presidency of the IACtHR, I gave due application to Article 65 of the ACHR (in the OAS General Assemblies of Windsor/Canada, 2000, and of Santiago de Chile, 2003), – the last times the Court applied that provision until today, – having held a position of principle and not a "pragmatic" one in this respect. The system of protection exists for the safeguard of the victims, and this consideration ought to have primacy over any others.

25. On the last two occasions (in 2000 and 2003), under my Presidency of the IACtHR, in which the sanction of Article 65 of the ACHR was applied, the concrete results on behalf of the effective protection of human rights under the ACHR were immediate[20]. In

[20] For an account, cf. A.A. Cançado Trindade, - El Ejercicio de la Función Judicial Internacional - Memorias de la Corte Interamericana de Derechos Humanos, 3rd. ed., Belo Horizonte/Brazil, Edit. Del Rey, 2013, pp. 29-45.

sum, on this jurisdictional point of major importance, the norms of the ACHR exist to be complied with, even if this generates problems with one or another State Party. In ratifying the ACHR, States Parties assumed obligations to be complied with (*pacta sunt servanda*), which are obligations of international *ordre public*. The ACHR calls for a position of principle in this matter; after all, for the safeguard of the protected rights, it sets forth prohibitions which belong to the domain of imperative law, of international *jus cogens*.

26. A remarkable illustration of full compliance with conventional obligations is provided by the case of the "*Last Temptation of Christ*" (*Olmedo Bustos and Others versus Chile*, Judgment of 05.02.2001), wherein the IACtHR ordered the end of movie censorship, – a measure that required the reform of a constitutional provision[21]. On 07.04.2003 the respondent State reported to the Court its full compliance with the Court´s Judgment, and added that the movie at issue was already being exhibited (since 11.03.2003) in the *Cine Arte Alameda* in Santiago. In its resolution of 28.11.2003, the IACtHR declared that the case was thereby terminated, as Chile had fully complied with its Judgment of 05.02.2001.

27. This Judgment, delivered under my Presidency of the IACtHR, was not only the first pronouncement of the Court in a contentious case on the right to freedom of thinking and of expression, but likewise of full compliance with the Judgment which required the modification of a provision of the national Constitution itself. And this was not an isolated episode. Another one, of similar historical significance, – having also occurred under my Presidency, – was that of the case of the *Constitutional Tribunal versus Peru*, culminating likewise in the full compliance, by the respondent State, with the Court´s Judgment (merits and reparations, of 31.01.2001), with deep implications for the consideration of the relations between international and domestic law in the present domain of compliance with Judgments concerning the safeguard of the rights of the human person.

28. In that particular Judgment, the IACtHR had condemned the destitution of the three magistrates of the Peruvian Constitutional Tribunal as a breach of the ACHR, and determined that such violation

[21] Namely, Article 19(12) of the Chilean Constitution of 1980.

of the right to an effective remedy and to the judicial guarantees and the due process of law under the ACHR required the *restitutio in integrum* of the three magistrates (their effective reinstallment into their posts), given the nature of their function and the need to safeguard them from any "external pressures" (par. 75). The resolution of destitution of the three magistrates was annuled by the Peruvian Congress even before the aforementioned Judgment of 31.01.2001 of the IACtHR.

29. In effect, the National Congress did so on 17.09.2000, before the holding of the public hearing before the Court on 22.11.2000 in the case of the *Constitutional Tribunal*. The three magistrates were reinstalled in their posts in the Peruvian Constitutional Tribunal, which came to be presided by one of them. On the two subsequent occasions – after the reinstallment of the three magistrates – when I visited the plenary of the Constitutional Tribunal in Lima (on 12.09.2001 and on 18.11.2003), its magistrates expressed to me their gratitude to the IACtHR. The episode reveals the relevance of the international jurisdiction. In a subsequent letter (of 04.12.2003) that, as President of the IACtHR, I sent to the Constitutional Tribunal, I observed *inter alia* that the IACtHR´s unprecedented Judgment had repercussions "not only in our region but also in other continents", and marked "a starting-point of a remarkable and reassuring approximation between the Judiciary at national and international levels, which nowadays serves as example to other countries"[22].

30. This precedent is furthermore reflected in the convergence which has followed between their respective jurisprudences (of the IACtHR and of the Constitutional Tribunal). In the same line of thinking, throughout my long period as Judge of the IACtHR, I sustained the view that the *corpus juris* of protection of the ACHR is directly applicable, and States Parties ought to give full execution to the Judgments of the IACtHR. This is not to be confused with "homologation" of sentences, as the IACtHR is an international, and not a "foreign", tribunal; States Parties are bound to comply directly with the IACtHR´s judgments, without the need of "homologation".

[22] Text of the letter reproduced *in*: OAS, *Informe Anual de la Corte Interamericana de Derechos Humanos - 2003*, San José of Costa Rica, IACtHR, 2004, Annex LVII, pp. 1459-1460, and cf. pp. 1457-1458.

31. Contrary to what is still largely assumed in several countries, international and national jurisdictions are not conflictual, but rather complementary, in constant *interaction* in the protection of the rights of the human person[23]. In the case of the *Constitutional Tribunal*, the international jurisdiction effectively intervened in defense of the national one, contributing decisively to the restoration of the rule of law (*état de Droit*, *Estado de Derecho*), besides safeguarding the rights of the victimized.

32. In the history of the relations between the national and international jurisdictions, this is a remarkable precedent, which will keep on being studied for years to come. The two historical episodes that I herein recall, of the closing of the cases of the "*Last Temptation of Christ*" and of the *Constitutional Tribunal*, pertaining to Chile and to Peru, respectively, after due compliance by them with the IACtHR´s Judgments, reveal that, in the present domain of protection, the interaction between international and domestic law takes place to safeguard the rights inherent to the human person.

33. In conclusion, the IACtHR, which does not count on an organ such as a Committee of Ministers to assist it in the supervision of the execution of its judgments and decisions, has taken upon itself that task. It has done so in the exercise of its *inherent faculty* of that supervision. Much has been achieved, but it has also experienced a setback (of "partial compliances"), as we have seen. Its homologue ECtHR counts on the Committee of Ministers, and has reckoned the *complementarity* of its own functions and those of the Committee in this particular domain. I hope the present reassessment of the accumulated experience of the IACtHR to date may prove useful to the colleagues and friends of the ECtHR currently dedicated to the examination of this matter. After all, compliance with the

[23] Cf. A.A. Cançado Trindade, *Reflexiones sobre la Interacción entre el Derecho Internacional y el Derecho Interno en la Protección de los Derechos Humanos*, Guatemala, Ed. del Procurador de los Derechos Humanos de Guatemala, 1995, pp. 3-41; A.A. Cançado Trindade, *The Access of Individuals..., op. cit. supra* n. (12), ch. V, pp. 76-112 (on the interaction between international law and domestic law in human rights protection).

judgments and decisions of contemporary international human rights tribunals is directly related not only to the *rule of law*, but also, and ultimately, to the *realization of justice* at national and international levels.

Strasbourg, 31 January 2014.

A.A.C.T.