

Fourth, this PCT's decision, as the concurring opinion made explicit, illustrates the *conventionalization* or "control of conventionality" doctrine as a particular Latin-American approach to the relationship and interaction between international law and domestic law. Under this doctrine, national organs such as the PCT need to examine the compatibility of national laws, judicial decisions, and policies with legal sources from the inter-American human rights system (both treaties and jurisprudence) and international law more generally.<sup>20</sup> The IACtHR pronounced the doctrine in 2006,<sup>21</sup> and Latin-American domestic courts have increasingly applied it since then.<sup>22</sup> This contrasts with the European Court of Human Rights' "margin of appreciation" doctrine that gives comparatively more deference to states.<sup>23</sup> In Latin America, international law-backed jurisprudential interpretations of national legal sources under the control of conventionality doctrine can importantly enhance national legal systems to (much) better address violence against women as well as other rights conflicts or conflicts between human rights and states' interests.

In sum, the Tribunal's decision in this case is a significant milestone in the protection of women's rights in Peru, and arguably for the development of international human rights law in general. The PCT explicitly recognized women's right to live free from violence, clarified the contents thereof, assessed related state actions, and examined the right's interplay with potentially conflicting rights—largely relying on international law at each stage. International human rights law is not self-enforcing, even in monist countries. Due to the endemic nature of violence against women in many countries, this kind of international law-backed jurisprudence makes necessary progress toward stopping such abuses.

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*Inter-American Court of Human Rights—Advisory Opinion OC-26/20—collective guarantee—good faith—Inter-American democratic test*

ADVISORY OPINION OC-26/20, DENUNCIATION OF THE AMERICAN CONVENTION ON HUMAN RIGHTS AND THE CHARTER OF THE ORGANIZATION OF AMERICAN STATES AND THE CONSEQUENCES FOR STATE HUMAN RIGHTS OBLIGATIONS. At [https://www.corteidh.or.cr/docs/opiniones/seriea\\_26\\_eng.pdf](https://www.corteidh.or.cr/docs/opiniones/seriea_26_eng.pdf).

Inter-American Court of Human Rights, November 9, 2020

<sup>20</sup> See, e.g., Ferrer Mac-Gregor, *supra* note 8; PABLO GONZÁLEZ DOMÍNGUEZ, THE DOCTRINE OF CONVENTIONALITY CONTROL: BETWEEN UNIFORMITY AND LEGAL PLURALISM IN THE INTER-AMERICAN HUMAN RIGHTS SYSTEM (2018); Jorge Contesse, *The International Authority of the Inter-American Court of Human Rights: A Critique of the Conventionality Control Doctrine*, 22 INT'L J. HUM. RTS. 1168 (2018).

<sup>21</sup> *Almonacid Arellano v. Chile*, Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (Ser. C) No. 154, para. 124 (Sept. 26, 2006).

<sup>22</sup> See, e.g., TRANSFORMATIVE CONSTITUTIONALISM IN LATIN AMERICA: THE EMERGENCE OF A NEW IUS COMMUNE (Armin Von Bogdandy, Eduardo Ferrer Mac-Gregor, Mariela Morales Antoniazzi, Flavia Piovesan & Ximena Soley eds., 2017).

<sup>23</sup> See, e.g., YUTAKA ARAI TAKAHASHI, THE MARGIN OF APPRECIATION DOCTRINE AND THE PRINCIPLE OF PROPORTIONALITY IN THE JURISPRUDENCE OF THE ECHR (2002).

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In Advisory Opinion OC-26/20 (Advisory Opinion or AO), the Inter-American Court of Human Rights (Court or IACtHR) set forth the principles that apply to state disengagement with the Inter-American human rights system (IAHRS). Responding to a request submitted by Colombia, the AO addresses three issues. First, the “international human rights obligations of a member State of the [OAS] that has denounced the American Convention on Human Rights.” Second, it considers the “effects on the international human rights obligations of a member State of the OAS that is not party to the American Convention and has denounced the charter of the OAS.” And third, the relevance of the overarching *collective guarantee* embodied by Inter-American human rights instruments in the specific context of denunciations and withdrawals. According to the Court, the notion of a collective guarantee entails “a general duty of protection . . . in order to ensure the effectiveness of those instruments, as a rule of an *erga omnes partes* nature” that is enhanced by “collective application” and takes account of “the asymmetrical relationship between the individual and the State” (para. 164). Although the Court has elsewhere clarified that the American Convention and other human rights treaties are inspired by higher common values in this way,<sup>1</sup> Advisory Opinion OC-26/20 elucidates the notion of a collective guarantee far more comprehensively. This decision has been taken in a context of rule of law erosion, both in Latin America and beyond.<sup>2</sup> States are increasingly resisting compliance with international courts and tribunals and questioning their authority. Some states have gone further, withdrawing from human rights treaties.<sup>3</sup> Within the OAS, Venezuela’s denunciation of the American Convention in 2012 and its subsequent decision to denounce the OAS Charter in 2017,<sup>4</sup> raised novel questions about the member states’ ongoing collective obligation to prevent human rights violations in the Inter-American system.<sup>5</sup> Nicaragua’s recent decision to withdraw from the OAS in November 2021<sup>6</sup> further highlights the AO’s importance.

<sup>1</sup> See, *inter alia*, Advisory Opinion OC-25/18, para. 199 (Inter-Am. Ct. H.R. May 30, 2018); Case of González, et al. (“Cotton Field”) v. Mexico, Judgment, Preliminary Objection, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 205, para. 62 (Nov. 16, 2009); Case of the Constitutional Court v. Peru, Judgment (ser. C) No. 55, para. 41 (Sept. 24, 1999); and Case of González, et al. (“Campo Algodonero”) v. Mexico, *supra* note 1, para. 62; Case of Ivcher-Bronstein v. Peru, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 54, para. 42 (Sept. 24, 1999); the latter with reference to *UK, App. No. 5310/71* (Eur. Ct. H.R. Mar. 20, 1978), at <https://hudoc.echr.coe.int/eng?i=001-57506>.

<sup>2</sup> Anne Peters, *The Deconstitutionalisation of International Law in Times of Populism and Pandemic* (virtual presentation given with the University of Nottingham, Mar. 19, 2021), handout available at [https://www.mpil.de/files/pdf6/apeters\\_deconstitutionalisation-v1.pdf](https://www.mpil.de/files/pdf6/apeters_deconstitutionalisation-v1.pdf); Tom Ginsburg, *Authoritarian International Law?*, 114 AJIL 221 (2020).

<sup>3</sup> Laurence R. Helfer, *Rethinking Derogations from Human Rights Treaties*, 115 AJIL 20 (2021); Wayne Sandholtz, Yining Bei & Kayla Caldwell, *Backlash and International Human Rights Courts*, in *CONTRACTING HUMAN RIGHTS: CRISIS, ACCOUNTABILITY, AND OPPORTUNITY* 159 (Alison Brysk & Michael Stohl eds., 2018).

<sup>4</sup> Silvia Steininger, *Don’t Leave Me This Way: Regulating Treaty Withdrawal in the Inter-American Human Rights System*, EJIL: TALK! (Mar. 5, 2021), at <https://www.ejiltalk.org/dont-leave-me-this-way-regulating-treaty-withdrawal-in-the-inter-american-human-rights-system>.

<sup>5</sup> Trinidad and Tobago had earlier withdrawn from the American Convention in 1999. Beyond Latin America, various further cases of backlash and withdrawal have been noted by comparative scholars and commentators. Øyvind Stiansen & Erik Voeten, *Backlash and Judicial Restraint: Evidence from the European Court of Human Rights*, 64 INT’L STUD Q. 770 (2020); Karen J. Alter, James T. Gathii & Laurence R. Helfer, *Backlash Against International Courts in West, East and Southern Africa: Causes and Consequences*, 27 EUR. J. INT’L L. 293 (2016).

<sup>6</sup> IACHR Press Release, *The IACHR Stresses Its Competent Jurisdiction Concerning Nicaragua and Laments Nicaragua’s Decision to Denounce the Charter of the OAS in a Context of Serious Human Rights Violations*, Press Release 312 (Nov. 20, 2021), at [https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media\\_center/PReleases/2021/312.asp](https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media_center/PReleases/2021/312.asp).

At its core, the Court offers a “legal solution to the interpretations of the American Convention, the OAS Charter, the American Declaration and other treaties concerning the protection of human rights in the Americas” in the face of disengagement of the IAHRS (para. 174). The Advisory Opinion also considers: (1) the possibility of assessing the legality of the denunciation under national constitutional law; (2) the denouncing state’s ongoing commitment to protect human rights notwithstanding its withdrawal from the American Convention and the OAS; and (3) the obligation of all OAS member states to collectively guarantee human rights in the region, including by the denouncing state (para. 72). Hence, not only should states parties to the Convention as well as the OAS member states examine the constitutionality and democratic character of a state’s decision to denounce these conventions; where denunciations do not satisfy this “democratic principle,” member states have a further duty to activate other institutional and peaceful mechanisms for collectively guaranteeing universal and constitutionally enshrined human rights norms (para. 173). This implies that a state withdrawing from the OAS remains subject to an enforceable minimum threshold of human rights protection (para. 94).

The first two questions on human rights obligations in cases of denunciation of the American Convention and the OAS Charter are conceptually connected. In the case of denunciation of the American Convention, the Court reiterates that “obligations associated with the minimum threshold of protection through the Charter of the OAS and the American Declaration remain under the supervision of the Inter-American Commission” (para. 115). International obligations also persist in the case of denunciation of the OAS (paras. 150–52). In particular, “the Court reiterates that the denouncing State remains obligated to comply with reparations ordered by the Court in its contentious role, even after the denunciation of the OAS Charter becomes final,” given that the denouncing state has accepted the Court’s jurisdiction (para. 152). In both cases, “customary norms, those derived from general principles of international law and those pertaining to *jus cogens* continue to bind the state by virtue of general international law” (paras. 151, 155).

In analyzing the first question—the obligations remaining following denunciations of the American Convention—the Court began by reaffirming its stance that human rights treaties are special and legally distinctive. In particular, their protections mainly apply to individuals. As such, the Court considered that the American Convention should be interpreted in accordance with the *pro personae* principle, such that “human rights norms should be interpreted as extensively as possible when recognising individuals’ rights and, by contrast, as restrictively as possible when the norm imposes limits on the enjoyment of human rights.”<sup>7</sup>

Starting from that position, the Court noted that the American Convention does not expressly incorporate any domestic procedural requirements for denunciation (such as rules specifying which government actors are competent to withdraw from a treaty). The Court thus turned to the domestic laws of the member states to determine whether a common practice could be identified that might aid its interpretation (para. 62). It concludes, however, that there is no uniformity:

the denunciation of a human right treaty—particularly one that establishes a jurisdictional system for the protection of human rights, such as the American Convention—

<sup>7</sup> Hayde Rodarte Berbera. *The Pro Personae Principle and Its Application by Mexican Courts*, 4 QUEEN MARY HUM. RTS. L. REV. 1 (2017).

must be subject to a pluralistic, public and transparent debate within the States, as it is a matter of great public interest because it implies a possible curtailment of rights and, in turn, of access to international justice. (Para. 64.)

Thus, the Court emphasizes that the denunciation of the American Convention should be done using a similar procedure as that used for acceding to and ratifying such international instruments in the first place. It derived this “principle of parallelism of forms” (*id.*) from its assertion that there is “a tendency” (para. 62), especially in countries where the abrogation of international norms is regulated by the constitution, that a domestic deliberative decision involving legislative organs is necessary to comply with the democratic principle.

Furthermore, the Court reasoned that when an OAS member state denounces the American Convention, the obligations set forth in that treaty as well as individual petitions and contentious cases remain in effect during the one-year transition period specified in Article 78.1 (paras. 68–75). The transitional period reduces the incentive to denounce out of “pressure from a specific situation or contingency” (*id.*).

In addition, the IACtHR held that “it is crucial to probe a State’s good faith in relation to the purpose and context of a denunciation” (para. 73). The Court identified six examples of potentially bad faith denunciations whose legality is questionable: first, most directly related to the denunciation, when the main reason to withdraw is a disagreement with a decision made by a body of the Inter-American system (such as the Court or the Commission); second, when the denunciation involves indefinite suspension of human rights guarantees or violations of non-derogable rights; third, in case of severe, massive, or systematic human rights violations; fourth, in the case of a progressive erosion of democratic institutions; fifth, the manifest, irregular, or unconstitutional alteration or capture of the democratic order; and, finally, sixth, potentially in case of an armed internal conflict (although that situation is particularly complex) (*id.*).

Moreover, the Court considered that it “is essential to determine whether the decision to denounce is taken in the context of a ‘minimum level of democratic quality,’ that would indicate the State’s good faith” (n. 110). By referring to the Inter-American Democratic Charter, the Court established that a denunciation of the Convention should only occur in the context of sufficient respect for democratic core principles such as the guarantee of human rights and free and fair elections. This finding correlates with the previous discussion of the domestic procedures required for a denunciation in “good faith.”

Beyond the persistence of convention obligations during the transition period, the Court found that denunciations of the American Convention have no retroactive effects (paras. 76–82). Moreover, the denouncing state’s general international law obligations remain in force, including: (1) those deriving from other Inter-American treaties that the state has ratified (para. 83–89); (2) the principles derived from the American Convention and other international human rights instruments that have been legally integrated or constitutionally enshrined at the domestic level (paras. 90–93); (3) the obligations derived from the OAS Charter and the American Declaration of the Rights and Duties of Man, which can be enforced by the Inter-American Commission (paras. 94–99); and (4) *jus cogens*, customary norms, and general principles of international law (paras. 100–10).<sup>8</sup>

<sup>8</sup> See paragraph 106 for considerations on *jus cogens* norms recognized on behalf of the Court.

The Court approached the second question, on the effects of withdrawing from the OAS Charter, in a parallel fashion. As with the American Convention, it held that the Charter cannot be denounced with immediate effect (Art. 143). For the Court, the Charter's obligations "have their origin in the purposes and axiological principles reflected therein," which "include the promotion and defense of human rights without discrimination" (para. 136). Considering that a denunciation of the Charter and consequent withdrawal from the OAS would leave persons under the jurisdiction of the denouncing state unprotected by regional bodies such as the Inter-American Commission, the Court highlighted need for a collective response by other OAS member states, as discussed further below. Finally, the Advisory Opinion considered the wider consequences of denouncing the OAS Charter, reiterating that human rights standards remain applicable in the transitional period, and that other ratified international human rights instruments also maintain their validity (paras. 155–57).

The Court turned, lastly, to the third question: what are the obligations of *other* OAS member states when a country seeks to withdraw from either the American Convention or the OAS Charter. The Court clarified that the remaining states must not "remain impassive and indifferent when denunciations are made for reasons or in contexts contrary to the principle of good faith" (para. 162). This conclusion was bolstered by the collective guarantee arising from a shared interest of all member states in the effectiveness of the Inter-American system. The OA calls upon member states, but also the political bodies of the Organization, to adopt institutional and peaceful mechanisms to address possible denunciations of the American Convention and the OAS Charter early and collectively in situations involving threats to democratic stability or peace and security.

Importantly, the Court characterizes the collective guarantee as an *erga omnes* principle with binding force under international law (para. 199). It acts as an essential safeguard of democracy. Accordingly, states have the duty to act collaboratively to ensure the protection of rights they have jointly agreed upon and in particular that individuals "are not deprived of a minimum threshold of protection of their human rights" when a denunciation lacks good faith (para. 164). These obligations also reflect the background of asymmetric power relations between the state and individuals as rights-holders. The collective guarantee may entail five kinds of action: (1) to present observations or objections regarding denunciations that do not meet the democratic principle; (2) to ensure that the denouncing state complies with its remaining human rights obligations after the denunciation takes effect; (3) to jointly investigate and prosecute serious human rights violations committed by the denouncing state; (4) to grant international protection to asylum seekers and migrants; and (5) to engage in diplomacy to incentivize the withdrawing states to rejoin the OAS (para. 173).

\* \* \* \*

AO OC-26/20 can be evaluated in two ways: first as a progressive development of the Court's assertion of judicial authority and of its holistic interpretation methods—which include literal (para. 125), teleological (paras. 126–31), contextual, systemic (paras. 132–40), and supplementary means (paras. 141–46)—in line with its transformative mandate;<sup>9</sup> and second as a

<sup>9</sup> Armin von Bogdandy, *The Transformative Mandate of the Inter-American System – Legality and Legitimacy of an Extraordinary Jurisgenerative Process*, at 113 (2019-16 Max Planck Institute for Comparative Public Law & International Law (MPIL) Research Paper, 2019).

milestone in the principles governing denunciations within the Inter-American system. On the one hand, OC-26/20 is noteworthy for what it reflects about the Court's view of its advisory jurisdiction as a hermeneutic approach that creates multilateral effects for all member states in the system. On the other hand, the Court's interpretation of the effects of a denunciation represents a temporal, contextual, and material innovation in international human rights law. Arguably, the validity and legitimacy of the democratic principle lies at the heart of these interpretive moves.

First, OC-26/20 reaffirms the Court's prior jurisprudence on treaty interpretation, which encompasses several distinctive features. Most notably, human rights treaties are living instruments and *lex specialis*. The Court also draws on Articles 31 and 32 of the Vienna Convention on the Law of Treaties (VCLT), which implies an application of "the general rule of interpretation of international treaties of a customary nature" and "the simultaneous application of good faith, the ordinary meaning of the terms used in the treaty in question, their context, and the object and purpose of the treaty" (para. 41). The Court further grounds its interpretation in Article 29 of the American Convention, which establishes that no provision of the treaty may be interpreted as allowing any state party, group, or individual to suppress the enjoyment and exercise of the rights and freedoms recognized in the Convention or to limit them to a greater extent than is provided for therein.

Second, the IACtHR reaffirms its capacious understanding of its interpretative authority. In particular, the Court explains that its advisory opinions constitute "authorized interpretations" of legal principles that hence "form part of the applicable corpus iuris" and "set parameters for the effective fulfilment of the human rights obligations" (para. 91). This idea can be derived from the obligation of states parties to adopt the authoritative interpretation of its competent organ, according to VCLT Articles 31 and 32.<sup>10</sup> The IACtHR thus posits that there are "legal effects" through its advisory opinions (para. 92), with the aim of preventing human rights violations. This question is controversial among scholars; some voices suggest that advisory opinions can have binding legal effects<sup>11</sup> while others disagree.<sup>12</sup>

At the same time, the Court's advisory jurisprudence has a multilateral foundation. All member states may submit comments and participate in the public hearings.<sup>13</sup> The Court also solicits and cites a wide array of comments and *amicus curiae* submissions, which offer a diverse array of normative frameworks applicable to the respective questions addressed and form a multilateral base for the Court's interpretation.<sup>14</sup>

<sup>10</sup> Daniela Salazar Marín, Ana Isabel Cobo Ordóñez, Camila Cruz García, Mateo Guevara Ruales & María Paula Mesías Vela, *La fuerza vinculante de las Opiniones Consultivas de la Corte Interamericana de Derechos Humanos a la luz del derecho y la justicia constitucional en Ecuador*, 32 FORO REVISTA DE DERECHO 123 (2019); Cavagnaro Burgos, Gabriela Anaís, Jijón Vera & Sara Cristina, *¿Son vinculantes las opiniones consultivas que emite la Corte Interamericana de Derechos Humanos?* (Universidad Católica de Santiago de Guayaquil, Feb. 10, 2020), available at <http://repositorio.ucsg.edu.ec/handle/3317/14488>; Juan Carlos Hitters, *¿Son vinculantes los pronunciamientos de la Comisión y de la Corte Interamericana de Derechos Humanos?*, 10 REVISTA IBEROAMERICANA DE DERECHO PROCESAL CONSTITUCIONAL 149 (2008).

<sup>11</sup> See also Pedro Nikken, *La función consultiva de la Corte Interamericana de Derechos Humanos*, in EL SISTEMA INTERAMERICANO DE PROTECCIÓN DE LOS DERECHOS HUMANOS EN EL UMBRAL DEL SIGLO XXI (Antônio Augusto Cançado Trindade, et al. eds., 2003).

<sup>12</sup> For a discussion, see Eduardo Vio Grossi, *La naturaleza no vinculante de las opiniones consultivas de la Corte interamericana de derechos humanos*, 2 REVISTA JURÍDICA DIGITAL UANDES 200 (2018).

<sup>13</sup> Advisory Opinion OC-15/97 Inter-Am. Ct. H.R. (ser. A) No. 15, para. 26 (Nov. 14, 1997).

<sup>14</sup> For Advisory Opinion OC-26/20 (Nov. 9, 2020), written observations were presented by Bolivia, Brazil, Colombia, Honduras, Mexico, Nicaragua, Panama, and the United States, as well as by the Inter-American

With respect to denunciations, AO OC-26/20 breaks new ground by elaborating three parameters of the collective guarantee mechanism: (1) a *temporal* parameter, demarcating the transition period following any denunciation, of one year after notification (for the American Convention) and two years (for the OAS Charter);<sup>15</sup> (2) a *material* parameter, which refers to the purpose of denunciation and seeks, in particular, to establish a guiding framework for collaborative action on behalf of member states to prevent regression of human rights protections; and (3) a *contextual* parameter, which derives from the Court's identification of six examples of denunciations whose legality is questionable and might lack of good faith.

Finally, the OC-26/20 offers a notable contribution to the democratic principle, which operates as a “guiding principle and an interpretative guideline” enshrined in Articles 29, 30, and 32 of the American Convention and is reinforced by the Inter-American Democratic Charter (IADC) (para. 72). The democratic principle includes the “division of powers and the proper functioning of the democratic institutions of the states parties within the framework of the rule of law” and is “based more broadly on the progressive development of the inter-American system” (*id.*). The principle hence provides an orientation to the type of political order which is “no longer solely a matter of domestic, internal or exclusive jurisdiction” and constitutes an “in the Americas is an international legal obligation” (*id.*).

As the AO further reminds us, there is an “indissoluble link between democracy and full respect for human rights and freedoms” (para. 139). Building on these pillars, the Court's holistic reading of the OAS Charter, the American Declaration of the Rights and Duties of Man, the Convention, and the Inter-American Democratic Charter, reclaims the centrality of the *collective guarantee mechanism* to respond to denunciations “that do not withstand scrutiny in light of the democratic principle” (para. 71), to protect the integrity of the American Convention and other human rights treaties. The opinion thus furthers the IACtHR's ongoing project of striving to achieving “a set of higher common values [which are] centered around the protection of the human person.”<sup>16</sup>

The IACtHR's reliance on the democratic principle demands the application of an “Inter-American democratic test,”<sup>17</sup> in the case of denunciation. This democratic test is derived from the IADC and establishes the “essential elements” and “fundamental components” of representative democracy (Arts. 3–4) and the double conditionality between democracy and human rights (Arts. 7–8), all in close interrelation with the economic and social dimension (Arts. 11–13). The essential elements of representative democracy include respect for human rights and fundamental freedoms, access to power and its exercise subject to the rule of law, the holding of periodic, free, fair elections based on universal and secret suffrage as an expression of the sovereignty of the people, the pluralistic system of political parties and organizations, and the separation and independence of the branches of government (Art. 3). Likewise, the fundamental components of the exercise of democracy (Art. 4) are transparency in

Commission on Human Rights. Further, forty-nine *amicus curiae* were presented. Virtual hearings took place in June 2020; thirty interventions were delivered.

<sup>15</sup> See paragraph 42 for specifications on the referential time frame from the moment a state expresses its intention to denounce until the state has fulfilled its obligations to disengage from the OAS.

<sup>16</sup> *Case of Ivcher-Bronstein v. Peru*, *supra* note 1, para. 42.

<sup>17</sup> For the concept of this democratic test, see MARIELA MORALES ANTONIAZZI, PROTECCIÓN SUPRANACIONAL DE LA DEMOCRACIA EN SURAMÉRICA: UN ESTUDIO SOBRE EL ACERVO DEL IUS CONSTITUTIONALE COMMUNE (2015).

government activities, probity, government accountability in public administration, respect for social rights and freedom of expression and of the press. These elements and components go hand in hand with a dual conditionality between democracy and human rights according to Articles 7 and 8 of the IDC. Article 7 states that democracy is indispensable for the effective exercise of fundamental freedoms and human rights, in their universal, indivisible, and interdependent nature, as enshrined in the respective constitutions of the states and in inter-American and international human rights instruments. For its part, Article 8 establishes that the member states reaffirm their intention to strengthen the inter-American system for the protection of human rights for the consolidation of democracy in the hemisphere.

The Advisory Opinion hence reflects a paradigm shift, by setting the democratic principle as one of the primary criteria to assess the material and contextual parameters for the denunciation of the American Convention. As Hilary Charlesworth has recognized, there is a need to “consider the way that international law defines, refines and interacts with ideas of democracy.”<sup>18</sup> From this perspective, the Court’s progressive development of inter-American human rights law at the intersection of the *pro personae* principle and a democratic principle seems a fundamental step.

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<sup>18</sup> Hilary Charlesworth, *Democracy and International Law*, 371 RECUEIL DES COURS 43 (2014), available at [http://dx.doi.org/10.1163/1875-8096\\_pplrdc\\_A9789004289369\\_02](http://dx.doi.org/10.1163/1875-8096_pplrdc_A9789004289369_02).