Case-law of the Inter-American Court of Human Rights
Chronicle for the Year 2008

Marie Rota
The Inter-American Court of Human Rights, established by the American Convention on Human Rights, is often considered as the “little sister” of the European Court. Both of them are founded on the same assumptions: human rights are considered as “attributes of the human being”; they provide the same types of action (individual or state recourse), and they share similar institutional mechanisms and rights.

Nevertheless, the study of the inter-american jurisprudence shows that the Inter-American Court has developed, in its recent decisions and advisory opinions, its own “jurisprudential doctrine”\(^1\). It has opted for a jus-naturalist conception, following the doctrine of the former president of the Inter-American Court, Antônio Augusto Cançado Trindade, who calls for the creation of a “new jus gentium” and a “humanization of international law”\(^2\). An analysis of judgments

\(^1\) Sergio García Ramírez, “Prologue”, in Laurence Burgorgue-Larsen and Amaya Úbeda de Torres, Les grandes décisions de la Cour interaméricaine des droits de l’homme, Bruylant, Bruxelles, 2008, p. XXI.

\(^2\) Conception detailed both in his separate opinions (for example, §19 of his opinion under the advisory opinion I/A Court H.R., Judicial Condition and Rights of the Undocumented Migrants, Advisory Opinion OC-18 of September 17, 2003, Series A No. 18) and in its international law courses taught at The Hague: “International Law for Humankind: Towards a New Jus Gentium”, Recueil des Cour ADI/AIL, Tome 316, n° 1, 2005, or in his book: A Humanização do Direito Internacional, Del Rey, Belo Horizonte, 2006.

The Court adopted several substantial decisions in the year 2008. Most of them focused on the right to life and the right to personal integrity which are often jeopardized by recurring cases of enforced disappearances and extra-judicial killings. A noticeable tendency has developed among the contracting states of recognizing, at least to a certain extent, their responsibility for the alleged violations. Consequently, the number of preliminary objections is in a steady decline. The Court also encourages the conclusion of friendly settlements. This brings contentious cases to a quick end and ensures that victims receive just reparations. It also provides for more efficient functioning of the Court. Despite a number of similarities with the European Court of Human Rights, the Inter-American case law clearly reveals that the Court is developing its own doctrine. Its specific approach towards the protection of human rights is adapted to the particularities observed within the region. The author of this chronicle would like to thank especially Frazer Egerton for his careful reading and help on the English version.

**Keywords:** American Convention on Human Rights, Inter-American Court of Human Rights, enforced disappearances, right to integrity, secondary victim (IACHR), indirect victim (ECtHR), right to freedom and security, extra-judicial killings, hearing within reasonable time, “doctrine Trinidado”, reparations

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and opinions of the Inter-American Court in that article offers to shed light on whether and how the new bench of the Court has carried out Trinidade’s vision.

In 2008, the Inter-American Court has adopted eighteen decisions, with eight of them addressing the interpretation of previous decisions. On that first article, we will analyze the ten other decisions, which deals with the merits. We will, moreover, underline rights, which have undergone a change and which present some special features of the inter-American system.

The Court first examines its jurisdiction and the admissibility of applications (1.), then the potential violations of the rights invoked (2.) and finally the repairs (3.).

1. Jurisdiction of the Court and admissibility of individual applications (Article 62.3 Convention)

The Court always devotes a paragraph in which it examines its own jurisdiction. It considers its jurisdiction _ratione materiae_ and checks the date of ratification of the Convention by the State.

The Court may also be competent under another treaty, as in the _Portugal v. Panama_ and _Bayarri v. Argentina_ cases, which concern the Inter-American Convention to Prevent and Punish Torture, and _Portugal v. Panama, Ticona Estrada et al v. Bolivia_ and _Tiu Tojin v. Guatemala_, concerning the Inter-American Convention on Forced Disappearance. In such cases, the Court applies any Convention invoked by the Commission or by the victims’ representatives, since it gives jurisdiction to the Court and has been ratified by the State. The Convention on Forced Disappearances, which has been ratified by the States of Panama, Bolivia and Guatemala, explicitly provides that jurisdiction and is therefore

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5 Inter-American Convention to Prevent and Punish Torture, adopted the 9th of December 1985 in Cartagena de Indias (Colombia).

6 Inter-American Convention on Forced Disappearance of Persons, adopted the 9th of June 1994 in Belém do Pará (Brazil).

7 Article XIII of the Convention.
directly enforceable. However, article VIII (in fine) of the Inter-American Convention to Prevent and Punish Torture does not make any explicit reference to the Court. Nonetheless, the Court has regarded that treaty as referring implicitly to its jurisdiction, and therefore applied it directly to the States that have ratified this Convention, including Panama and Argentina.

In relation to its jurisdiction ratione personae, the Court recalls that the potential victims may act independently vis-à-vis the Commission and “may invoke rights other than those asserted in the petition filed before the Commission”8. It reiterates, however, that representatives of potential victims cannot allege new matters of facts different from those asserted in the Commission application9.

The Court has also been asked to confirm the scope of its jurisdiction ratione temporis in the Ticona Estrada et al. v. Bolivia case. The Court therefore emphasizes that it may decide on any fact that occurred before the state recognition of its jurisdiction insofar as they persist, and thus are continuous or permanent10. Moreover, when the State expressly acknowledged the events from the beginning, that State must be considered as having tacitly abandoned any temporal limitation on the exercise of the Court jurisdiction11.

The Court must also examine its jurisdiction in regards to the States’ admission of responsibility, which is a common practice in front of the Inter-American Court. In case of full recognition of responsibility, article 53 of its Rules of Procedure states that the Court “shall decide, after hearing the opinions of the other parties to the case, whether to accept such acquiescence, and rule upon its juridical effects”12. In the three cases studied13, the States’ recognitions are only partial, and the judges of Costa Rica ensure that the extent of those recognitions is strictly respected.

When the State has entered into a settlement with the victims’ representatives, as with the Tiu Tójin v. Guatemala case, the Court also settles the dispute14. In that case, the Court considers important to deliver a judgment, arguing that it constitutes “a form of reparation”15. However, the Court does not deal with the non-controversial facts, recognizes the responsibility of Guatemala16, and examines the repairs granted, in order to verify if they suit its requirements17.

As a result of the increase of States’ recognitions of responsibility, preliminary objections are clearly declining. It is therefore not surprising they have been raised (and rejected) in only three cases: the Salvador Chiriboga v. Ecuador, the Heliodoro Portugal v. Panama, and the Bayarri v. Argentina cases.

2. Scope of rights protected by the Convention

2.1. General obligations

The article 1.1 of the American Convention provides: “The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms [...].” Two obligations follow from this article: 1) to respect and 2) to guarantee those rights. The latter is divided into four areas: prevention, investigation, punishment and...
reparation. The Court applies this article in all the decisions studied, but never alone. The judge must actually apply it in combination with the substantive right in question. We will therefore analyze its scope through the various substantive rights.

Article 2 of the Convention imposes on the State an obligation of compliance of their domestic law with its provisions. This obligation was discussed in particular in the *Ticona Estrada et al. v. Bolivia* case18, in which the Court recalls that it is “a customary Law”19. The Court which comes under international phasized the value of the prohibition of torture, domestic law with its provisions. This obligation was discussed in particular in the *Ticona Estrada et al. v. Bolivia* case18, in which the Court recalls that it is “a customary Law”19.

2.2. Rights of personal integrity

2.2.1. Right to Humane Treatment (Article 5 of the Convention)

In the *Bayarri v. Argentina* case, the Court emphasized the value of the prohibition of torture, which comes under international *jus cogens*20. It then examined the acts committed by the police officers against the victim during an investigation, regarding the three criteria necessary to qualify an act of torture: it is an ill-treatment, which (a) is intentional; (b) causes severe physical or mental suffering, and (c) is committed with a purpose or objective. The Court concludes in this case that those treatments meet this qualification21.

The *Valle Jaramillo et al. v. Colombia* case raises another aspect of this article22. The Court re-affirmed the principle that a mere threat of reparation. The Court applies this article in all the decisions studied, but never alone. The judge must actually apply it in combination with the substantive right in question. We will therefore analyze its scope through the various substantive rights.

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The *Valle Jaramillo et al. v. Colombia* case raises another aspect of this article22. The Court re-affirmed the principle that a mere threat of
a prima facie violation of their right to mental and moral integrity, reversing the burden of proof. It remains however on the responsibility of the victims for any other person31. One can only approve this clarification, regarding the principle of due process and burden of proof on each part.

Finally, in the Valle Jaramillo et al.s v. Colombia case, the Court noticed that the combination of Article 5 and Article 1.1 implies an obligation to investigate possible acts of torture or other cruel, inhuman, or degrading punishment or treatment, when a denunciation exists, but also when there is good reason to believe that such acts were committed. In this case, the Court found that, although the authorities knew potential acts of torture, they have not ordered a full investigation, which would have enabled a rapid collection of evidence. Indeed, the State did not fulfill its duty to investigate diligently.

2.2.2. Right to life and extra-judicial executions

The article 4 of the Convention provides two obligations: the negative obligation to not endanger life (art. 4), and the positive obligation to protect this right, including against the actions of private individuals. Indeed, the Court granted a horizontal effect to the Convention. A particularly obligation is added: the obligation to protect certain groups such as children or detainees in the particular circumstances of non-international armed conflict. The Court, in the Valle Jaramillo et al.s v. Colombia case, reaffirmed these principles and added a new category: the defenders of human rights. It considers that they must enjoy special protection because of their “work is essential to strengthen democracy and the rule of law”.

2.2.3. Mechanism deductive in respect of forced disappearances

In the Ticona Estrada et al.s v. Bolivia case, the Court recalls the definition of forced disappearance, as reflected in the Inter-American Convention on Forced Disappearance of Persons in particular: it is a) a deprivation of freedom, b) made possible due to the direct intervention of government officials or their acquiescence, and c) characterized by the refusal of the State to recognize this custody and reveal the fate of the person concerned or the place where she is located.

It also reminds that a forced disappearance is a violation multiple and complex. It can constitute an infringement of both personal freedom and a cruel and inhuman treatment, often accompanied by torture or extrajudicial executions. Therefore, even if no evidence of torture and deprivation of life has been provided, the state is responsible/liable for the violation of personal integrity and of the right to life.

2.3. Right to personal liberty and security (art. 7 of the Convention)

The Court has analyzed the scope of Article 7 of the Convention in cases Yvon Neptune v. Haiti and Bayarri v. Argentina. It recalls the two components of this provision: the first (devoted in the first paragraph) states that “[e]very person has the right to personal liberty and security”, and the second (devoted in the following paragraphs), corresponds to a series of specific safeguards.

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30 I/A Court H.R., Valle Jaramillo et al. v. Colombia, §119.
31 Idem, §119 ; in this case, the Court recognizes that the state of Colombia is responsible for the violation of more than fifty people’s right to integrity, idem, §§128 and 132.
33 I/A Court H.R., Valle Jaramillo et al. v. Colombia, §94.
35 I/A Court H.R., Valle Jaramillo et al. v. Colombia, §87.
37 idem, §56.
39 I/A Court H.R., Yvon Neptune v. Haiti, §89.
Among them appears the right to not be deprived of liberty unlawfully (art. 7.2). In contrast to the article 5.1 of the European Convention, which provides an exhaustive list of situations in which deprivation of liberty is permitted, this provision refers to the internal law of the Member States (which is not respected in the two cases in question).

Article 7.3 protects the right to not be deprived of his liberty in an arbitrary manner, transgressed in the Yvon Neptune v. Haiti case. It is however not applied in the Bayarri v. Argentina case. Like in its decision Chaparro Álvarez and Lapo Íñiguez v. Ecuador, the Court emphasized that the "the arbitrariness referred to in Article 7(3) of the Convention has its own juridical content" and that it is necessary to analyze it just in case of lawful detention. However, in this case, the Court has already established that the detention was unlawful under Article 7.2, and therefore decides that there was no need to consider this provision.

In the Yvon Neptune v. Haiti case, the complainants alleged a violation of the third guarantee: the right to be informed promptly of the reasons for his arrest and of charges against him (art. 7.4). But the Court did not estimated necessary to consider this argument, due to the arbitrary nature of detention.

The Court then looks at whether the guarantee to be "brought promptly before a judge or other officer authorized by law to exercise judicial power" (paragraph 5) has been respected. The Court has already had the opportunity to clarify this obligation. It focused that the person detained must appear personally before the judge, which is not the case in these two species. The condition of being "brought promptly" was therefore not respected.

It is interesting to note that in the Bayarri v. Argentina case, the Court then devoted a whole title to the second guarantee protected by the Article 7.5, which states that if a person is not tried within a reasonable time, that person accused must be "be released without prejudice to the continuation of the proceedings". In that case, the preventive detention of the victim lasted for more than thirteen years. The legal limit established by law (which sets a maximum of three years) has been exceeded, as well as the duration, which has been clearly excessive.

There is also a clear evolution of the jurisprudence of the Court, which empowers the content of Article 7.5. Previously, the Court, under the influence of A. A. Cançado Trindade, used to appreciate the scope of this provision together with Article 8.1. The current President of the Court, Cecilia Medina Quiroga, then called for a recognition of "self contained" of the Article 7.5. Both delays are actually distinct: the first (Art. 7.5) concerns the period of remand, while the second (Art. 8.1) is related to the duration of the trial. The Court, noting that vision, thus requires States that judges "should periodically assess whether the reasons and need for the measure and its proportionality are maintained, and whether the duration of the detention has exceeded the limits established by law and reasonableness"; they therefore should not wait until the person is paid for the release.

2.4. Judicial guarantees (art. 8) and protection (art. 25)

As in the Yvon Neptune v. Haiti and Apitz Barbera et al. v. Venezuela cases, the Court often examines the scope of these articles 8 and 25 (always in relation to Article 1.1) in a single and same chapter. It points out that under these provisions, Member States have an obligation to provide effective judicial recourses to those who

40 I/A Court H.R., Yvon Neptune v. Haiti, §§ 77-86 and 1/A Court H.R., Bayarri v. Argentina, §55.
41 I/A Court H.R., Yvon Neptune v. Haiti, §100.
42 I/A Court H.R., Lapo Íñiguez v. Ecuador, §96.
43 I/A Court H.R., Bayarri v. Argentina, §62.
46 The State has therefore violated the right of Mr. Bayarri to be tried within a reasonable time or be released, pursuant to Article 7.5, 7.2 and 7.1, I/A Court H.R., Bayarri v. Argentina, §75.
47 C. Medina Quiroga, La Convención Americana: Teoría y jurisprudencia: vida, integridad personal, libertad personal, debido proceso y recurso judicial, Universidad de Chile, Facultad de Derecho, Centro de Derechos Humanos, Santiago, 2005, p. 244.
48 I/A Court H.R., Bayarri v. Argentina, §76.
allege that they are victims of human rights violations (Article 25), recourses that must be substantiated in accordance with the rules of due process of law (Article 8(1)), all within the general obligation of these States to ensure the free and full exercise of the rights established by the Convention to all persons subject to their jurisdiction (Article 1(1))\textsuperscript{50}.

But these items can also be studied separately, as in the Castañeda Gutman v. Mexico case\textsuperscript{51} concerning Article 25, and Bayarri v. Argentina, discussed above, on Article 8. In the latter case, the Court examines separately the Article 8.1 of the Convention, which protects the right to have his case heard within a reasonable time\textsuperscript{52}, as a consequence of the Article 7.5 empowerment\textsuperscript{53}. The Court pointed out the criteria it has identified in its previous case law to determine the reasonableness of a procedural delay\textsuperscript{54}. It does not, however, analyze them\textsuperscript{55}: the Criminal Procedure has been so slow (seventeen years) that it is considered as constituting a violation of due process in itself\textsuperscript{56}.

The combination of Articles 1.1, 8.1 and 25.1 then founded a positive obligation to prevent, investigate and punish the responsible\textsuperscript{57}, distinct from that following the combination of this Article 1.1 and any other substantive law. This obligation arises first when the victim (or his relatives) complains about the violation of this right, as in five of the decisions studied\textsuperscript{58}. It is particularly important in the context of forced disappearances. The Court considers that this is a rule of \textit{jus cogens}\textsuperscript{59}, and noted the concordance of this case A. A. Cançado Trindade’s conception of jus cogens norms. Indeed, the former President of the Court considers that this category is driven by the evolution of the “universal juridical conscience” and the need to protect the “rights inherent to the human being”\textsuperscript{60}.

Moreover, the Court seems to consider that this obligation exists even if there is not any denunciation, from the moment the State authorities were aware of a potential violation of the Convention. In the Ticona Estrada et al. v. Bolivia case, the court examines the rights of the victim of forced disappearance’s brother, arrested on the same date and tortured. The Court could not condemn the State on the basis of a positive duty coming from the combination of Articles 5 and 1.1 of the Convention, because of its temporal jurisdiction to rule on this torture. But it replaced the case in the field of Articles 8.1 and 25.1, in conjunction with Article 1.1. From this combination of articles results a positive obligation for the State to conduct an inquiry \textit{ex officio}, when a good reason to believe that potential acts of torture were committed exists, even when the Court cannot judge that principal violation. We can ask ourselves whether one can deduce from these three articles a general obligation, which could concern all rights protected by the Convention, which would significantly extend the positive obligation in question and the jurisdiction of the Court.

3. Reparations (art. 63 of the Convention)

The Court first ordered reparations for damage: in this context, it compensates the direct consequences\textsuperscript{61}, such as loss of income, but also

\begin{itemize}
  \item I/A Court H.R., \textit{Tiu Tojin v. Guatemala}, §91.
  \item Separated opinion of Judge A. A. Cançado Trindade under the advisory opinion and legal rights of migrant workers, 17 September 2003, Series A, No. 18.
\end{itemize}
reduction of family assets, resulting from a right violation. It also compensates the immaterial damages, which differs from damage to the “life project”.

The Court also recalls that “the requirement of domestic justice” must be met: the State has the obligation to systematically investigate, prosecute and punish those responsible, even to seek the missing person.

Finally, the Court orders “measures of satisfaction” as the traditional obligation to publish the decision or part of it in the Official Journal and others newspapers, even broadcast it on the radio; the obligation to provide, as long as necessary, a free medical care, necessary to heal the wounds resulting from the violation; the obligation to amend its legislation to comply with the norms of the inter-american system; the obligation to recognize publicly its responsibility, to give the victim’s name to a street in memoriam, to place a plaque in memory of the victim in the Courthouse, to grant a scholarship to another victim and to ensure safety and the return in the victim’s country of origin.

Bayarri v. Argentina, §§142, 155, 159 and 194; I/A Court H.R., Ticona Estrada et al. v. Bolivia, §§125 and 181 and I/A Court H.R., Valle Jaramillo et al. v. Colombia, §244.


64 I/A Court H.R., Ticona Estrada et al. v. Bolivia, §116. The “life project”, recognized by the Court since 1998, is “the full self-actualisation of the person concerned and takes account of her calling in life, her particular circumstances, her potentialities, and her ambitions, thus permitting her to set for herself, in a reasonable manner, specific goals, and to attain those goals”, I/A Court H.R., Case of Loayza-Tamayo v. Peru, Reparations and Costs, Judgment of November 27, 1998, Series C No. 42, §147.

65 Sergio García Ramírez, Temas de la Jurisprudencia Interamericana sobre derechos humanos: Votos particulares, ITESO, Universidad Iberoamericana, Mexico, 2005, p.74.


69 I/A Court H.R., Tiu Tojín v. Guatemala, §108.


72 I/A Court H.R., Kimel v. Argentina, §126 and I/A Court H.R., Heliodoro Portugal v. Panama, §249.

73 I/A Court H.R., Heliodoro Portugal v. Panama, §§250-253.

74 I/A Court H.R., Valle Jaramillo et al. v. Colombia, §§227 and 231.
Author’s short biography

Marie Rota holds a master’s degree in public law (Caen), is a young researcher and a doctoral candidate at the Centre de Recherche sur les Droits fondamentaux et les Evolutions du Droit (University of Caen, Lower Normandy). She is also a co-researcher at CEDIN (Centro de Direito Internacional, Belo Horizonte, MG, Brazil) and a member of GRIB (Group for interdisciplinary research on Brazil). She is preparing her doctoral dissertation under the supervision of Marie-Joëlle Redor-Fichot and Gilles Lebreton on the comparison of the case law of the European Court of Human Rights and the Inter-American Court of Human Rights, with the emphasis on the interpretation of both Conventions.