



**THE IMPACT OF THE INTERNATIONAL COURT OF JUSTICE JURISPRUDENCE
IN HUMAN RIGHTS COURTS: JUDICIAL DIALOGUE OR MONOLOGUE WITH
THE INTER-AMERICAN COURT OF HUMAN RIGHTS?**

*O IMPACTO DA JURISPRUDÊNCIA DA CORTE INTERNACIONAL DE JUSTIÇA
EM CORTES DE DIREITOS HUMANOS: DIÁLOGO JUDICIAL OU MONÓLOGO
COM A CORTE INTERAMERICANA DE DIREITOS HUMANOS?*

Gabriela Hühne Porto

Mestranda em Direito Internacional no Programa de Pós-Graduação da UERJ (2021). Bacharela em Direito pela Universidade do Estado do Rio de Janeiro – UERJ (2018) e desde 2016, atua em pesquisa na área de Direito Internacional na FGV Direito Rio.

Paula Wojcikiewicz Almeida

Pós-doutora (2014) pelo Instituto Max Planck de Direito Público Comparado e Direito Internacional. Doutora em Direito (2012) pela Universidade do Estado do Rio de Janeiro - UERJ. Mestre (2005) em Direito Público Internacional e Europeu pela Université Paris-Sud 11. Diretora do Centro de Excelência Jean Monnet em Governança Global UE-América do Sul, promovido pela Comissão Europeia na Escola de Direito da Fundação Getúlio Vargas. Pesquisador Associado do Instituto de Direito Internacional e Europeu da Sorbonne (IREDIÉS). Professora dos Programas de Pós-Graduação da Escola de Direito da Fundação Getúlio Vargas e do Mestrado em Relações Internacionais da Faculdade de Ciências Sociais da Fundação Getúlio Vargas do Rio de Janeiro. Professora visitante na École de droit de la Sorbonne, Université Paris 1 Panthéon-Sorbonne (2019). Professora visitante da Universidade de Salzburg (desde 2017).

Abstract

This contribution particularly evaluates the use of the International Court of Justice's (ICJ) jurisprudence in the case law of the Inter-American Court on Human Rights (IACtHR). It intends to identify whether, for what purpose, and to what extent the IACtHR takes into account the jurisprudence of the ICJ. This article is divided into two parts and applies quantitative and qualitative methods. The first section evaluates asymmetries and particular features that characterize the judicial dialogue between the ICJ and the IACtHR. Being aware that the ICJ and the IACtHR are placed in different levels and possess

structural differences, the second part presents an empirical analysis of the most cited ICJ rulings in both IACtHR's contentious and advisory proceedings. Ultimately, this analysis aims to identify the existence of a dialogue or a monologue between the IACtHR and the ICJ.

Key-words: Judicial Dialogue; Inter-American Court of Human Rights; International Court of Justice; empirical analysis; cross-fertilization.

Resumo

Esta contribuição avalia particularmente o uso da jurisprudência da Corte Internacional de Justiça (CIJ) pela jurisprudência da Corte Interamericana de Direitos Humanos (CtIDH). Busca identificar se, com que finalidade e em que medida a CtIDH leva em consideração a jurisprudência da CIJ e aplica métodos quantitativos e qualitativos. O artigo está dividido em duas partes. A primeira seção avalia assimetrias e particularidades que caracterizam o diálogo judicial entre a CIJ e a CtIDH. Ciente de que a CIJ e a CtIDH estão situadas em diferentes níveis e possuem diferenças estruturais, a segunda parte apresenta uma análise empírica das decisões mais citadas da CIJ nos procedimentos contenciosos e consultivos da CtIDH. Em última instância, esta análise visa identificar se existe um diálogo ou um monólogo entre a CIJ e a CtIDH.

Palavras-chave: Diálogo Judicial; Corte Interamericana de Direitos Humanos; Corte Internacional de Justiça; análise empírica; fertilização cruzada.

1. INITIAL CONSIDERATIONS

The Inter-American Court on Human Rights (IACtHR) is an autonomous legal institution, whose mandate is to interpret and apply the American Convention on Human Rights. Since the beginning of its activities, the Court has extensively sought guidance in external instruments to interpret the American Convention, including treaties, soft law and other legal regimes' provisions. This contribution will particularly evaluate the use of the International Court of Justice's (ICJ) jurisprudence in the case law of the IACtHR. 'Transjudicial communication' (SLAUGHTER, 2003, p. 191) or 'judicial dialogue' stands for the importation and exportation of precedents from other courts and tribunals. This dialogue between International Courts and Tribunals (ICTs) occurs predominantly via external citation, which can be considered more of a monologue than an actual dialogue since the court whose precedent is being imported by the other court will rarely have the opportunity to engage or to retort in any kind of exchange of views (SLAUGHTER, 1994, p. 113). Arguably, inter-judicial dialogue advances coherence and harmonization of the international legal system as a whole

(KASSOTI, 2015, p. 46) and, notably, of international human rights law (PAPAIOANNOU, 2014, p. 1037-1059). In light of the increasing international normative complexity and density, 'mutual observation and dialogue are absolutely essential in order to avoid fragmentation of international law' (SPIELMANN, 2015, p. 190).

The use of ICJ case law via direct referral in IACtHR's rulings will be the focus of this article. Judicial dialogue will be understood as 'indirect' horizontal dialogue or formal interaction or communication between international courts at the same hierarchical level (SLAUGHTER, 1994, p. 103). It will try to identify whether, for what purpose, and to what extent the IACtHR takes into account the jurisprudence of the ICJ (KOH, 2004, p. 43-57), whether to assist in the interpretation of parallel rules; to define or illustrate applicable standards; to confirm the Court's decision; to help fill in gaps; or to search for guidance or inspiration (LAW; CHANG, 2011, p. 571)¹, among others purposes.

In order to evaluate the judicial dialogue between the IACtHR and the ICJ, this article applies both quantitative and qualitative methods. Since the IACtHR references to the ICJ jurisprudence are not listed in any comprehensive database, the only way to proceed was to apply a key-word strategy to search the IACtHR website for all judgments issued in contentious (preliminary objections and merits) and advisory proceedings, as well as provisional measures, since the creation of the Court². References to the ICJ made by the parties of the dispute have not been accounted for. Being aware that the analysis of direct referral to external case law via quantitative research methods possesses limitations (ALSCHNER; CHARLOTIN, 2018)³, this empirical analysis has been supplemented with qualitative approaches (LAW; CHANG, 2011, p. 527).

Ultimately, this analysis aims to identify the functions of the judicial dialogue between the IACtHR and the ICJ. In general, the functions of the judicial dialogue include: (i) cross-fertilization, by providing 'inspiration for the solution of a particular

¹ In especially controversial or politically sensitive cases, judges tend to look consistently to other prestigious and influential courts for guidance, inspiration and also to build up their decisions' legitimacy.
² IACtHR judgments concerning reparations and costs and monitoring compliance were also included in the empirical analysis, as they have been joined in the same document in the Court's recent practice and contain relevant external citation. The analysis did not deal with cases issued by the Inter-American Commission on Human Rights, the OAS *quasi*-judicial organ.

³According to the authors: "Large-scale citation analysis has thus become a promising new means to empirically study the evolution of international law, precedent and judicial institutions. Quantitative citation analysis, however, also comes with a set of caveats".

legal problem'; and (ii) the need to ensure persuasiveness, authority or legitimacy of judicial decisions' (SLAUGHTER, 1994, p. 117-19; SANDHOLTZ, 2019, p. 17)⁴. Angelika Nußberger, former Vice-President of the European Court of Human Rights, identified the purpose of ECHR's referrals according to the issue at hand (NUßBERGER, 2017, p. 426-31): be they (1) questions of general international law inherent in the cases brought before the Court⁵, or (2) innovative questions of human rights law, for which the Court seeks inspirations and knowledge of general tendencies and recent developments.

The following section will evaluate the existence of an asymmetric judicial dialogue between the ICJ and the IACtHR **(2)**. This will be followed by a qualitative analysis of the most cited ICJ rulings in both IACtHR's contentious and advisory proceedings **(3)**.

2. THE ASYMMETRIC JUDICIAL DIALOGUE BETWEEN THE ICJ AND THE IACTHR

Judicial dialogue is particularly relevant in the area of human rights⁶. The communication between human rights courts can lead to a more uniform understanding and application of rights and freedoms recognized in the treaties (DE PAUW, 2015, p. 18) and constitutions. Some scholars believe this phenomenon is part of a wider context represented by globalization, deterritorialization of law and universality of rights (ROIG, 2016, p. 24-41). Others also comment on a possible construction of a rights-based global constitutionalism (SANDHOLTZ, 2019) and the emergence of a "decompartmentalization" trend in the interpretation of human rights treaties (BURGORGUE-LARSEN, 2018a, p. 187-213).

⁴ According to the authors, external citations can illustrate that a court's reasons are sound, or that its interpretation of the law 'is consistent with common practice in other jurisdictions'.

⁵ According to the author: "In the first category we are confronted with questions of international law as such. There are three subcategories. First, there might be parallel procedures brought before our Court and before other inter- national bodies or jurisdictions. [...] If we deal with general concepts of international law, such as state immunity or jurisdiction, we do take a very close look at whatever is decided by other international bodies. Undoubtedly, there is an intense reflection on other sources of international law."

⁶ On July 17, 2018, the first edition of "Dialogue between Regional Human Rights Courts" took place at the Inter-American Court of Human Rights in San José, Costa Rica. The event was attended by the presidents, judges of the African Court of Human and Peoples' Rights, the European Court of Human Rights and the Inter-American Court of Human Rights, as well as international specialists of recognized trajectory. For more details of this initiative that aims to strengthen direct contact and international cooperation, see "Dialogo entre Cortes Regionales de Derechos Humanos". **Corte Interamericana de Derechos Humanos** (comp.). San José, C.R.: Corte IDH, 2020.

No doubts remain that engaging in a judicial dialogue enriches the judicial decision-making of ICTs (VOETEN, 2010, p. 550)⁷. As far as the ICJ and the IACtHR are concerned, asymmetries and particular features characterize this dialogue **(2.1)**, which should be taken into account before further empirical analysis of IACtHR direct referrals to ICJ jurisprudence **(2.2)**.

2.1. The preconditions and features of an asymmetric judicial dialogue

There has been consistent work analyzing the interaction between the European Court of Human Rights and the IACtHR (ECHR, 2016; ROCA; FERNANÁNDEZ; SAN-TOLAYA; CANOSA, 2012), which has not been the case as far as the interaction between the ICJ and the IACtHR are concerned. This is explained by the horizontal and voluntary nature of the existing dialogue between both regional human rights courts that enhances its operability (ROIG, 2016, p. 28). Moreover, their structural similarities contribute to the improvement of their communication (PAPAIOANNOUM, 2014, p. 1042). They also share the understanding that human rights treaties are living instruments that should be interpreted according to the present-day developments.

The greater presence of a constitutional discourse, illustrated by the ‘control of conventionality’ doctrine is also a distinguishing feature of the Inter-American System: there is an international obligation incumbent upon national authorities of Member States to the American Convention on Human Rights (ACHR) to interpret domestic law in accordance with the ACHR, duly guided by the interpretation held by the IACtHR (BURGORGUE-LARSEN, 2018b). However, the existing ‘vertical’ dynamics between judges from Constitutional Courts/Supreme Courts in America and the IACtHR – both sharing the obligation to apply and interpret the same legal order (GÓNGORA-MERA, 2017; DALY, 2018) - shall not be confused with the existence of a horizontal dialogue between international judges.

The IACtHR is actively and openly engaged in a formal judicial dialogue with the ICJ and other ICTs, such as regional human rights courts. However, the interactions may present particular features depending on the referenced court. Notably, the fact that the IACtHR and the ICJ are placed at different levels and possess structural

⁷ According to Erik Voeten, the improvement of the quality of decisions is the most frequent rationale advanced by judges for justifying the need to look abroad.

differences, points to a judicial dialogue inevitably marked by asymmetries between these two courts. There is not necessarily a 'common substantive focus' between the ICJ and the IACtHR, which is an underlying precondition for engaging in judicial dialogue (SLAUGHTER, 1994, p. 128; VOETEN, 2010, p. 562-566).

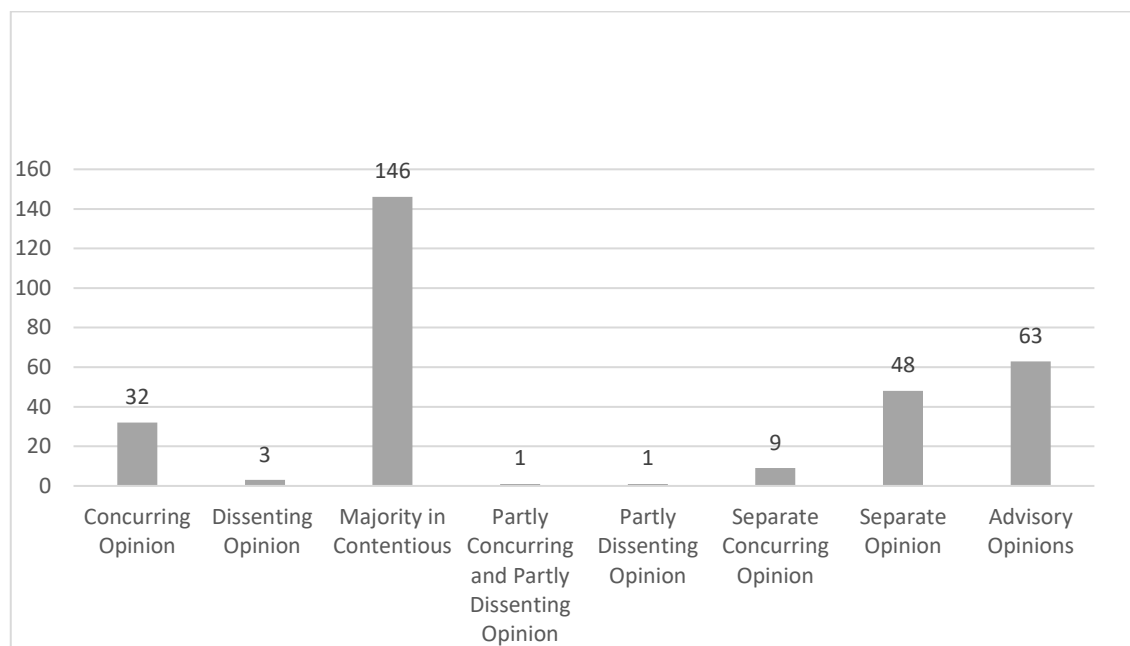
Also, although there is no hierarchy among international courts, the ICJ is undoubtedly seen as an authoritative interpreter of international law and a source of guidance for other international institutions and tribunals, among which the IACtHR. Indeed, due to its tradition as the principal judicial organ of the United Nations and its long-standing practice, the World Court's jurisprudence has achieved a special role in the international legal order (GARCIANDIA, 2020, p. 177-178). It is believed to act as a legitimate public authority that contributes to the development of international law, and, ultimately, to the protection and development of the international community and its values (VON BOGDANDY; VENZKE, 2012a, p. 7-41; VON BOGDANDY; VENZKE, 2012b, p. 979-1003; VON BOGDANDY; VENZKE, 2011, p. 979-1003). Being an agent of legal development, the 'Court has an enormous potential to influence the process of legal development', even though it is restrained by formal and functional factors (TAMS; TZANAKOPOULOS, 2010, p. 781-800).

Referring to its European homologue, European Court of Human Rights and the ICJ, Dean Spielmann affirms that 'even though there are relatively few decisions [...] which refer expressly to the ICJ/PCIJ case-law, they are mostly decisions of some importance for the development of its own jurisprudence or for the international community as a whole' (SPIELMANN, 2015, p. 175). Conversely, in regards to the relationship between the Court of Justice of the European Union and the ICJ, Eva Kassoti affirms that the CJEU 'shows a high degree of deference to the authority of the ICJ by routinely having recourse to the latter's case-law' in cases dealing with issues of public international law (KASSOTI, 2015, p. 21-49).

Similarly, the asymmetric judicial dialogue between the ICJ and the IACtHR is characterized by the former being an influencer and guide for the latter and not the opposite (ALMEIDA, 2019b, p. 1-19). The empirical analysis of direct referrals to the ICJ jurisprudence by the IACtHR case law seems to confirm this argument.

2.2. An empirical overview of the asymmetric judicial dialogue

The IACtHR issued its first judgment on the merits in 1988; and its first advisory opinion in 1982⁸. Since then, the IACtHR has extensively referred to ICJ's rulings in majority judgments (MILLER, 2002, p. 489). This practice has conceived a rich jurisprudence that presents a combination of global developments and regional features (MAC-GREGOR, 2017, p. 90).



The figure above shows that most references to ICJ case law in IACtHR jurisprudence can be found in majority proceedings. The IACtHR has made references to ICJ's jurisprudence in a total of 146 majority judgments and 94 judges' opinions⁹. The Inter-American Court practice is widespread and comprises both procedural and substantive issues. These numbers reveal that the Court is actively engaged in a judicial dialogue with the ICJ, be that in search for inspiration for solving a particular legal problem and/or for enhancing its decisions' persuasiveness, authority or legitimacy (SLAUGHTER, 1994, p. 117-19).

⁸ This table illustrates citation patterns only. It does not consider the overall score of existing majority judgments and separate opinions.

⁹ In the Inter-American system, judges' opinions may take various forms: separate, concurring, dissenting, partly concurring, partly dissenting, and separate concurring. Opinions are based in Article 65(2) of the Rules of the Court, according to which: "Any Judge who has taken part in the consideration of a case is entitled to append a separate reasoned opinion to the judgment, **concurring or dissenting**. These opinions shall be submitted within a time limit to be fixed by the Presidency so that the other Judges may take cognizance thereof before notice of the judgment is served. Said opinions shall only refer to the issues covered in the judgment." [emphasis added].

Accordingly, the operation of judicial dialogue is often linked to the existing means of interpretation in international law (TZANAKOPOULOS, 2016; PAPAIOANNOU, 2014, p. 1045-47). In practice, IACtHR judges often seek guidance in external sources, and tend to incorporate these references as interpretative tools when drafting decisions (BURGORGUE-LARSEN; CÉSPEDES, 2013, p. 191-192¹⁰; RODRIGUÉZ, 2019) (See Article 29 of the American Convention and Article 31(3) of VCLT)¹¹. Judicial interpretation can lead to the development of common standards, possibly striving for the most effective protection of human rights (DE PAUW, 2015) and for enhancing the unity of law (PAPAIOANNOU, 2104, p. 1059). In particular, the IACtHR is known for its universalist and “integrationist” approach to treaty interpretation, reflected in the evolutive interpretation of the American Convention on Human Rights (DE PAUW, 2015).

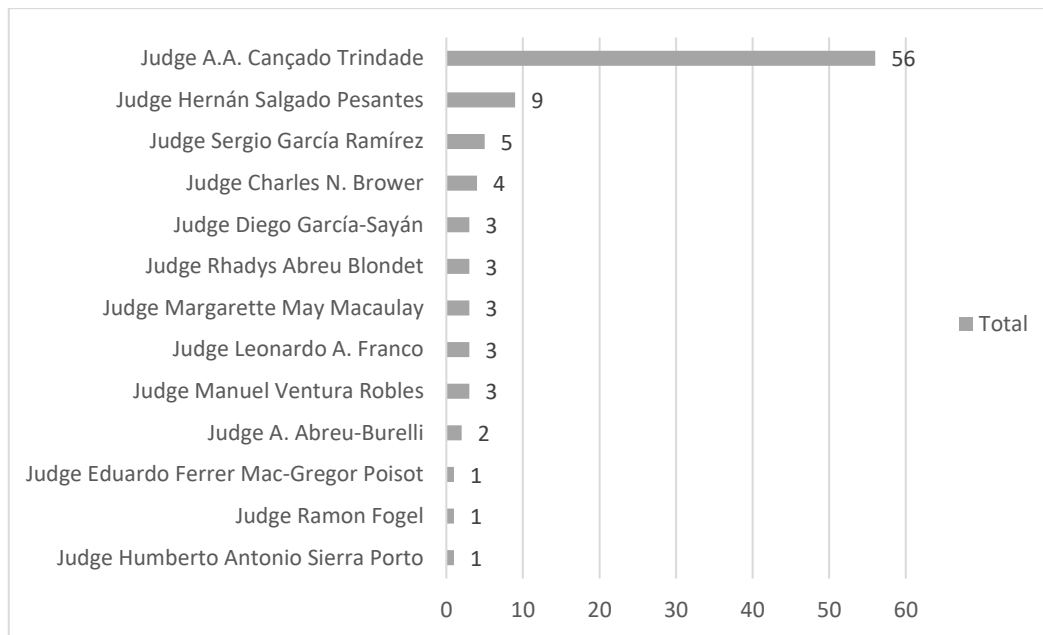
Therefore, when it comes to the practice of judicial dialogue, judges certainly have a privileged role in the creation and articulation of shared legal structures (ROIG, 2016, p. 26). In addition to majority judgments, one may often find other international legal material quoted in separate opinions (NUßBERGER, 2017, p. 425)¹², which constitute a non-neglected form of judicial dialogue.

As far as references to ICJ's jurisprudence in IACtHR's case law are concerned, the most active judge is Judge Cançado Trindade. From 1995 to 2006, Judge Cançado Trindade made 56 referrals to ICJ jurisprudence: 42 in separate opinions, 12 in concurring opinions and 2 in dissenting opinions, as can be seen below:

¹⁰ In more practical terms, the work carried out by the lawyers and practitioners for the preparation of the Inter-American Court' draft judgments cannot be ignored. Organized in working groups, part of the IACtHR's staff develops crucial research on comparative law, both at national and international levels.

¹¹ For a general example of the IACtHR interpretive practice, see INTER-AMERICAN COURT OF HUMAN RIGHTS, *Case of the Ituango Massacres v. Colombia* (Preliminary Objections, Merits, Reparations and Costs) 2006, paras 154 and 157.

¹² Regarding the ECtHR' Use of Decisions of International Courts and Quasi-Judicial Bodies, the author affirms that this practice might indicate that there was a deliberate intention to avoid its integration in the judgment.



Arguably, the education and professional background of judges often shape their decision-making process (ALMEIDA, 2019a; NUßBERGER, 2017, p. 425). According to Erik Voeten, activist judges are more likely to cite external sources than conservative judges who tend to engage in a narrower interpretation (VOETEN, 2010, p. 553, 567). At the ICJ, for instance, most external citations to IACtHR's case law can be found in the separate opinions of judges possessing a background in human rights (ALMEIDA, 2019c)¹³. Whether there is a causal link between the profile of IACtHR's judges and the practice of external citations, further research would be needed to sustain this view¹⁴.

However, judicial dialogue may emphasize an activist dimension of a judge, which leads to legitimacy concerns. The lack of public electoral support allocates greater value for the argumentative rationality, which is enhanced by the practice of judicial communication (ROIG, 2016, p. 37). However, when it comes to international courts' cross-referencing activity, the method can be seen as occasionally too subjective or too creative (DE PAUW, 2015, p. 13-14). The lack of clarity in the

¹³According to the author, 'the most activist judges as far as cross-fertilization with IACtHR case law is concerned are Judge Cançado Trindade (18 references), Judge ad hoc Kreka (2 references) and Judge Higgins (2 references). [...] Such an inclination towards an expansive reading of international human rights may derive from the background of judges.'

¹⁴ A starting point to access the profiles of IACtHR's judges can be found in: VERDUGO R, Sergio.; GARCÍA, José Francisco. Radiografía al sistema interamericano de derechos humanos. **Revista Actualidad Jurídica**, n. 25, 2012.

selection of external sources has also led to allegations of “cherry-picking” and disregard of states’ consensus as well (DE PAUW, 2015, p. 13-14).

If the role of judges in the practice of judicial dialogue rests pivotal, an accurate analysis of ICJ’s most cited cases in IACtHR’s jurisprudence indicates that the use of the World Court’s precedents by the latter, since its first advisory opinion and contentious case, reflects rather an institutional judicial decision-making initiative than that of a single judge or a majority of them in a particular period of time.

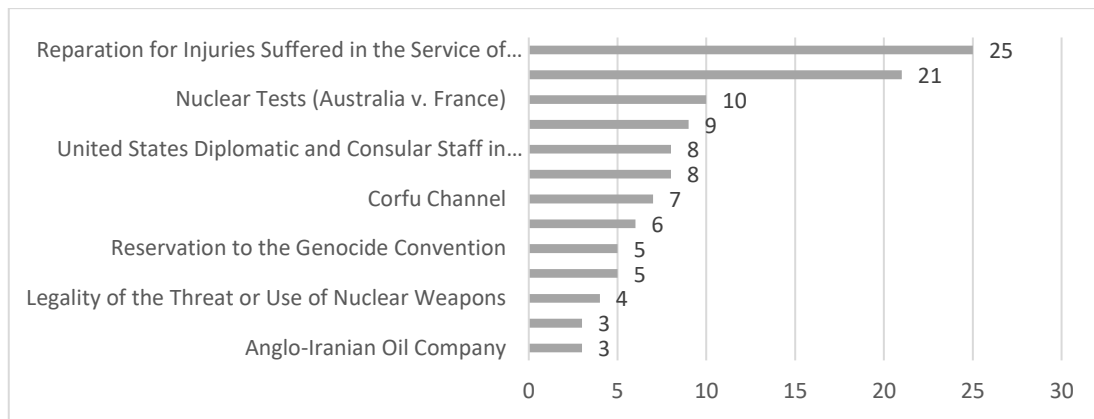
3. THE IMPACT OF ICJ’S MOST CITED CASES IN IACtHR’S CASE LAW

Considering the high amount of citations to ICJ’s case law in IACtHR’s jurisprudence, this analysis will focus on ICJ’s most cited cases, according to scores of citation. Without claiming to be exhaustive, the unit of analysis comprises specific ICJ case law referred to by the IACtHR, both in contentious **(3.1)** and advisory jurisdiction **(3.2)**¹⁵.

3.1. Contentious cases: the impact of ICJ referrals in IACtHR’s majority judgments

In the Inter-American Court jurisprudence, there are several examples of external references to the ICJ case law. Since most references to ICJ rulings can be found in majority judgments, this article will not analyze the references made in IACtHR judges’ separate opinions. Due to space constraints, this section will focus on the influence of: ICJ most cited ruling in the development of the duty to repair, *Reparation for injuries suffered in the service of the United Nations* (ICJ REPORTS, 1949, p. 174), in 25 occasions **(A)** and ICJ second most cited case in the adoption of international procedural rules, *Military and Paramilitary Activities in and against Nicaragua* (ICJ REPORTS, 1986, p. 14), in 21 occasions **(B)**.

¹⁵ This analysis has focused on case law. It does not include references to human rights treaties.



A) The influence of ICJ jurisprudence in the development of the ‘duty to repair’

The 1949 ICJ advisory opinion on *Reparation for Injuries* (ICJ REPORTS, 1949, p. 174) is the most cited case in IACtHR majority judgments. From 1989 to 2016, there has been 25 references to this ICJ advisory opinion in IACtHR majority judgments¹⁶. They all concern the same topic, which is the duty to make adequate reparation for the violation of an international obligation and to provide compensation for the injury suffered. The IACtHR applied the principle of international law, as emphasized by the ICJ, according to which ‘any violation of an international obligation that has caused damage carries with it the obligation to repair it adequately’ (IACtHR, *Baena Ricardo et al Case*, 2001, para. 201).

In 1996, the IACtHR started mentioning Article 63.1 of the American Convention of Human Rights to supplement references to the ICJ. The Court stated that Article 63.1 ‘codifies a rule of customary law, which moreover is one of the fundamental

¹⁶ IACtHR’s *Reparation and Costs Judgment: Godínez Cruz Case*, Series C Nº 8, 21 July 1989, para. 23; *Velásquez Rodríguez Case*, Series C Nº 7, 21 July 1989, para. 25; *El Amparo Case*, Series C Nº 28, 14 September 1996, para. 14; *Neira Alegría et al Case*, Series C Nº 29, 19 September 1996, para. 36; *Caballero Delgado and Santana Case*, Series C Nº 31, 29 January 1997, para. 15; *Garrido and Baigorria Case*, Series C Nº 39, 27 August 1998, para. 23; *Loayza Tamayo Case*, Series C Nº 42, 27 November 1998, para. 84; *Castillo Páez Case*, Series C Nº 43, 27 November 1998, para. 84; *Suárez Rosero Case*, Series C Nº 44, 20 January 1999, para. 40; *Blake Case*, Series C Nº 48, 22 January 1999, para. 33; *Constitutional Court Case Merits*, Series C Nº 71, 31 January 2001, para. 117; *Baena Ricardo et al Case*, Merits, Series C Nº 72, 2 February 2001, para. 201; *Ivcher Bronstein Case Merits*, Series C Nº 74, 6 February 2001, para. 117; *Cesti Hurtado Case*, Series C Nº 78, 31 May 2001, para. 32; *Mayagna (Sumo) Awas Tingni Community Case*, Merits, Series C Nº 79, 31 August 2001, para. 163; *Barrios Altos Case*, Series C Nº 87, 30 November 2001, para. 24; *Durand and Ugarte Case*, Series C Nº 89, 3 December 2001, para. 24; *Baena Ricardo et al Case*, Series C Nº 104, 28 November 2003, para. 65; *Street Children Case* Series C Nº 77, 26 May 2001, para. 59. IACtHR’s Monitoring Compliance with Judgment Order: *Apitz Barbera et al Case*, 23 November 2012, para. 24; *Río Negro Massacres and Gudiel Álvarez et al. Case*, 21 August 2014, para. 6; *Joint Monitoring Compliance of 11 cases Case*, 21 August 2014, para. 6; *Yatama Case*, 20 November 2015, para. 5; *Barrios family Case*, 22 November 2016, para. 3; *Fleury et al. Case*, 22 November 2016, para. 3.

principles of current international law of responsibility of States' (IACtHR, *Blake Case*, 1999, para. 33).

Over the years, only a few changes are notable regarding the substance of referrals to *Reparation for Injuries* in the IACtHR judgments. However, their location has varied since 1989. *Reparation for Injuries*' opinion was cited in the main text of the judgment in the first round of ten cases (see footnote No 16). By contrast, starting from 2001, all references to ICJ case law are found in footnotes. They have also been displayed subsequently to the Inter-American Court's own precedents regarding the duty to repair.

This "turning point" can be traced back to the IACtHR's *Constitutional Court* case, in 2001, when reference to the ICJ's *Reparation for Injuries* opinion first arose in a footnote (para. 117). Since then, references to the ICJ jurisprudence have been preceded by expressions such as 'in the same direction', 'and', 'in this sense', 'also', etc. The phenomenon of internalization and appropriation of concepts by the IACtHR can also be noted in the expression 'it has been thus applied by this Court' (IACtHR: *El Amparo Case*, 1996, para. 14; *Neira Alegría et al Case*, 1996, para. 36; *Caballero Delgado and Santana Case*, 1997, para. 15).

The location and substance of referrals to the ICJ's '*Reparation for Injuries*' in the IACtHR's *Baena-Ricardo Case* perfectly illustrates this phenomenon, in which not only its own case law but also the ICJ's are identified as *jurisprudence constante*.

201. **This Tribunal has reiterated in its constant jurisprudence** as a principle of international law that any violation of an international obligation that has caused damage carries with it the obligation to repair it adequately.⁷³ [...]

Footnote 73 cfr. **Case of the Constitutional Court**, supra note 7, para. 118. Suárez-Rosero Case, Reparations (Art. 63.1, American Convention on Human Rights). Judgment of January 20, 1999. Series C N° 44, para. 40. **In the same sense**, cfr. Factory at Chorzów, Jurisdiction, Judgment N° 8, 1927, P.C.I.J., Series A. N° 9, page 21; Factory at Chorzów, Merits, Judgment N° 13, 1928, P.C.I.J., Series A. N° 17, page 29; **Reparations for Injuries Suffered in the Service of the United Nations, Advisory Opinion, I.C.J. Reports 1949, page 184.** [emphasis added] (IACtHR, *Baena Ricardo et al Case*, 2001, para. 201).

This passage helps to clarify the extent and purpose of citing the 1949 ICJ advisory opinion along the years. It indicates that the ICJ case law, due to its recognized authority, was essential for building up the Court's reasoning in the development of the 'duty to repair'. More recently, recourse to ICJ judgments in the

footnotes, as a secondary source, demonstrates that the IACtHR has developed its own regional case law on the matter, influenced by the World Court.

B) The influence of ICJ jurisprudence in international procedural issues

From 1988 to 2015, the IACtHR cited the ICJ's case *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)* in 21 majority judgments¹⁷; being the second most cited case¹⁸. All references concern procedural issues such as burden of proof (16 times) and absence of one of the parties (5 times)¹⁹.

The IACtHR has taken jurisprudential inspiration from *Military and Paramilitary Activities* since its first judgment: the *Velasquez Rodriguez* case (1988, paras. 127 and 146). Because no Inter-American legal instrument referred to this matter, the IACtHR had recourse to what 'international jurisprudence has recognized' as being 'the power of Courts' for determining the standards of proof (*Ibid*, para. 27)²⁰. *Military and*

¹⁷ This amount of citations includes ICJ Judgments on 'Jurisdiction and Admissibility', from 1984, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)* (Jurisdiction and Admissibility) General List N° 70, and the Judgment on Merits, from 1986, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)* General List N° 70.

¹⁸ IACtHR. *Velasquez Rodríguez Case*, Merits Judgment, Series C N° 4, 29 July 1988, paras. 127 and 146; *Godínez Cruz Case*, Merits Judgment, Series C N° 5, 20 January 1989, para. 133; *Fairén Garbi and Solís Corrales Case*, Merits Judgment, Series C N° 6, 15 March 1989, para. 130; *Castillo Páez Case*, Reparations and Costs Judgment, Series C N° 43, 27 November 1998, para. 38; *Constitutional Court Case*, Competence Judgment, Series C N° 55, 24 September 1999, para. 52; *Constitutional Court Case*, Merits, Reparations and Costs Judgment, Series C N° 71, 31 January 2001, para. 62; *Ivcher Bronstein Case*, Merits, Reparations and Costs Judgment, Series C N° 74, 6 February 2001, para. 82; *White Van Case*, Reparations and Costs Judgment, Series C N° 76, 25 May 2001, para. 51 *Street Children Case*, Reparation and Costs Judgment, Series C N° 77, 26 May 2001; *Cesti Hurtado Case*, Reparations and Costs Judgment, Series C N° 78, 31 May 2001, para.21; *Bámaca Velasquez Case*, Reparations and Costs Judgment, Series C N° 91, 22 February 2002, para. 15; *Trujillo Oroza Case*, Reparations and Costs Judgment, Series C N° 92, 27 February 2002, para. 37; *Juan Humberto Sánchez Case*, Interpretation of the Judgment of Preliminary Objection, Merits, Reparations and Costs, Series C N° 102, 26 November 2003, para. 48; *Caesar Case*, Merits, Reparations and Costs Judgment, Series C N° 123, 11 March 2005, para. 37; *Mapiripán Massacre Case*, Merits, Reparations and Costs Judgment, Series C N° 134, 15 September 2005, para. 97-d; *Yvon Neptune Case*, Merits, Reparations, and Costs Judgment, Series C N° 180, 6 May 2008, para. 17; *Perozo et al Case*, Preliminary Objections, Merits, Reparations, and Costs Judgment, Series C N° 195, 28 January 2009, para. 131; *Ríos et al Case*, Preliminary Objections, Merits, Reparations, and Costs Judgment, Series C N° 194, 28 January 2009, para. 120; *Kawas Fernández Case*, Merits, Reparations and Costs Judgment, Series C N° 196, 3 April 2009, para. 43; *Lysias Fleury et. al Case*, Merits and Reparations Judgment, Series C N° 236, 23 November 2011, para. 14; *Wong Ho Wing Case*, Preliminary Objections, Merits, Reparations, and Costs Judgment, Series C No 297, 30 June 2015, para. 28.

¹⁹ It is possible that there might be reference to an ICJ judgment or opinion in more than one paragraph in the same IACtHR judgment.

²⁰ "The Court must determine what the standards of proof should be in the instant case. **Neither the Convention, the Statute of the Court nor its Rules of Procedure speak to this matter. Nevertheless, international jurisprudence has recognized** the power of the courts to weigh the

Paramilitary Activities was referred to in the main text of the judgment to state that ICTs always avoid ‘a rigid rule regarding the amount of proof necessary to support the judgment’ and to establish the international responsibility of States, ‘particularly in human rights cases’. This approximation between ICJ’s and IACtHR’s procedural practices as *international tribunals*, in contrast with domestic courts, is restated in subsequent judgments, with continuous citation to *Military and Paramilitary Activities*.

In the IACtHR’s *Villagrán-Morales* case, also known as *Street Children* case (2001), the IACtHR cited ICJ’s *Nicaragua v USA* case to address the topic of standard of proof, in a similar paragraph, but with some formal differences. Noteworthy, the Inter-American Court first referred to its own jurisprudence (IACtHR, *Street Children Case*, 2001, para. 40), including the first three IACtHR’s cases from 1988 and 1989 (IACtHR: *Velásquez Rodríguez Case*, 1988, paras. 127-8; *Godínez-Cruz*, 1989, para. 133; *Fairén Garbi and Solís Corrales Case*, 1989, para. 130), which was followed by international jurisprudence. Therefore, the *Street Children* case serves to illustrate the progressive formation of the IACtHR’s *jurisprudence constante*. Paragraph 40 of the judgment is very clear in this regard:

40. **The Court has indicated previously** that the proceedings before it are not subject to the same formalities as domestic proceedings and that, when incorporating determined elements into the body of evidence, particular attention must be paid to the circumstances of the specific case and to the limits imposed by respect for legal certainty and the procedural equality of the parties. **International jurisprudence has upheld** the power of the courts to evaluate the evidence within the limits of sound judicial discretion and has always avoided making a rigid determination of the amount of evidence required to support a judgment.

Footnote 3: cf. Castillo Páez case. Reparations, supra note 1, para. 38; Fairén Garbi and Solís Corrales case. Judgment of March 15, 1989. Series C No. 6, para. 130; Godínez Cruz case. Judgment of January 20, 1989. Series C No. 5, para. 133; and Velásquez Rodríguez case. Judgment of July 29, 1988. Series C No. 4, para. 127. **See also, the International Court of Justice, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, I.C.J. Reports 1986, p. 14, para. 60.** [emphasis added] (IACtHR, *Street Children Case*, 2001, para. 40)

Along the same lines, since 2003, referrals to the *Military Paramilitary Activities* case have been inserted in the judgments’ footnotes (IACtHR, *Juan Humberto Sánchez Case*, 2003, para. 48). Similar to references to *Reparations for Injuries*

evidence freely, although it has always avoided a rigid rule regarding the amount of proof necessary to support the judgment (Cfr. Corfu Channel, Merits, Judgment, I.C.J. Reports 1949; *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, I.C.J. Reports 1986, paras. 29-30 and 59-60)”. [emphasis added]

opinion, this practice represents an appropriation or incorporation of a legal concept by the IACtHR, fine-tuned to the World Court's developments.

However, there is no systematic form of citing precedents, according to which all previous cases are necessarily cited in IACtHR judgments that deal with the same legal matter. For instance, the *White Van* case (Reparation and Costs) was adjudged one day before the *Street Children* case and displays almost the same paragraph transcribed above, but does not provide as many references to both internal and external case law as the latter (IACtHR, *White Van Case*, 2001, para. 51). Nevertheless, in *White Van* case, the IACtHR reiterated the importance of the ICJ's *Military and Paramilitary Activities* decision to address the 'amount of evidence needed' in international jurisprudence.

The IACtHR has also turned to the ICJ's *Military and Paramilitary Activities* to address the evidentiary value of well-known facts. According to the ICJ, in order to judge the United States' responsibility for certain activities in and against Nicaragua 'the Court can attach a certain amount of weight to such public knowledge', including press and broadcast material consistent to the main facts and circumstances of the case (paragraphs 62-64 of the 1986 ICJ Judgment). This ICJ stand was reproduced in three IACtHR's judgments against Honduras (1988 and 1989) regarding the responsibility of Honduran military and police force (IACtHR: *Velásquez Rodríguez Case*, 1988, para. 146; *Godínez-Cruz Case*, 1989, para. 152; *Fairén Garbi and Solís Corrales Case*, 1989, para. 145), in which *Military and Paramilitary Activities* was framed as the 'international jurisprudence' understanding on the matter. The same reasoning can be found in the IACtHR's cases *Perozo et al* (2009, para. 131) and *Kawas Fernández* (2009, para. 43) in order to confirm the particular probative value of statements emanating from 'high-ranking official political figures' that acknowledge facts and conducts of the State. Indeed, in *Perozo et al* (2009, para. 131), both ICJ and PCIJ jurisprudence are referred to as a basis for recognizing state responsibility (see paragraphs 159-161) (*Ibid*, para. 138).

Moreover, the IACtHR has taken inspiration from the ICJ's *Military and Paramilitary Activities* judgment to endorse the idea that 'the absence of one of the parties does not affect the validity of the judgment' in four different occasions (IACtHR: *Constitutional Court Case*, 2001, para. 62; *Ivcher Bronstein Case*, 2001, para. 82; *Caesar Case*, 2005, para. 37; *Yvon Neptune Case*, 2008, para. 17; *Lysias Fleury et al Case*, 2011, para. 14). For instance, in the IACtHR's *Constitutional Court v. Peru*

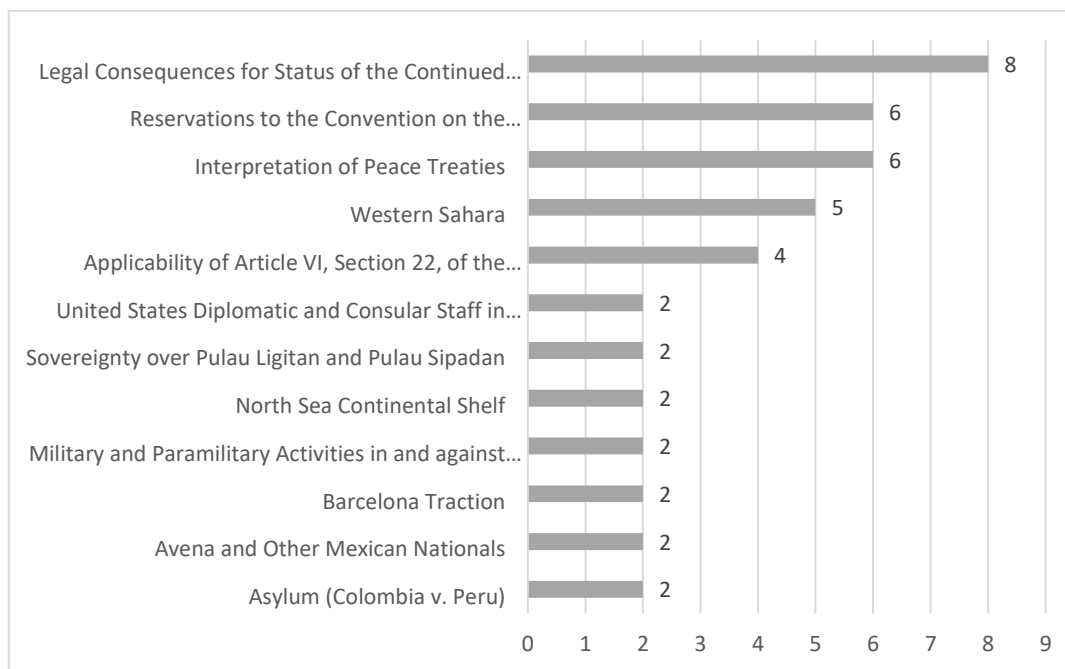
(2001, para. 62) case, the Court referred to 'international jurisprudence', i.e., *Military and Paramilitary Activities*, to assert Peru's obligation to comply with the Court's judgment, regardless of its absence from the proceedings (Ibid). For the IACtHR, ICJ jurisprudence possess a persuasive character which can also be seen by the joint referral to other five ICJ cases concerning this issue (Ibid): *Fisheries Jurisdiction* (Jurisdiction of the Court) (ICJ, 1973, para. 12); *Fisheries Jurisdiction* (Merits) (Ibid, para. 17); *Nuclear Tests* (Australia v. France) (ICJ, 1974, para. 15); *Aegean Sea Continental Shelf* (ICJ, 1978, para. 15); *United States Diplomatic and Consular Staff in Tehran* (ICJ, 1980, para. 33).

Ten years later, the IACtHR seems to have appropriated ICJ reasoning in its own case law. In IACtHR's *Lysias Fleury et al* (2011, para. 14), the location of the referral to *Military and Paramilitary Activities* changed from the main text to the footnotes, only after the mentioning of IACtHR's own case law in the same footnote, as it has occurred in other cases mentioned above. Paragraph 14 of the judgment well illustrates this process:

'Haiti failed to appear at any stage of the proceedings before the Court. **In previous cases, the Court has considered that** when a State does not specifically answer the application, the facts of the case regarding which it has remained silent are presumed to be true, provided that conclusions can be reached from the existing evidence that are consistent with those facts.⁷ [...] International jurisprudence has recognized that the absence of one of the parties at any stage of the case does not affect the validity of the judgment.⁸ **Footnote 8: 8 Case of the Constitutional Court v. Peru. Merits, reparations and costs. Judgment of January 31, 2001. Series C No. 71, paras. 60 and 62, and Case of Yvon Neptune v. Haiti, supra note 7, para. 17. See also, *inter alia*, International Court of Justice, Compétence en matière d'Activités militaires et paramilitaires au Nicaragua et contre celui-ci (Nicaragua c. États-Unis d'Amérique), Fond, arrêt, C.I.J. Recueil 1986, p. 23, para. 27; Compétence en matière de pêcheries (Royaume-Uni c. Islande), Fond, arrêt, C.I.J. Recueil 1974, p. 9, para. 17; Essais nucléaires (Australie c. France), Arrêt du 20 décembre 1974, C.I.J. Recueil 1974, p. 257, para. 15 ; Plateau continental de la mer Egée (Grèce c. Turquie), Arrêt du 19 décembre 1978, C.I.J. Recueil 1978, p. 7, para. 15, and Personnel diplomatique et consulaire des Etats-Unis à Téhéran (Etats-Unis d'Amérique c. Iran), Arrêt du 24 mai 1980, C.I.J. Recueil 1980, p. 18, para. 33' [emphasis added] (Ibid)**

3.2. Advisory Opinions: the impact of ICJ referrals on questions of general international law

As for the IACtHR Advisory Jurisdiction, the most cited ICJ decision is *Legal Consequences for States of the Continued Presence of South Africa in Namibia*²¹:



As indicated above, this case was cited in eight IACtHR advisory opinions²². In two of them, a direct citation to ICJ's *Legal Consequences* paragraph can be found in its main text, in order to provide inspiration to support that the interpretation a treaty must take into account the system it is part of (See IACtHR Advisory Opinion: OC-10,

²¹ This amount includes seven references to ICJ Resolution of June 1971 and one to an ICJ order of January 1971. See: ICJ, *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970) Advisory Opinion*, General List N° 53 1971, p. 16; and ICJ *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970) Order of 29 January*, General List N° 53, 1971, p. 12.

²² It is possible that there is reference to an ICJ judgment/opinion in more than one paragraph in the same IACtHR judgment. In the present case, there are ten references to the '*Legal Consequences for States of the Continued Presence of South Africa in Namibia*' (including the 1971 January order) in eight IACtHR Advisory Opinions: "*Other treaties*" subject to the consultative jurisdiction of the Court (Article 64 American Convention on Human Rights), Advisory Opinion OC-1, Series A No 1, 24 September 1982, para. 23; *Restrictions to the death penalty (Articles 4(2) and 4(4) American Convention on Human Rights)*, Advisory Opinion OC-3, Series A No 3, 8 September 1983, para. 40; *Interpretation of the American Declaration of the Rights and Duties of Man within the framework of article 64 of the American Convention on Human Rights*, Advisory Opinion OC-10, Series A No 10, 14 July 1989, paras. 37-38; *Reports of the Inter-American Commission on Human Rights*" (Article 51 American Convention on Human Rights), Advisory Opinion OC-15, Series A No 15, 14 November 1997, paras. 39-40; *The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law*, Advisory Opinion OC-16, Series A No 16, 1 October 1999, para. 45; *Juridical Condition and Human Rights of the Child* Advisory Opinion OC-17, Series A No 17, 28 August 2002, para. 32; *Juridical Condition and Rights of Undocumented Migrants*, Advisory Opinion OC-18, Series A No 18, 17 September 2003, para. 62; *Article 55 of the American Convention on Human Rights*, Advisory Opinion OC-20, Series A No 20, 29 September 2009, para. 39.

1989, paras. 37-38; OC-16, 1999, para. 113). In six occasions, the ICJ's *Legal Consequences* judgment was used for guidance to clarify the scope of the advisory jurisdiction and of admissibility requests (IACtHR Advisory Opinion: OC-1, 1982, para. 23; OC-3, 1983, para. 40; OC-15, 1997, paras. 39-40; OC-16, 1999, para. 45; OC-17, 2002, para. 32; OC-18, 2003, para. 62).

For the IACtHR, *Legal Consequences* stands as a paradigmatic case and has encouraged the regional court to exercise advisory jurisdiction despite any objection from States. Occasionally, State parties alleged that the Inter-American Court should refrain itself from accepting the request on the ground that it was 'a disguised contentious case' (IACtHR Advisory Opinion: OC-3, 1983, para. 40; OC-15, 1997, paras. 39-40) or 'a method for evading the application of the principle requiring the consent of all States Parties to a legal dispute before judicial procedures are instituted' (IACtHR Advisory Opinion OC-1, 1982, para. 23).

The evolution of the use of ICJ case law in the IACtHR's advisory opinions is in line with the same phenomenon observed in majority judgments. In the first advisory opinion (*Ibid*), ICJ's *Legal Consequences* opinion was used to decide on a 'subject of heated debate'. Afterwards, the IACtHR's position to exercise advisory jurisdiction found 'ample support in the jurisprudence of the International Court of Justice' (IACtHR Advisory Opinion OC-3, 1983, para. 40) and was in 'full conformity with international jurisprudence on the subject' (*Ibid*). These express references to ICJ case law were found in the main text of the advisory opinion.

However, since 1999, references to *Legal Consequences* have been located in footnotes, following a more general understanding of IACtHR practice (IACtHR Advisory Opinion: OC-16, 1999, para. 45; OC-17, 2002, para. 32; OC-18, 2003, para. 62). Paragraph 62 of the IACtHR Advisory Opinion No. 18 (2003) illustrates this process by stating that 'international jurisprudence in this area', represented by the ICJ case law, is *only one* of the various factors that the Court may use considering the matter (IACtHR Advisory Opinion OC-18, 2003, para. 62):

The Court may use various factors when considering this matter. One of them, which **coincides with much of the international jurisprudence in this area**,¹⁰ refers to the problem that, a ruling on an issue or matter that might eventually be submitted to the Court in the context of a contentious case could be obtained prematurely, using a request for an opinion.¹¹ However, **this Court has noted subsequently** that the existence of a difference concerning the interpretation of a provision does not, per se, constitute an impediment for exercise of the advisory function.¹² [...]

Footnote 10: Cf. Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations, Advisory Opinion, I.C.J. Reports 1989, p. 177, para 29-36; **Legal Consequences for States of the Continued Presence of South Africa in Namibia** (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971, p. 16, para. 27-41; Western Sahara, Advisory Opinion, I.C.J. Reports 1975, p. 12; Reservations to the Convention on Genocide, Advisory Opinion, I.C.J. Reports 1951, p. 15, (19, 20); and I.C.J.: Interpretation of Peace Treaties, Advisory Opinion, I.C.J. Reports 1950, p. 65 (71, 72). [...]

Footnote 12: Cf. Legal Status and Human Rights of the Child, supra note 1, para. 32; The Right to Information on Consular Assistance in the Framework of the Guarantees of Due Process of Law, supra note 1, para. 45; and Compatibility of Draft Legislation with Article 8(2)(h) of the American Convention on Human Rights. Advisory Opinion OC-12/91 of December 6, 1991. Series A No. 12, para. 28. [emphasis added]

This citation shows that after acknowledging the risk, raised by the ICJ, that an issue brought by a request of opinion may prematurely define the outcomes of a subsequent contentious cases, the IACtHR gave emphasis to the conclusion reached in its own jurisprudence according to which ‘the existence of a difference concerning the interpretation of a provision does not, *per se*, constitute an impediment for exercise of the advisory function’.

4. CONCLUSION

Considering the current process of diversification and expansion of international law, judicial dialogue can be seen as a tool not only for fostering integration and normative coherence on a global scale (MAC-GREGOR, 2017, p. 96), but also for avoiding its fragmentation (SPIELMANN, 2015, p. 190). In the absence of any hierarchy among ICTs, the ICJ’s voice tend to receive particular attention and occupies the role of ‘guarantor of the unity of international law’. In this sense, the reception of ICJ ‘precedents’ in the IACtHR jurisprudence occurs predominantly when questions of general international law are inherent to cases brought before the Court. By taking into account the jurisprudence of the ICJ, the Inter-American Court aims to enhance the persuasiveness, authority or legitimacy of its decisions.

The IACtHR does not seem to hesitate to turn towards ICJ jurisprudence to analyze, develop, and define its own jurisprudence with regards to procedural and substantive issues. Nonetheless, this practice has varied over the years. Since its first rulings in the 1980’s, the ICJ case law, due to its recognized authority, was essential for building up the Court’s reasoning in the development of important issues. This has

been demonstrated by the impact of both the ICJ *Reparation for Injuries*' on the IACtHR's duty to repair, and by the ICJ *Military and Paramilitary Activities* case on international procedural matters, such as the burden of proof for international tribunals, as well as ICJ *Legal Consequences* on the scope of IACtHR advisory jurisdiction.

From the analysis of the most cited cases, it seems that the IACHR relied on ICJ case law to take a stand on more general questions of international law. Consistency and harmony of international law can be a possible reason for it. Perhaps an analysis of all references to the ICJ's jurisprudence – not limited to the most cited decisions – would be necessary to verify if this substantive pattern may be generalized. Possibly, when the IACtHR is confronted with a new issue regarding human rights law – and not a matter of general international law-, it would assume a leading role and would search primarily for other human rights instruments and rulings in order to be aware of the ongoing developments in international human rights law.

The analysis of the use of the ICJ jurisprudence by the IACtHR over the years also serves to illustrate the progressive formation of its *jurisprudence constante*. The IACtHR has indeed developed its own jurisprudence, but it has not spared from reinforcing some legal concepts by mentioning ICJ jurisprudence (notably in the footnotes). The Inter-American Court cannot be seen as a passive importer of interpretations rendered by other courts as it frequently engages in its own innovative interpretations, some of them based on regional realities or universalist considerations (NEUMAN, 2008, P. 116-117). Judges have expressed their pride in the Court's contributions to the human rights discourse (*Idem*), in which Inter-American regional particularities have been stressed even in comparison with its European counterpart's developments (PAPAIOANNOU, 2014, p. 1040).

Contrary to the ICJ practice concerning transjudicial communication with human rights courts, empirical data demonstrates that most references to ICJ case law are found in IACtHR's majority judgments. This indicates that judicial interaction between the IACtHR and the ICJ can neither be attributed to the role of individual judges nor to a specific period of time. However, since this 'dialogue' occurs predominantly via external citation, without any reciprocity in ICJ's judicial decision-making practice, it may be considered rather a monologue than a real judicial dialogue.

REFERENCES

- ALSCHNER, Wolfgang; CHARLOTIN, Damien. The Growing Complexity of the International Court of Justice's Self-Citation Network. **The European Journal of International Law**, vol. 29 no. 1, 2018.
- APAIOANNOU, Maria. Harmonization of International Human Rights Law Through Judicial Dialogue: the Indigenous Rights' Paradigm. **Cambridge International Law Journal**, 3, 4, 2014, pp. 1037-1059.
- BURGORGUE-LARSEN, Laurence; CÉSPEDES, Nicolás Montoya. El diálogo judicial entre la Corte Interamericana de Derechos Humanos y la Corte Europea de Derechos Humanos. **Manual: Protección Multinivel de Derechos Humanos**. Red de Derechos Humanos y Educación Superior, 2013.
- BURGORGUE-LARSEN, Laurence. "Decomartmentalization": The key technique for interpreting regional human rights treaties. **I•CON**, 2018a, vol. 16 No. 1, pp. 187–213.
- BURGORGUE-LARSEN, Laurence. Conventionality Control: Inter- American Court of Human Rights (IACtHR). **Max Planck Encyclopedias of International Law**. Oxford University Press, 2018b.
- CORTE IDH. "Diálogo entre Cortes Regionales de Derechos Humanos". **Corte Interamericana de Derechos Humanos** (comp.). San José, C.R.: Corte IDH, 2020.
- DALY, Tom Gerald. Relation of Constitutional Courts/ Supreme Courts to IACtHR. **Max Planck Encyclopedias of Comparative Constitutional Law**. Oxford University Press, 2018.
- DE PAUW, M. The Inter-American Court of Human Rights and the Interpretive Method of External Referencing: Regional Consensus v. Universality. In: HAECK, Y., RUIZ-CHIRIBOGA, O., HERRERA, C. B. Herrera (Eds.), **The Inter-American Court of Human Rights: theory and practice, present and future**. Editora: Intersentia Publishers, 2015.
- EUROPEAN COURT OF HUMAN RIGHTS, 'References to the Inter-American Court of Human Rights and Inter-American instruments in the case-law of the European Court of Human Rights', **ECHR Research Report**, 2016.
- GARCIANDIA, Rosana. State responsibility and positive obligations in the European Court of Human Rights: The contribution of the ICJ in advancing towards more judicial integration. **Leiden Journal of International Law**, n. 33, 2020.
- GÓNGORA-MERA, Manuel Eduardo. Judicialización de la discriminación estructural contra pueblos indígenas y afrodescendientes en América Latina: Conceptualización y tipología de un diálogo interamericano. In: VON BOGDANDY, Armin; ANTONIAZZI, Mariela Morales; MAC-GREGOR, Eduardo Ferrer (eds.) **Ius Constitutionale Commune en América Latina**, Textos básicos para su comprensión (Instituto de Estudios Constitucionales del Estado de Querétaro; Max Planck Institute for Comparative Public Law and International Law. México, 2017.

KASSOTI, Eva. Fragmentation and Inter-Judicial Dialogue: The CJEU and the ICJ at the Interface. **European Journal of Legal Studies**, vol. 8, no. 2, 2015.

KOH, Harold Hongju. International Law as Part of Our Law. **American Journal of International Law**, n. 98, 2004.

LAW, David S; CHANG, Wen-Chen. The Limits of Global Judicial Dialogue. **Washington Law Review** n. 86, 3, 2011.

MAC-GREGOR, Eduardo Ferrer. What Do We Mean When We Talk about Judicial Dialogue: Reflections of a Judge of the Inter-American Court of Human Rights. **Harvard Human Rights Journal**, n. 30, 2017.

MILLER, Nathan. An International Jurisprudence? The Operation of Precedent Across International Tribunals, **Leiden Journal of International Law**, n. 15, 2002.

NEUMAN. Gerald L., Import, Export, and Regional Consent in the Inter-American Court of Human Rights. **The European Journal of International Law** n. 19, 1, 2008, 116-117.

NUßBERGER, Angelika. The ECtHR' Use of Decisions of International Courts and Quasi-Judicial Bodies. In: MÜLLER, A. (ed.), **Judicial Dialogue and Human Rights**. Studies on International Courts and Tribunals. Cambridge: Cambridge University Press, 2017.

PAPAIOANNOU, Maria. Harmonization of International Human Rights Law Through Judicial Dialogue: the Indigenous Rights' Paradigm. **Cambridge International Law Journal**, 3, 4, 2014.

ROCA, Javier García Roca; FERNÁNDEZ, Pablo Antonio; SAN-TOLAYA, Pablo; CANOSA, Raul (eds.) **El diálogo entre los Sistemas Europeo y Americano de Derechos Humanos**. Editora: Civitas, 2012.

RODRÍGUEZ, Gabriela. Artículo 29. Normas de interpretación. In: STEINER, Christian; FUCHS, Marie-Christine (eds). **Convención Americana sobre Derechos Humanos: Comentario**. Segunda edición. Konrad Adenauer Stiftung, 2019.

ROIG, Francisco. Human Rights and Judicial Dialogue between America and Europe: Toward a new model of law? **The Age of Human Rights Journal**, n. 6, 2016, pp. 24-41.

SANDHOLTZ, Wayne. Human Rights Courts and Global Constitutionalism: Coordination through Judicial Dialogue. KRIEGER Heike; NOLTE, Georg; ZIMMERMANN, Andreas (eds.), **KFG Working Paper Series**, Berlin Potsdam Research Group "The International Rule of Law – Rise or Decline?", n. 35, 2019.

SLAUGHTER, Anne-Marie. A Typology of Transjudicial Communication'. **University of Richmond Law Review**, n. 29, 1, 1994.

SLAUGHTER, Anne-Marie. A Global Community of Courts. **Harvard International Law Journal**, n.44, 1, 2003.

SPIELMANN, Dean. Fragmentation or partnership? The reception of ICJ case-law by the European Court of Human Rights. In: ANDENAS, M; BJORGE, E.(Eds.). **A Farewell to**

Fragmentation: Reassertion and Convergence in International Law. Studies on International Courts and Tribunals, 2015, pp. 190.

TAMS, Christian J.; TZANAKOPOULOS, Antonios. Barcelona Traction at 40: The ICJ as an Agent of Legal Development. **Leiden Journal of International Law**, n. 23, 2010.

TZANAKOPOULOS, Antonios, 'Judicial Dialogue as a Means of Interpretation' In Helmut Philipp Aust and Georg Nolte (eds.) **The Interpretation of International Law by Domestic Courts: Uniformity, Diversity, Convergence.** Editora: Oxford University Press, 2016.

VERDUGO R, Sergio.; GARCÍA, José Francisco. Radiografía al sistema interamericano de derechos humanos. **Revista Actualidad Jurídica**, n. 25, 2012.

VOETEN, Erik. Borrowing and Nonborrowing among International Courts. **The Journal of Legal Studies**, n. 39, 2010, p. 550.

VON BOGDANDY, Armin; VENZKE, Ingo. In Whose Name? An Investigational of International Court's Public Authority and Its Democracy Justification. **The European Journal of International Law**, 23.1, 2012a.

VON BOGDANDY, Armin; VENZKE, Ingo. On the Functions of International Courts: An Appraisal of Their Burgeoning Public Authority, **ACIL Research Paper** No 2012-10, 2012b.

VON BOGDANDY, Armin; VENZKE, Ingo(eds.) Beyond Dispute: International Judicial Institutions as Lawmakers, Special Issue, **German Law Journal**, 12, 5, 2011.

WOJCIKIEWICZ ALMEIDA, Paula. Paula Wojcikiewicz. The legitimacy of International Trade Tribunals: the case of Mercosur. In: RUIZ-FABRI, H., ULFSTEIN, G. HOWSE, R. **The Legitimacy of International Trade Tribunals.** Cambridge University Press, 2019a.

WOJCIKIEWICZ ALMEIDA, Paula. The Asymmetric Judicial Dialogue Between the ICJ and the IACtHR: An Empirical Analysis. **Journal of International Dispute Settlement**, 2019b.

WOJCIKIEWICZ ALMEIDA, Paula. The Impact of the Inter-American Court of Human Rights Jurisprudence in the International Court of Justice Case Law. **Revista da Faculdade de Direito Universidade Federal de Minas Gerais.** N. 75, 2019c.

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