UDC 341

SYSTEMIC INTERPRETATION OF THE AMERICAN CONVENTION ON HUMAN RIGHTS[1, 2]

A. FUENTES[a]

[a]*Raoul Wallenberg Institute of Human Rights and Humanitarian Law, 17B Gråbröderg Street, Lund 22105, Sweden*

This paper proposes a critical assessment of the jurisprudence of the Inter-American Court of Human Rights (IACRTHR) regarding the systemic integration of the provisions enshrined in the American convention on human rights (ACHR), under the light of the developments of the *corpus juris* of international human rights law. By incorporating the evolution in the interpretation of human rights law into the reading of ACHR, IACRTHR has expanded the scope of protection of the rights recognized within the ACHR, aiming at delivering more effective and comprehensive protection of them. This study will specifically focus its analysis on the interpretative method applied by IACRTHR. In particular, special attention will be given to the manner that the regional tribunal has applied the method of systemic integration of international human rights law, under the guiding light of the *pro homine* principle, which hermeneutically put the protection of individuals at the centre of the interpretative process of international human rights law.

Keywords: human rights; systemic interpretation; *corpus juris*; *pro homine* principle; Inter-American Court of Human Rights.

СИСТЕМНАЯ ИНТЕРПРЕТАЦИЯ АМЕРИКАНСКОЙ КОНВЕНЦИИ О ПРАВАХ ЧЕЛОВЕКА[3]

А. ФУЭНТЕС[1)]

[1)]*Институт прав человека и гуманитарного права имени Рауля Валленберга, Стура Гробрёдершгатан, 17Б, 22105, г. Лунд, Швеция*

Дается оценка решений Межамериканского суда по правам человека в отношении системной интеграции положений, закрепленных в Американской конвенции о правах человека, в свете изменений нормативно-правовой базы международного законодательства по правам человека. Для обеспечения более эффективной и всеобъемлющей защиты прав человека с учетом эволюции в толковании закона о правах человека в интерпретации данной конвенции

[1]Preparation of the article is organized by Raoul Wallenberg Institute of Human Rights and Humanitarian Law in the context of academic cooperation with the Belarusian State University and other Belarusian universities. This academic cooperation has been supported by the Government of Sweden represented by the Swedish International Development Cooperation Agency (Sida). Opinion of the authors expressed in this article may not coincide with the viewpoint of the Institute or Sida.

[2]The content of this article consists in an updated extended version of the research brief published by the author in 2019 under the title "Systemic interpretation of international human rights law in the jurisprudence of the Inter-American Court of Human Rights" in the website of the Raoul Wallenberg Institute of Human Rights and Humanitarian Law (RWI).

[3]Данная статья является обновленной и расширенной версией исследовательской записки, опубликованной автором в 2019 г. под названием "Системная интерпретация международного законодательства по правам человека в юриспруденции Межамериканского суда по правам человека" на веб-сайте Института прав человека и гуманитарного права имени Рауля Валленберга.

Образец цитирования:
Фуэнтес А. Системная интерпретация Американской конвенции о правах человека. *Журнал Белорусского государственного университета. Международные отношения*. 2020;1:94–101 (на англ.).

For citation:
Fuentes A. Systemic interpretation of the American convention on human rights. *Journal of the Belarusian State University. International Relations*. 2020;1:94–101.

Автор:
Алехандро Фуэнтес – доктор права; старший исследователь.

Author:
Alejandro Fuentes, doctor of laws; senior researcher.
alejandro.fuentes@rwi.lu.se

Межамериканский суд по правам человека расширил сферу защиты прав, признанных в ней. В данной работе сделан акцент на интерпретационном подходе суда. В частности, особое внимание уделено применению региональным трибуналом системной интеграции международного законодательства по правам человека в свете руководящего принципа гуманизма, где защита частных лиц герменевтически ставится в центр внимания интерпретационного процесса международного законодательства в области прав человека.

Ключевые слова: права человека; системная интерпретация; корпоративное право; принцип гуманизма; Межамериканский суд по правам человека.

Introduction

The Inter-American Court of Human Rights (IACRTHR) has developed an innovative jurisprudence that has contributed to the strengthening of the notion of the *corpus juris* of international human rights law. By means of interpreting the provisions contained in the American convention on human rights (ACHR)[4], under the light of relevant regional or universal human rights instruments, the IACRTHR has paved the way for more effective protection of conventionally recognised human rights.

In other words, the regional tribunal has introduced a systemic integration of international human rights norms, which consists in interpreting the provision of the ACHR under the light of relevant human rights instruments that are part of the same system[5]. This systemic normative integration has strengthened the protection of human rights, not only facilitating the generation of all its appropriate effects (i. e. principle of effectiveness or *effet utile*), but also laying the foundation for their evolutive interpretation under the light of international human rights law developments[6].

Moreover, the interpretative prevalence of the principle of effectiveness has been reinforced in the jurisprudence of the IACRTHR with the incorporation of the *pro homine* principle. By introducing this additional hermeneutical tool, the IACRTHR has developed an interpretation of human rights norms based "on the principle of the rule most favourable to the human being"[7]. In addition, the effective protection of conventionally recognized rights has been further strengthened by means of a *non-restrictive* interpretation [1, p. 6]. In this sense, the regional tribunal used extensively the provisions enshrined in Art. 29 of the ACHR, which precluded any restrictive interpretation of the rights and freedoms recognized in this convention, either by virtue of domestic legislation or by the implementation of other conventional obligations[8].

Therefore, these hermeneutical developments have paved the way for the introduction of more robust human rights guarantees in the region. These guarantees have been reinforced by means of interpreting the ACHR in line with the *pro homine* principle, which is an interpretation that allocates the human person – and its effective protection – at the centre of the interpretation and implementation of human rights provisions.

However, it is important to note that this expansive interpretation of the ACHR risks being perceived as a *praetorian* introduction of rights and obligations not expressly mentioned in the text of this convention. In fact, as mentioned elsewhere, this development has generated some discomfort among states members of the ACHR. In this regard, it has been noted that the jurisprudence related to the recognition of the right of indigenous peoples to their traditional land and territories have had an enormous impact on different strategic sectors for the development of the states, in particular, in the exploitation of the natural resources present in the claimed traditional lands [2].

---

[4]The American convention on human rights, also denominated Pact of San José, Costa Rica adopted by delegates of the member states of the Organization of the American States (OAS) in the Inter-American specialized conference on human rights, which was held in San José (Costa Rica) on 22 November 1969, and entered into force on 18 July 1978. Today, 22 countries – out of 35 states members of the OAS are parties to this convention.

[5]*Koskenniemi M.* Fragmentation of international law: difficulties arising from the diversification and expansion of international law // Report of the study group of the Int. Law Comm., A/cn.4/L.682 (Int. Law Comm., 1 May – 9 June and 3 July – 11 Aug. 2006, Geneva, Switzerland).

[6]The right to information on consular assistance in the framework of the guarantees of the due process of law. 1 Oct. 1999. IACRTHR. Advisory opinion OC-16/99. Series A. No. 16. Para 58 ; *Lixinski L.* Treaty interpretation by the Inter-American Court of Human Rights: expansionism at the service of the unity of international law // The Eur. Journ. of Int. Law. 2010. Vol. 21. No. 3.

[7]Baena-Ricardo et al. v. Panama. 2 Feb. 2001. IACRTHR. Judgment on merits, reparations and costs. Series C. No. 72. Para 189.

[8]Art. 29 of the ACHR reads as follow: "No provision of this convention shall be interpreted as: (a) permitting any state party, group, or person to suppress the enjoyment or exercise of the rights and freedoms recognized in this convention or to restrict them to a greater extent than is provided for herein; (b) restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any state party or by virtue of another convention to which one of the said states is a party; (c) precluding other rights or guarantees that are inherent in the human personality or derived from representative democracy as a form of government; or (d) excluding or limiting the effect that the American declaration of the rights and duties of man and other international acts of the same nature may have".

To conclude, an analysis of the IACRTHR's interpretative methods will contribute to a better understanding of the steps taken by this regional tribunal towards the determination of the content and scope of the rights contained in the ACHR. This article will both clarify the legal grounds invoked by the IACRTHR, and shed light on the hermeneutical contribution of its jurisprudence that has integrated human rights provisions under the light of the developments of the *corpus juris* of international human rights law.

Human rights interpretation in the Americas

When interpreting the provisions of the ACHR, the IACRTHR relies on traditional interpretive canons[9]. In particular, it makes specific references to both general and supplementary rules of interpretation as incorporated in Art. 31[10] and Art. 32[11] of the 1969 Vienna convention on the law of the treaties (VCLT)[12].

As stated by Art. 31 of the VCLT, the primary guidance for interpretation of the provisions contained in a treaty is provided by its own *object* and *purpose*, which in the case of the ACHR is the "effective protection of human rights". For the IACRTHR, "[t]he safeguard of the individual in the face of the arbitrary exercise of the powers of the State is the primary purpose of the international protection of human rights"[13]. It is important to notice that this method of interpretation "respects the principle of the primacy of the text, that is, the application of objective criteria of interpretation"[14]. It also means that the terms and – therefore – the content of the rights recognized in the ACHR have autonomous and independent meanings, which are informed not only by the object and purpose of the same instrument, but also "interpreted by reference to their normative environment" in which the convention is integrated[15].

The hermeneutical relevance of the principle of effectiveness (effet utile). According to the IACRTHR, the ACHR – as a human rights treaty – must be interpreted "in such a way that the system for the protection of human rights has all its appropriate effects (*effet utile*)"[16]. Moreover, the interpretation should not reduce, restrict, or limit the recognition and effective protection of rights enshrined in the ACHR. In the wording of Judge García Ramírez, "the principle of interpretation that requires that the object and purpose of the treaties be considered (Article 31(1) of the Vienna Convention) <…> and the principle pro homine of the international law of human rights <…> which requires the interpretation that is conducive to the fullest protection of persons, all for the ultimate purpose of preserving human dignity, ensuring fundamental rights and encouraging their advancement"[17]. To put it differently, protected rights have to be interpreted in a manner that reinforces their effective implementation and avoids any potential interpretation that could make their enjoyment illusory or deprived of their essential content. According to the IACRTHR, "the efficacy of the mechanism of international protection, must be interpreted and applied in such a way that the guarantee that it establishes is truly practical and effective, given the special nature of human rights treaties"[18]. As expressed by the IACRTHR, "[a] provision of the Convention must be interpreted in good faith, according to the ordinary meaning to be given to the terms of the treaty and their context, and bearing in mind the object and purpose of the ACHR, which is the effective protection of the human person, as well as by an evolutive interpretation of international instruments for the protection of human rights"[19].

---

[9]For a more detailed explanation of the interpretative methods applied by the Inter-American Court, see: *Fuentes A.* Expanding the boundaries of international human rights law. The systemic approach of the Inter-American Court of Human Rights [Electronic resource]. Available from: https://ssrn.com/abstract=3163088 (date of access: 07.04.2020).

[10]Art. 31 of the VCLT states – in its first paragraph – that "(a) treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose".

[11]Art. 32 of the VCLT recognizes the possibility of recourse to supplementary means of interpretation, such as "the preparatory work of the treaty and the circumstances of its conclusion".

[12]"Other treaties" subject to the consultative jurisdiction of the court (Art. 64 of ACHR). 24 Sept. 1982. IACRTHR. Advisory opinion oc-1/82. Series A. No.1. Para 33.

[13]Yatama v. Nicaragua. 23 June 2005. IACRTHR. Judgment on preliminary objections, merits, reparations and costs. Series C. No. 127. Para 167.

[14]The effect of reservations on the entry into force of the American convention on human rights (Art. 74 and Art. 75*)*. 24 Sept. 1982. IACRTHR. Advisory opinion oc-2/82. Series A. No. 2. Para 29.

[15]*Koskenniemi M.* Fragmentation of international law. Supra note 2. P. 209. Para 413–414. According to this study, "[a]ll treaty provisions receive their force and validity from general law, and set up rights and obligations that exist alongside rights and obligations established by other treaty provisions and rules of customary international law".

[16]The right to information on consular assistance. Supra note 3. Para 58.

[17]Mayagna (Sumo) Awas Tingi Community v. Nicaragua. 31 Aug. 2001. IACRTHR. Judgment on merits, reparations and costs. Series C. No. 79. Concurring opinion of Judge Sergio García Ramírez. Para 2.

[18]Constitutional Court v. Peru. Competence. 24 Sept. 1999. IACRTHR. Judgment. Series C. No. 55. Para 36. See also: Yatama v. Nicaragua. Supra note 12. Para 204.

[19]Artavia Murillo et al. ("In vitro fertilization") v. Costa Rica. 28 Nov. 2012. IACRTHR. Judgment on preliminary objections, merits, reparations and costs. Series C. No. 257. Para 173. For a comprehensive analysis of the main findings of the case, see: *Ligia M.* A pro-choice reading of a pro-life treaty: the Inter-American Court on Human Rights' distorted interpretation of the American Convention on human rights in Artavia v. Costa Rica // Wisconsin Int. Law Journ. 2014. Vol. 32. Issue 2. P. 223–266.

Therefore, in order to fulfil the requirements of the principle of effectiveness, which lies at the core of the scope of protection of the ACHR, the interpretation of its text cannot affect or interfere with the scope of protection of a given right to a point of depriving an individual of the effective guarantees and freedoms enshrined in it. As a complement of this principle, Art. 29 of the ACHR incorporates the principle of *non-restrictive* interpretation[20]. This principle precludes any restrictive interpretation of the rights and freedoms recognized in the ACHR, by virtue of domestic legislation or the implementation of other conventional obligations. In this regard, the IACRTHR has stressed that "[a]ny interpretation of the Convention that <…> would imply suppression of the exercise of the rights and freedoms recognized in the Convention, would be contrary to its object and purpose as a human rights treaty"[21].

Furthermore, *effective* protection of conventional rights also demands special attention to all circumstances and relevant contextual factors of the case under analysis. As Judge Sergio Garcia-Ramirez highlighted, "[i]t would be useless and lead to erroneous conclusions to extract the individual cases from the context in which they occur. Examining them in their own circumstances – in the broadest meaning of the expression: actual and historical – not only contributes factual information to understand the events, but also legal information through the cultural references – to establish their juridical nature and the corresponding implications"[22]. As expressly reaffirmed by the IACRTHR, "human rights treaties are living instruments whose interpretation must consider the changes over time and present-day conditions"[23]. For this reason, the regional tribunal "must adopt the proper approach to consider [the interpretation of a given right] in the context of the evolution of the fundamental rights of the human person in contemporary international law"[24].

Evolutive and systemic interpretation of the ACHR. In addition to the above-mentioned hermeneutical steps, the IACRTHR has introduced an evolutive interpretation of the ACHR, following the blueprints of the International Court of Justice (ICJ), which has stated: "an international instrument has to be interpreted and applied within the framework of the entire legal system prevailing at the time of the interpretation"[25].

Societal conditions change permanently as "culture takes diverse forms across time and space"[26]. International human rights law cannot be blind to those changes; it needs to follow the historical development of societies in order to remain meaningful as a normative parameter. That is why the continually evolving conditions in society influence the interpretation of a given right within a particular historical and geographical context.

According to the famous proposition of the Vienna declaration and programme of action (1993), human rights are universal, indivisible, interdependent and interrelated, but in their interpretation and implementation, "the significance of national and regional particularities and various historical, cultural and religious backgrounds must be born in mind"[27]. This means that human rights interpretation needs to take into consideration the evolving socio-cultural conditions in which human rights norms and standards need to be implemented[28].

It is precisely based on the above-mentioned considerations that the IACRTHR has stated, "human rights treaties are living instruments whose interpretation must consider the changes over time and present-day conditions"[29]. In other words, for the regional tribunal the interpretation of human rights provisions needs to follow the developments that take place in our societies and – therefore – needs to be *evolutive* too. That is, when interpreting a given right, the ACHR "must adopt the proper approach to consider it in the context of the evolution of the fundamental rights of the human person in contemporary international law"[30].

Moreover, the evolutive interpretation of human rights provisions is complemented by taking into

---

[20]See: supra note 6 ; *Fuentes A.* Expanding the boundaries of international human rights law. Supra note 8. P. 8.

[21]Ivcher Bronstein v. Peru. 24 Sept. 1999. IACRTHR. Competence. Series C. No. 54. Para 41. See also: *Fuentes A.* Judicial interpretation and indigenous peoples' rights to lands, participation and consultation. The Inter-American Court of Human Rights' approach // Int. Journ. on Minority and Group Rights. 2015. No 23. P. 58.

[22]Yatama v. Nicaragua. Supra note 13. Concurring opinion of Judge Sergio Garcia-Ramirez. Para 7.

[23]The right to information on consular assistance. Supra note 3. Para 192 ; Gómez-Paquiyauri Brothers v. Peru. 8 July 2004. IACRTHR. Judgment on merits, reparations and costs. Series C. No. 110. Para 165.

[24]The right to information on consular assistance. Supra note 3. Para 115.

[25]Legal consequences for states of the continued presence of South Africa in Namibia (South West Africa). Notwithstanding Security Council Resolution 276 (1970). 21 June 1971. ICJ Advisory opinion, ICJ reports. 1971. P. 16, 31.

[26]UNESCO universal declaration on cultural diversity : adopt. by the 31st session UNESCO General Conference. 2 Nov. 2001. Art. 1.

[27]Vienna declaration and programme of action of 12 July 1993. A/CONF.157/23. Section I. Para 5.

[28]*Fuentes A.* Expanding the boundaries of international human rights law. Supra note 8. P. 9 *et seq.*

[29]The right to information on consular assistance. Supra note 3. Para 114. See also: Case of the "Street children" (Villagrán-Morales et al.) v. Guatemala. 19 Nov. 1999. IACRTHR. Judgment on merits. Series C. No. 63. Para 192 ; Gómez-Paquiyauri Brothers v. Peru. Supra note 23. Para 165.

[30]The right to information on consular assistance. Supra note 3. Para 115.

account not only the instruments and agreements directly related to the provision under interpretation (Art. 31(2) (a), (b) of the VCLT), but also "any relevant rules of international law applicable in the relations between the parties" (Art. 31(3)(c) of the VCLT). The latter provision introduces the principle of *systemic* integration in general international law, which "points to a need to take into account the normative environment more widely"[31]. In the wording of the IACRTHR, "[a]ccording to the systematic argument, norms should be interpreted as a part of a whole, the meaning and scope of which must be defined based on the legal system to which they belong. Thus, the IACRTHR has considered that "the interpretation of a treaty should take into account not only the agreements and instruments formally related to it (Article 31(2) of the Vienna Convention), but also its context (Article 31(3))"; in other words, international human rights law"[32].

Therefore, for the IACRTHR the interpretation of the ACHR must take into account the legal system of which the ACHR is a part, namely, international human rights law[33]. This means that the IACRTHR would not limit itself to the text of the ACHR when it integrates the content of its provisions, but would rather scrutinize all other regional or universal human rights instruments that would provide support and would – eventually – complement its application in a given case. The IACRTHR has considered that it could "address the interpretation of a treaty provided it is directly related to the protection of human rights in a member state of the Inter-American system, even if that instrument does not belong to the same regional system of protection"[34].

The systemic interpretative approach is essentially grounded on the fact that international human rights law "is composed of a series of rules (conventions, treaties and other international documents), and also of a series of values that these rules seek to develop"[35]. Also, according to Justice Cançado Trindade: "Stemming from human conscience and the sentiment of justice enshrined therein, jus gentium is erected upon ethical foundations, incorporates basic human values, common to the whole of humankind, thus paving the way for the future evolution of the international legal order"[36]. This further indicates that norms "should also be interpreted based on a values-based model that the Inter-American System seeks to safeguard from the perspective of the "best approach" for the protection of the individual"[37].

Finally, it is important to note that the object and purpose of human rights treaties provide the criteria that inform the values-based model that permeates the entire interpretative process. In addition to the consideration of those values, the interpreter needs to take into consideration the principles and values that permeate the entire legal system, which the instrument under interpretation is a part of. Indeed, the systemic argument not only paves the way for normative cross-referencing but also for an axiological integration and value-based cross-fertilization across all human rights law instruments relevant to a given case under analysis.

The *corpus juris* of international human rights law

The notion of *corpus juris* of international human rights law has emerged in the last decades as a guiding interpretative principle that permeates the entire jurisprudence of the IACRTHR. As pedagogically explained by the IACRTHR, "the corpus juris of international human rights law comprises a set of international instruments of varied content and juridical effects (treaties, conventions, resolutions and declarations). Its dynamic evolution has had a positive impact on international law in affirming and building up the latter's faculty for regulating relations between States and the human beings within their respective jurisdictions. This Court, therefore, must adopt the proper approach to consider this question in the context of the evolution of the fundamental rights of the human person in contemporary international law"[38]. Finally, it is important to highlight the conceptual approach of the IACRTHR in one of its latest Advisory opinion, related to the rights and guarantees of children in the context of migration processes. In this Advisory opinion, the IACRTHR has referred to the corpus juris as "a series of rules expressly recognized in international treaties or established

[31] *Koskenniemi M.* Fragmentation of international law. Supra note 2. P. 209. Para 415. According to this study, "[w]ithout the principle of "systemic integration" it would be impossible to give expression to and to keep alive, any sense of the common good of humankind, not reducible to the good of any particular institution or "regime"". (P. 244. Para 480).

[32] Artavia Murillo et al. ("In vitro fertilization") v. Costa Rica. Supra note 18. Para 191. See also: González et al. ("Cotton field") v. Mexico. 16 Nov. 2009. IACRTHR. Judgment on preliminary objection, merits, reparations and costs. Series C. No. 205. Para 43.

[33] The right to information on consular assistance. Supra note 3. Para 113 ; Kichwa Indigenous People of Sarayaku v. Ecuador. 27 June 2012. IACRTHR. Judgment on merits and reparations. Series C. No. 245. Para 161.

[34] Sarayaku v. Ecuador. Supra note 32. Para 161.

[35] González et al. ("Cotton field"). Supra note 31. Para 33.

[36] *Cançado Trindade A. A.* International law for humankind: towards a new jus gentium. Leiden : Brill Nijhoff, 2013. P. 27.

[37] *Ibid*. P. 27.

[38] *Ibid*. Para 115. See also: Juridical condition and rights of undocumented migrants. 17 Sept. 2003. IACRTHR. Advisory opinion OC-18/03. Series A. No. 18. Para 120 ; Yakye Axa indigenous community v. Paraguay. 17 June 2005. IACRTHR. Judgment on preliminary objections, merits, reparations and costs. Series C. No. 172. Para 67 ; Ituango Massacres v. Colombia. 1 July 2006. IACRTHR. Judgment on preliminary objections, merits, reparations and costs. Series C. No. 148. Para 157.

in international customary law as evidence of a general practice accepted as law, as well as of the general principles of law and of a series of general norms or soft law, that serve as guidelines for the interpretation of the former, because they provide greater precision to the basic contents of the treaties"[39].

The IACRTHR views, that states are "bound by the corpus juris of the international protection of human rights, which protects every human person erga omnes, independently of her statute of citizenship, or of migration, or any other condition or circumstance" in order to deliver effective protection to the rights contained in the convention[40]. In this sense, it is important to highlight that the systemic protection provided by the corpus juris of human rights law is particularly relevant *vis-à-vis* individuals or groups in situations of vulnerability. As Justice Cançado Trindade said when referring to the relevance of the instruments that integrate the *corpus juris*, "[t]o attempt to withdraw their protection, rendering human beings, individually and in groups, extremely vulnerable, if not defenceless, would go against the letter and spirit of those Conventions"[41].

In integrating the *corpus juris* of international human rights law, the IACRTHR has referred to all kind of norms (binding or not, universal, regional or domestic) while dealing with different provisions of the ACHR in relation to a wide array of issues involving, for instance, the rights of indigenous peoples, undocumented migrant workers, children, etc. [3, p. 243]. Indeed, the IACRTHR has not only taken into account different sources of international law during its extensive interpretation of the ACHR, including *jus cogens* norms and *erga omnes* obligations[42], but has also made consistent references to domestic law[43].

Moreover, human rights treaties are not static documents, frozen in time. On the contrary, they are living instruments whose interpretation must consider the changes over time and present-day conditions[44]. Thus, the integrative references to international human rights instruments must also take into consideration the developments in their interpretation provided by authoritative human rights adjudicative bodies, such as regional human rights courts or UN treaty bodies, which have the conventional mandate to interpret those instruments under today's societal conditions.

In sum, references to the *corpus juris* of international human rights law have also paved the way to the allocation of the fate of the human person – and of humankind as a whole – as a central element of international law. According to Justice Cançado Trindade, this process of integration has led to a "greater justice" and "a higher level of humanity" in international law, where the subjects of international law are not only states and international organizations but also "human beings, either individually or collectively" and "humankind"[45]. The subjects of international law are not only states and international organizations but also human beings, either individually or collectively, and humankind. In this sense, it has been said that "[t]he corpus juris is therefore "essentially victim orientated" as it has been originally consolidated and developed in benefit of human beings "individually" or "in groups""[46].

In light of the above considerations, it is possible to conclude that the *pro homine* principle has also played a central hermeneutical role in the IACRTHR's jurisprudence by prioritizing the centrality of the individual's fate in the interpretative process of the ACHR. Consequently, some remarks regarding this principle are necessary to achieve a better understanding of the IACRTHR's systemic interpretation.

The interpretative centrality of the *pro homine* principle

The "effective protection of human rights" constitutes not only the object and purpose of the ACHR but also a guiding principle for its interpretation. Indeed, human rights treaties aim to establish a system for the protection of human dignity, which reinforces and provides content to the *pro homine* principle (also referred to as *pro persona* principle). For instance, according to the IACRTHR, "the right to due process must be considered in accordance with the object and purpose supra note of the American Convention, which is the effective protection of the human being; in other words, it should be interpreted in favor of the individual"[47].

The *pro persona* principle has permeated and influenced the jurisprudence of the IACRTHR, which has

[39]Rights and guarantees of children in the context of migration and/or in need of international protection. 19 Aug. 2014. IACRTHR. Advisory opinion OC- 21/14. Series A. No. 21. Para 60.

[40]Juridical condition and rights of the undocumented migrants. Supra note 36. Para 85.

[41]Application of the Convention on the prevention and punishment of the crime of genocide (Croatia v. Serbia). 3 Feb. 2015. ICJ. Merits, dissenting opinion of Judge Cançado Trindade. Para 61.

[42]*See:* Juridical condition and rights of the undocumented migrants. Supra note 36. Concurring opinion of Judge Cançado Trindade. Para 86–89.

[43]*Medina Quiroga C.* The American convention on human rights. Supra note 5.

[44]The right to information on consular assistance. Supra note 3. Para 114.

[45]*Cançado Trindade A. A.* International law for humankind. Supra note 34. P. 282.

[46]Application of the Convention on the prevention and punishment of the crime of genocide (Croatia v. Serbia). Supra note 38. Dissenting opinion of Judge Cançado Trindade. Para 59.

[47]*See: Medina Quiroga C.* The American convention on human rights. Supra note 5. P. 6 ; 19 merchants v. Colombia. 5 July 2004. IACRTHR. Judgment on merits, reparations and costs. Series C. No. 103. Para 173 (emphasis added).

elevated its interpretative relevance to the point of recognizing it as a constitutive part of the ACHR [4]. The IACRTHR has said in this regard that, "[t]he American Convention expressly establishes specific standards of interpretation in its Article 29, which includes the *pro persona* principle, which means that no provision of the Convention may be interpreted as restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said States is a party, or excluding or limiting the effect that the American declaration of the Rights and Duties of man and other international acts of the same nature may have"[48].

The *pro homine* principle emerges as an essential hermeneutical tool, which – combined with the evolutionary and systemic interpretation of the IACRTHR – enlarges human rights' protection. Regarding the importance of the pro-homine principle in the jurisprudence of the IACRTHR, see – among others – A. Fuentes, M. Vannelli [5]. This means that the references made by the IACRTHR to different human rights instruments could facilitate not only an interpretative expansion of the scope of protection of human rights but also the prioritization and centrality of the individual's fate in the process of interpretation [6].

The constant jurisprudence of the IACRTHR is permeated by references to instruments that are part of the *corpus juris* of international human rights law, interpreted (and applied) under the guiding light of the *pro homine* principle. For instance, by applying these interpretative guidelines, the IACRTHR has concluded that sexual orientation, gender identity and gender expression are categories protected by the ACHR, because included within the legal category of "any other social condition", contained in Art. 1(1) of the ACHR as prohibited grounds of discrimination. In line with these developments, it is important to highlight that the IACRTHR has recognized – in a newly adopted advisory opinion – not only the general prohibition of discrimination based on sexual orientation, but also that "the right of each person to define his or her sexual and gender identity autonomously and that the personal information in records and on identity documents should correspond to and coincide with their self-defined identity is protected by the American Convention under the provisions that ensure the free development of the personality (Articles 7 and 11(2)), the right to privacy (Article 11(2)), the recognition of juridical personality (Article 3), and the right to a name (Article 18)[49]." The same could be said in connection with children's rights, where the IACRTHR has expanded the scope of protection of their rights by stressing their particular needs and situation of vulnerability, such as could be the case of unaccompanied children in processes of migration[50]. Finally yet importantly, the innovative jurisprudence developed by the IACRTHR in connection with indigenous peoples' land and cultural rights is nothing but an additional example of the "humanization" of international law. As an example of the process of "humanization" of international law, it is important to highlight the systemic integration of the rights of indigenous peoples made by the IACRTHR. In this sense, IACRTHR has expressly stated that "[t]wo international instruments are particularly relevant to the recognition of the right to cultural identity of indigenous peoples: the International Labour Organization convention No. 169 on indigenous and tribal rights and the United Nations declaration on the rights of indigenous peoples"[51].

In fact, it is essential to highlight that the principle of humanity "permeates the whole corpus juris of the international protection of the rights of the human person (encompassing international humanitarian law, the international law of human rights and international refugee law), conventional as well as customary, at global (UN) and regional levels"[52]. Hence, the *pro homine* principle is not only a principle of interpretation but also "a rigorous principle for the elaboration of national and international norms" and – in this regard – a "principle of regulation"[53], which "gives expression to the *raison d'humanité* imposing limits to the *raison d'État*"[54].

---

[48]Rights and guarantees of children in the context of migration and/or in need of international protection. Supra note 36. Para 54.

[49]Atala Riffo and daughters v. Chile. 24 Feb. 2012. IACRTHR. Judgment on merits, reparations and costs. Series C. No. 254. Para 78–93 ; Gender identity, and equality and non-discrimination with regard to same-sex couples. State obligations in relation to change of name, gender identity, and rights deriving from a relationship between same-sex couples (interpretation and scope of Articles 1(1), 3, 7, 11(2), 13, 17, 18 and 24, in relation to Article 1, of the American convention on human rights). 24 Nov. 2017. IACRTHR. Advisory opinion OC-24/17. Series A. No. 24. Para 115.

[50]See: *Fuentes A., Vannelli M.* Human rights of children in the context of migration processes. Supra note 48. P. 6 *et seq*. ; Rights and guarantees of children in the context of migration and/or in need of international protection. Supra note 36. Para 128 *et seq*.

[51]Sarayaku v. Ecuador. Supra note 32. Para 215. See also: *Cançado Trindade A. A.* International law for humankind. Supra note 34. P. 282; *Fuentes A.* Expanding the boundaries of international human rights law. Supra note 8. P. 12 *et seq*.

[52]Application of the Convention on the prevention and punishment of the crime of genocide (Croatia v. Serbia). Supra note 38. Judge Cançado Trindade dissenting opinion. Para 69.

[53]Claude Reyes et al. v. Chile. 19 September 2006. IACRTHR. Judgment on merits, reparations and costs. Series C. No. 151. Separate opinion of Judge S. Garcia Ramirez. Para 13. See also: Awas Tingi v. Nicaragua. Supra note 16. Concurring opinion of Judge Sergio Garcia Ramirez. Para 2.

[54]Application of the international Convention for the suppression of the financing of terrorism and of the international convention on the elimination of all forms of racial discrimination (Ukraine v. Russian Federation). Judgment of 8 Nov. 2019. ICJ. Separate opinion of Judge Cançado Trindade. Para 64 *et seq*.

Finally, it is important to keep in mind the transformative capacity, the interpretative relevance, that the *pro homine* principle has in relation to those cases when individuals or groups are "in a situation of vulnerability or great adversity, or even *defencelessness*"[55], such as in the case of children, women and indigenous peoples. In this sense, the court has often referred to the "exacerbated situation of vulnerability" in connection with the application of the pro homine principle[56]. In these cases, the *pro homine* principle has operated as reinforcing and highlighting the human dimension of the victims in the IACRTHR's decision making, creating the interpretative conditions for the effective recognition and reparation of their sufferings, and preventing the future repetition of the wrongdoings.

Conclusive remarks

This study has critically analysed how the IACRTHR has enlarged the conventional protection of the rights of individuals by implementing a systemic, evolutive and effective interpretation of the ACHR, in light of human rights instruments that are part of the *corpus juris* of international human rights law.

The systemic and evolutive integration of relevant international human rights standards has aimed at delivering targeted protection to human beings in a situation of vulnerability, i. e. the rights of indigenous peoples, undocumented migrant workers, children, etc., emphasizing the application of the *pro homine* principle. In other words, it has contributed to deliver an effective human rights protection centred on and prioritizing the human person within the process of interpretation of human rights norms[57].

References to international norms and principles that integrate the *corpus juris* of international human rights law could be seen as paving the way towards "the construction of a new jus gentium at the beginning of the 21st century, no longer state centric, but turned rather to the fulfilment of the needs of protection and aspirations of human beings and humankind as a whole"[58].

References

1. Medina Quiroga C. *The American convention on human rights. Crucial rights and their theory and practice*. Cambridge: Intersentia; 2014. 374 p.

2. Fuentes A. Protection of indigenous peoples' traditional lands and exploitation of natural resources. The Inter-American Court of Human Rights' safeguards. *International Journal on Minority and Group Rights*. 2017;24:229–253.

3. Tigroudja H. The Inter-American Court of Human Rights and international humanitarian law. In: Kolb R, Gaggioli G, editors. *Research handbook on human rights and humanitarian law*. Cheltenham: Edward Elgar Publishing; 2013. p. 473.

4. Negishi Y. The *pro homine* principle's role in regulating the relationship between conventionality control and constitutionality control. *The European Journal of International Law*. 2017;28(2):457–481.

5. Fuentes A, Vannelli M. Human rights of children in the context of migration processes. Innovative efforts for integrating regional human rights standards in the Americas. *Laws*. 2019;8(4):31–54.

6. Mazzuoli Oliveira V, Ribeiro D. The *pro homine* principle as an enshrined feature of international human rights law. *Indonesian Journal of International & Comparative Law*. 2016;3(1):77–99.

Received by editorial board 16.04.2020.

[55]Application of the Convention on the prevention and punishment of the crime of genocide (Croatia v. Serbia). Supra note 38. Judge Cançado Trindade dissenting opinion. Para 65.

[56]Maritza Urrutia v. Guatemala. 27 Nov. 2003. IACRTHR. Judgment on merits, reparations and costs. Series C. No. 103. Para 87 ; Bámaca Velásquez v. Guatemala. 25 Nov. 2000. IACRTHR. Judgment on merits. Series C. No. 70. Para 150.

[57]Benjamin et al. v. Trinidad and Tobago. 1 Sept. 2001. IACRTHR. Preliminary Objections. Series C. No. 81. Para 70.

[58]*Cançado Trindade A. A.* International law for humankind. Supra note 34. P. 397.