The Inter-American Human Rights System

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Abstract 1

This chapter examines the Inter-American Human Rights System from the perspective of its relationship to domestic Latin American legislation. It does so by focusing on the conventionality control doctrine, one of the Inter-American Court of Human Rights' most influential creations. Under this doctrine, State institutions have an obligation to monitor compliance of domestic law with the American Convention on Human Rights (ACHR) and Inter-American case law. The chapter explores the structure and scope of the doctrine and how it has been applied by the Inter-American Court and by Latin American states, focusing on issues of anti-impunity and LGBTQ+ rights. The chapter ends by presenting the view that it is impossible to understand Latin American law in isolation from Inter-American law.

I. Introduction

Writing about the Inter-American human rights system as a whole, which 2
is comprised of the Inter-American Commission (IAComHR or the Commission) and the Inter-American Court of Human Rights (IACtHR or the Court), is a complex endeavour, particularly when writing in a general handbook on Latin American law rather than human rights law. The system deals with many diverse topics in a large geographic region and has done so over several decades, resulting in a large body of case law that has, at times, produced inconsistent decisions. Given the vastness of the relevant case law, for practical reasons this essay focuses on the system's relationship with domestic jurisdictions, specifically through the so-called 'conventionality control doctrine', perhaps its most distinctive and impactful feature within Latin American national legal systems.[1]

1 See, e.g.: Eduardo Ferrer Mac-Gregor, 'Reflexiones sobre el control difuso de convencionalidad: A la luz del caso Cabrera García y Montiel Flores vs. México' (2011) 44 Boletín mexicano de derecho comparado 917.

3 According to this doctrine, all national actors must interpret national legal instruments, including their respective constitutions, in accordance with the ACHR and Inter-American case law.[2] Controversially, this has led some to compare the Court to a 'Constitutional Court' for human rights in the region and;[3] irrespective of the validity of this view, Latin American domestic courts are supposed to give Inter-American standards a privileged and precedent-setting role within domestic law.

4 Predictably, different jurisdictions have followed different policies regarding this ambitious doctrine, ranging from absolute deference to uncomfortable tolerance or even outright rejection. This chapter follows the evolution of the Court's approach to conventionality control, tracing its emergence from the Court's experience in fighting against impunity in the context of Latin American democratisation before concluding with the role of conventionality control in the promotion of LGBTQ+ rights in the region.[4] This chapter will also explore how the IACtHR's case law has been implemented in various Latin American fora, either through embracing or resisting conventionality control.

5 It would not be an exaggeration to call the Inter-American human rights system one of the most progressive and human rights-oriented tribunals in the world. Reviewing how this system's fundamental case law has been constructed and implemented (or rejected) over the years at the national level offers a means to evaluate the system's claim to be the *ne plus ultra* interpreter of the region's "common constitutional law".[5]

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2 American Convention on Human Rights, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, entered into force 18 July 1978.

3 Laurence Burgorgue-Larsen, 'La Corte Interamericana de Derechos Humanos Como Tribunal Constitucional' in Armin von Bogdandy, Héctor Fix-Fierro and Mariela Morales Antoniazzi (eds), *Ius Constitututionale Commune en América Latina: Rasgos, Potencialidades y Desafíos* (Universidad Nacional Autónoma de México 2014). Note that this characterisation is also sometimes used to criticise the Court's perceived judicial activism. See, e.g.: Ruth Martinón Quintero, 'El Activismo Jurisprudencial de La Corte Interamericana de Derechos Humanos' (2018) 89 Revista de Derecho Público 93.

4 These topics have been selected because they allow for a comparison between the approaches of different domestic tribunals to a single issue, through their reaction to the conventionality control doctrine.

5 See, e.g.: Armin von Bogdandy, 'Ius Constitutionale Commune en América Latina: una mirada a un constitucionalismo transformador' (2015) Revista Derecho del Estado 3 y Armin von Bogdandy, Mariela Morales Antoniazzi and Eduardo Ferrer Mac-Gregor (eds), *Ius Constitucionale Commune En América Latina: Textos Básicos Para Su Comprensión* (Max Planck Institute for Comparative Public Law and International Law

This chapter is divided into 6 sections. Section 1 offers a brief introduction to the fundamental architecture of the Inter-American System. Sections 2 and 3 briefly outline the history of the conventionality control doctrine, focusing on its origin in the law of anti-impunity operating within the IACtHR. Section 4 will explore how this doctrine has been implemented at the national level, focusing on anti-impunity and same-sex marriage. Section 5 will discuss the future and potential of the conventionality control doctrine, while Section 6 will offer some conclusions and recommendations. 6

II. The Inter-American human rights system: A Brief Introduction

Historically, the Inter-American human rights system is a result of mixing the expansion of US influence in the region at the beginning of the Cold War with the policy aspirations of a group of human rights-oriented Latin American States that emerged in the later decades of the 20th century. To understand how these two key factors have shaped the current situation, one must go back a few years. 7

Since independence in the first decades of the 19th century, much of Latin American foreign policy had focused on constructing an expansive reading of non-intervention that would keep extra-regional and imperialistic forces at bay. Traditionally, and particularly since the imposition of the Platt Amendment on Cuba in the early 20th century, this policy of strong anti-interventionism was embraced to resist US imperialism in the region and culminated in the Montevideo Convention of 1933, whose Article 8 plainly states that "[n]o state has the right to intervene in the internal or external affairs of another".[6] 8

After World War II, and facing new challenges arising out of Cold War power politics, the United States sought to implant a more interventionist outlook in Latin America through the promotion of 'anti-communism' 9

2017). Compare, however, with critical voices such as Ezequiel Malarino, 'Acerca de la Pretendida Obligatoriedad de la Jurisprudencia de los Órganos Interamericanos de Protección de Derechos Humanos para los Tribunales Judiciales Nacionales' in Kai Ambos et. al. (eds), *Sistema Interamericano de Protección de los Derechos Humanos y Derecho Penal Internacional, Tomo II* (Konrad Adenauer Stiftung, 2011) 435.

6 Montevideo Convention on Rights and Duties of States, League of Nations Treaty Series vol. CLXV, 20–43, signed 26 December 1933.

sentiment.[7] In 1959, Venezuela accused the Dominican Republic of violating the former's right to non-intervention by fomenting unrest within Venezuela. Venezuela's indictment of the Trujillo administration before the Organization of American States (OAS) included claims of its human rights violations within the Dominican Republic as well. The United States, "looking at Cuba"[8], sought regional action against Trujillo through the vehicle of human rights. As Henry Kissinger has himself openly admitted, human rights standards were often seen by 20th century US administrations as "primarily a diplomatic weapon to use to thwart the communists' attempts to pressure (…) captive peoples".[9]

10 In Latin America, the core belief of anti-interventionism meant that the United States' plans encountered immense resistance. Nevertheless, a compromise approach was taken whereby instead of individual State action, OAS Member States agreed to channel human rights issues through the organisation. One of the organs created as a result of this compromise was the IAComHR, conceived as an entity that would "make general studies and promote human rights education".[10]

11 In accordance with its original design, the Inter-American human rights system was meant to be a US diplomatic weapon wielded against communism rather than a mechanism to protect individuals against State violations of their fundamental rights. However, despite the US' original intentions, this latter conception swiftly became an attractive possibility for a region often mired in authoritarianism.

12 By 1965 the IAComHR was authorised to examine individual cases, not just issue general reports. In time, the system managed to grow in terms of both legitimacy and influence, particularly in the 1970s, a period when much of Latin America was subject to authoritarian rule. Its visits to Pinochet's Chile in 1974 and Videla's Argentina in 1976 produced unexpectedly scathing reports that rallied the weakened democratic forces in both coun-

7 See e.g.: Par Engstrom, 'The Inter-American Human Rights System and US-Latin American Relations' in Juan Pablo Scarfi and Andrew R Tillman (eds), *Cooperation and Hegemony in US-Latin American Relations: Revisiting the Western Hemisphere Idea* (Palgrave Macmillan US 2016) and David Forsythe, 'Human Rights, the United States and the Organization of American States' (1991) 13 Human Rights Quarterly 66–98.

8 Forsythe (n 7) 82.

9 Henry A Kissinger, 'The Pitfalls of Universal Jurisdiction' [2001] *Foreign Affairs*.

10 Forsythe (n 7) 82.

tries. These reports positioned the Commission as a legitimate protector of human rights in the region, going much beyond its initial designs.

13 In 1978, with the entry into force of the ACHR and the establishment of the IACtHR, the system received some much-needed bite and was largely transformed into the system as we know it today. The ACHR requires State parties to assume an obligation to respect and guarantee fundamental rights and freedoms. These rights are contained in 24 articles dealing with, *inter alia*, the right to life, the right to a fair trial, the right to freedom of expression and so forth.

14 It is beyond the scope of this chapter to examine in detail the system's procedures and, as such, it will instead focus on the system's impact on Latin American law. In brief, under the Convention's terms, besides its supervisory duties, the IAComHR is charged with receiving individual petitions and issuing reports on the merits of each case. If a State refuses to comply with the Commission's decision, the Commission can then refer the case to the IACtHR to obtain a final and legally-binding resolution.

15 At this point, it is also worth highlighting the system's and the region's global legitimacy in the field. Latin American States have often had a leading role in designing and drafting aspects of the modern global human rights law system. In fact, the American Declaration on Rights and Duties of Man preceded its universal counterpart by a few months. From its original conception as a weapon for US-led diplomacy, the Inter-American human rights system has now grown to be one of the most progressive and respected human rights systems in the world.

III. The Inter-American Law of Anti-Impunity

16 The conventionality control doctrine was developed by the IACtHR in the context of one of its most important overarching themes: the Inter-American law of anti-impunity, related to the process of democratization that Latin American nations underwent between 1970–1990.

17 By the 1990s, so-called 'amnesty laws' were a common feature of Latin America's process of democratic transition. While some features varied from country to country, generally these laws barred the prosecution of human rights violators as a precondition for either peace (as was predominantly the case in Central America) or democracy (the predominant goal in South America). These laws prevented victims and their families from obtaining a legal remedy for past gross human rights violations, including

torture and forced disappearance, making them clear targets for strategic human rights litigation at the IACtHR.

18 At the time, Peru was living under the authoritarian government of Alberto Fujimori. On 3 November 1991, six hooded men, members of Fujimori's extrajudicial death squad, *Grupo Colina,* broke into an apartment and forced the residents to lie face-down on the ground before shooting them at point-blank range, killing fifteen and seriously injuring four others. Due to the political turmoil at the time, including the Congress being closed and the destruction of much of Peru's justice apparatus, formal investigations into the matter did not start until April 1995. In response, on 15 June that same year, the government swiftly approved Law 26479[11], which granted amnesty to military personnel, police officers and civilians that were under investigation or in prison for crimes committed "in the fight against terrorism". Soon after, Congress approved Law 26492[12], barring any judicial review of Law 26479, forcing the dismissal of all the remaining related cases.

19 Through Peruvian civil society organisations, the victims' families filed a petition before the IAComHR in June 1995. Five years later, the Commission recommended Peru to "*dejar sin efecto*" amnesty laws 26479 and 26492[13]; a phrase which was later indistinctly translated into English as both "annul" and "abrogate" by the IACtHR, however, for the sake of accuracy, and for the purpose of this chapter, it is better translated into the more literal phrase "to remove all effects".[14]

20 Under Fujimori's leadership, Peru predictably refused to comply with the decision and even tried to denounce the American Convention on Human Rights altogether. By the time the Commission brought the case to the Court's jurisdiction, in June 2000, Peru was undergoing significant political changes. On 19 November, Fujimori would end his 10-year rule by resigning and fleeing to Japan. The new administration of interim president, Valentín Paniagua, submitted a brief formally recognising Peru's international responsibility for the Barrios Altos massacre and agreeing to "remove

11 Ley 26479, Conceden amnistía general a personal militar, policial y civil para diversos casos, 14 June 1995.

12 Ley 26492, Precisan interpretación y alcances de amnistía otorgada por la Ley 26479, 28 June 1995.

13 *Barrios Altos, Peru* (Inter-American Commission on Human Rights) Case 11.528 Merits Report, 2000..

14 *Barrios Altos v Peru* (Inter-American Court of Human Rights) Judgment of 14 March 2001 (Merits), para. 17.

all effects" from Fujimori's amnesty laws.[15] In its subsequent Barrios Altos decision, the IACtHR established the basis of its anti-impunity framework:

> "[A]ll amnesty provisions, provisions on prescription [i.e. status of limitations] and the establishment of measures designed to eliminate responsibility are inadmissible, because they are intended to prevent the investigation and punishment of those responsible for serious human rights violations such as torture, extrajudicial, summary or arbitrary execution and forced disappearance, all of them prohibited because they violate non-derogable rights recognized by international human rights law".[16]

21 The Court held amnesty laws were a special kind of violation of international law, requiring special remedies. In language similar to that used by the Commission, the Court thus affirmed that these laws "*carecen de efectos jurídicos*"; i.e. they "lack legal effects". In the Court's own words:

> "Owing to the manifest incompatibility of self-amnesty laws and the American Convention on Human Rights, the said laws lack legal effect and may not continue to obstruct the investigation of the grounds on which this case is based or the identification and punishment of those responsible, nor can they have the same or similar impact with regard to other cases that have occurred in Peru (…)".[17]

22 This so-called 'Barrios Altos standard' was much more ambitious than what was expected or normally delivered in terms of human rights remedies at that time. The traditional understanding of how an international court's remedial system worked did not usually espouse the interchangeability of domestic and international law. In the European context, for example, the European Court of Human Rights said it "can neither nullify or invalidate the national legislation of the state concerned nor quash the respective domestic decisions"[18] but rather limit itself to -at most- "indicate the type of measure that might be taken in order to put an end to a violation it has

15 Id. para. 36.

16 Id. para. 41. Unless specifically stated, all quotations to the IACtHR's caselaw follow the Court's official translation.

17 Id. para. 44.

18 Helen Keller and Cedric Marti, 'Reconceptualizing Implementation: The Judicialization of the Execution of the European Court of Human Rights' Judgments' (2015) 26 European Journal of International Law 834.

found to exist".[19] As such, and according to this understanding, international judgments are "essentially declaratory in nature".[20]

23 These extensive powers to effectively *annul* domestic legislation were not originally envisioned by the Convention's drafters. Contemporaneous scholars were even sceptical that the Court would have the power to order a State to repeal its own laws.[21] Before *Barrios Altos,* the Court had specifically concluded that it was not an appellate court with judicial review powers and, therefore, "[a]ll it is empowered to do in this Case [sic] is call attention to the procedural violations of the rights enshrined in the Convention".[22] The application of a specific remedy, be it annulment, repeal or amendment, would be dependent on the relevant domestic authorities. In fact, barely a month before *Barrios Altos*, in the landmark 'Last Temptation of Christ Case' (*Olmedo Bustos v. Chile*)[23] the Court ordered Chile to "amend its domestic law, within a reasonable period of time, in order to eliminate prior censorship".[24] In other words, the Court did not annul the offending provision but ordered the State to remedy the violation in accordance with its own domestic rules.

24 Since *Barrios Altos,* the IACtHR issued a series of decisions annulling South America's amnesty laws, including those in Brazil (*Gomes Lund* case[25]), Chile (*Almonacid Arellano* case[26]) and Uruguay (*Gelman* case[27]), all premised on the 'Barrios Altos standard' which, in barely four paragraphs, became one of the most important *dicta* in the Court's history.

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19 *Oleksandr Volkov v Ukraine*, judgment of 27 May 2013, European Court of Human Rights 21722/11, para. 195

20 *Öcalan v Turkey,* Judgment of 12 May 2005, European Court of Human Rights 46221/99, para. 210

21 See, e.g.: Jo M Pasqualucci, 'Victim Reparation in the Inter-American Human Rights System: A Critical Assessment of Current Practice and Procedure' (1996) 18 Michigan Journal of International Law 2.

22 *Genie-Lacayo v. Nicaragua* (Inter-American Court of Human Rights) Judgment of 29 January 1997 (Merits, Reparations and Costs), para. 94.

23 Case of the Last Temptation of Christ (*Olmedo Bustos et. al.*) v. Chile (Inter-American Court of Human Rights) Judgment of 5 February 2001 (Merits, Reparations and Costs).

24 Id. para. 103.4

25 *Gomes Lund et. al. v. Brazil* (Inter-American Court of Human Rights) Judgment of 24 November 2010 (Preliminary Objections, Merits, Reparations and Costs).

26 *Almonacid Arellano v. Chile* (Inter-American Court of Human Rights) Judgment of 26 September 2006 (Preliminary Objections, Merits, Reparations and Costs).

27 *Gelman v. Uruguay* (Inter-American Court of Human Rights) Judgment of 24 February 2011 (Merits and Reparations).

For such an important rule, however, the 'Barrios Altos standard' left 25
some important holes in its underlying structure. The first part of the standard (paragraph 41, quoted above) is one of inadmissibility, that is to say, the amnesty law exists under domestic law but is not opposable to the Court under international law. The second part (paragraph 44) is one of nullity, namely that amnesty laws are a legal impossibility and therefore lack any legal effect. The obfuscation is evident in a separate opinion provided by the then-president of the Court, Judge Augusto A. Cançado Trindade, who explained that (i) self-amnesties "even if they are considered laws under a given domestic legal order, *are not so* in the ambit of the International Law of human Rights."[28] At the same time, however, he also said that (ii) these laws affect *jus cogens* rights, such as the right to life and personal integrity, and, therefore, "*have no legal validity at all* in the light of the norms of the International Human Rights".[29]

This possible dual reading of the Barrios Altos rule, as an argument 26
of inadmissibility or nullity, prompted the IAComHR to seek clarity. In *La Cantuta v. Peru,* the Commission argued that Peru's refusal to repeal the amnesty laws constituted a continued violation of *Barrios Altos*.[30] The Commission's was an argument of inadmissibility: the amnesty laws were *still* valid Peruvian law and could continue to be applied by the State. Compliance could only be secured through their being repealed under Peruvian law. Peru's government disagreed and believed the Court should adopt a nullity standard. For Peru, "the granting of amnesty has no practical effects in the domestic legal system" since the Court's ruling in *Barrios Altos* because "self-amnesty laws are not law".[31] No further measures were needed since one could not repeal a law that could not exist under international law. As Peru's legal expert, Professor Samuel Abad Yupanqui, argued: "[i]f the congress repealed the amnesty laws, it would imply an express acknow-

28 *Barrios Altos v. Peru*, (n 14) Separate Opinion of Judge Cançado Trindade, ¶6. *Jus cogens* rules are those of a peremptory nature, "accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character". See: Vienna Convention on the Law of Treaties, article 53.

29 Id. para. 11

30 *La Cantuta v. Peru* (Inter-American Court of Human Rights) Judgment of 29 November 2006 (Merits, Reparations and Costs) ¶162.

31 Id. para. 164

ledgement of their effectiveness, which would be at odds with the assertion that said laws have no legal effects whatsoever".[32]

27 The Court sided with Peru. It noted that "the *ab initio* incompatibility of the amnesty laws with the Convention has generally materialized in Peru ever since it was pronounced by the Court in the judgment rendered in the case of Barrios Altos; that is, the State has suppressed any effects that such laws could have had".[33] That the Court accepted this rationale is significant as it could have adopted a rather more cautious approach and hedged its findings to the particularities of Peru's radically pro-international-law legal system instead of turning it into a general rule. However, the ruling provided the most ambitious proposition, where "[s]aid 'laws' of self-amnesty are not truly laws, but a legal aberration".[34] The Court's boldness in this regard, however, has not been without complications.

28 In 2003, the Court gave a ruling in *Bulacio v. Argentina*, a case dealing with the arbitrary detention, beating and ultimate death of 17-year-old Walter David Bulacio.[35] Both Argentina and the Commission agreed that Argentina had violated Bulacio's rights but disagreed on how far Argentina could go in terms of an investigation into and punishment of those responsible. The Commission believed Argentina should pursue investigations even if a criminal complaint was barred by the statute of limitations. Argentina in turn believed its admission of responsibility was sufficient reparation, without the need of further investigations.[36]

29 The Court agreed with the Commission and noted that, according to *Barrios Altos,* statutes of limitation were "inadmissible".[37] However, unlike *Barrios Altos,* the facts in *Bulacio* did not concern systematic human rights violations, such as crimes against humanity, war crimes, torture and so forth, committed during a dictatorship. This was a case dealing with an isolated instance of arbitrary detention, arbitrary deprivation of life and inhumane treatment. If *Barrios Altos* were to be applied to *Bulacio* then, in essence, any case involving human rights violations or, to use Cançado Trindade's wording, any "crime against human rights", would be "inextin-

32 Id. para. 177.
33 Id. para. 187.
34 Id, Separate Opinion of Judge Cançado Trindade, para. 35.
35 *Bulacio v. Argentina* (Inter-American Court of Human Rights) Judgment of 18 September 2003 (Merits, Reparations and Costs).
36 Id. para. 107-a) and 108-a)
37 Id. para. 116.

guishable".[38] In fact, under Trindade's chairmanship, the IACtHR would go as far as to argue that access to justice was a *jus cogens* right and that, therefore, States had an "*erga omnes* obligation to adopt all such measures as are necessary to prevent such violations from going unpunished (…)".[39] For the Court, therefore, any application of statutes of limitations to any human rights violation was itself a human rights violation.

30 This development was poorly received by the Argentinean Supreme Court, one of the most respected in the region. In December 2004, it published a judgment on compliance with the *Bulacio* decision stating that the Inter-American Court's judgment was binding on Argentina, but that it simultaneously considered the IACtHR's rationale seriously flawed.[40] According to the Supreme Court, the IACtHR sought to resolve a clash between two human rights – the petitioner's right to a remedy and the accused's right to a prompt decision without undue delay through the "subordination" of the rights of the latter to those of the former, severely restricting the human right to due process.[41]

31 Eventually, in 2007, after Judge Trindade left the IACtHR, the Court would go back on its findings. In *Albán Cornejo v. Ecuador*, the Court dealt with the 1987 death of Laura Albán Cornejo as a result of medical malpractice in a private hospital.[42] Following her death, her relatives filed a criminal complaint against the doctors but the case was dismissed on grounds of statute of limitations.[43] Under the *Bulacio* version of the 'Barrios Altos standard', dismissing the suit would be sufficient to declare the statute of limitations inadmissible as it would contradict the *jus cogens* right of access to justice. However, at this point in time, the Presidency of Judge García Ramírez had something of a paradigm shift in its thinking and radically changed course, reserving the 'Barrios Altos standard' solely for gross human rights violations.[44]

32 Judge García Ramírez specifically gave credit to the Argentinean Supreme Court for the IACtHR's change of heart because, as he stated, "the

38 Id., Separate Opinion of Judge Cançado Trindade para. 38.
39 *La Cantuta v. Peru* (n 30) para. 160.
40 *Esposito, Miguel Angel* (Supreme Court of Argentina) Judgement of 23 December 2004.
41 Id. para. 12 and 14.
42 *Albán Cornejo v. Ecuador* (Inter-American Court of Human Rights) Judgment of 22 November 2007 (Merits, Reparations and Costs).
43 Id. para. 2.
44 Id. para. 111.

suppression of traditional rights [such as the statute of limitations defence] must be exceptional in nature".[45]

IV. Conventionality Control in Latin America

33 In 2006, the Court decided its landmark case *Almonacid Arellano v. Chile.* Initially, the case seemed straightforward, following the same dynamic the Court had settled upon in *Barrios Altos* and *La Cantuta*. In *Almonacid Arellano v. Chile*, a Chilean school teacher and Communist Party militant, Luis Alfredo Almonacid Arellano, had been shot and killed by Chilean police officers in 1973 in front of his family when he was leaving his home. When the family tried to seek justice to punish those responsible, they were prevented by Chile's amnesty law. In essence, the case revolved around the application of the 'Barrios Altos standard' to Mr Almonacid's case.

34 The Court, however, once again did not choose the simplest path of applying the standard to Chile and moving on. While it did note that Mr Almonacid's murder was a crime against humanity not subject to amnesty, it also chastised Chile for keeping its amnesty law in force for over sixteen years, despite the fact that it had not been applied by Chilean courts in several cases.[46] For the Court, the ACHR "imposes the legislative obligation to annul all legislation which is in violation of the Convention", otherwise domestic courts may change their minds and reinstate the amnesty if local political or legal winds change.[47] Since the legislature had not intervened to annul the law, however, the Court added a proviso that stated, "when the Legislative Power fails to set aside and/or adopts laws which are contrary to the American Convention, the Judiciary is bound to honor the obligation to respect rights as stated in Article 1(1) of the said Convention, and consequently, it must refrain from enforcing any laws contrary to such Convention".[48]

35 This was a paradigm-changing statement. It seemed, therefore, that while *La Cantuta* (decided two months after *Almonacid*) annulled amnesty laws *ipso facto*, simply declaring they lacked legal effects without the need for further action to secure their repeal, *Almonacid* decided that they should

45 Id., Separate Opinion of Judge García-Ramírez, para. 30.
46 *Almonacid Arellano v. Chile* (n 26) para. 121.
47 Id. para. 121.
48 Id. para. 123

be specifically set aside by domestic judges through an invocation of the Convention within their domestic case law. The Court has never properly explained the synthesis between *La Cantuta* and *Almonacid* even though often cites both rulings, seemingly interchangeably as if both cases followed the same principle. In general terms, though, while amnesty laws "lack legal effects" per se, all laws that violate human rights, including amnesty laws, must be reviewed by domestic courts in light of Inter-American law. It is this latter approach that has become the Court's main form of interaction with domestic legal systems. In *Almonacid*, the Court called this approach "a sort of conventionality control", meaning that just like domestic courts had to ensure domestic law's compatibility with the corresponding national constitution, they also had to guarantee their compatibility with the Convention.[49]

The doctrine of conventionality control, therefore, is the result of the Court's evolving understanding of its fight against impunity and how to address remedies for gross human rights violations. From a system of abstract *ab initio* nullity of non-conforming domestic legislation, the IACtHR has transitioned to a system where domestic actors have an ongoing duty to police domestic law to keep it compliant with Inter-American law. 36

Many national courts, including Constitutional and Supreme Courts, have dealt with the complications inherent to the doctrine of conventionality control. In the case of Mexico, for example, the IACtHR established that its judicial branch "shall exercise a 'control of conventionality' ex officio between domestic regulations and the American Convention, *evidently within the boundaries of its respective competencies and of the corresponding procedural regulations*".[50] 37

This forced the Mexican Supreme Court to decide which judges were allowed to do what in the context of Inter-American law and conventionality control. In *Rosendo Radilla Pacheco*, the Mexican Supreme Court decided that federal judges should declare the "invalidity" of rules that contravene the Convention but that all other (state) judges could only "not apply" the contravening rules in the instant case, without being able to make a 38

49 Id. para. 124

50 *Radilla Pacheco v. Mexico* (Inter-American Court of Human Rights) Judgment of 23 November 2009 (Preliminary Exceptions, Merits, Reparations and Costs) para. 339. (emphasis added)

general statement on their "invalidity".[51] Other courts, such as those in Colombia, Costa Rica and Peru, have also explicitly or implicitly recognised the doctrine.[52]

39 The IACtHR has likewise set out a series of fundamental obligations on how to comply with the doctrine. In *Cabrera García and Montiel Flores v. México*, it held that "all [state] institutions, including its judges" are bound to ensure that "all the effects of the provisions embodied in the Convention are not impaired by the enforcement of laws that are contrary to its purpose and end".[53] This means that conventionality control is done *ex officio*, regardless of whether the parties invoke it or not.[54] This is so even when domestic legislation limits the entity's powers, meaning that if a court that does not have the power to set aside legislation encounters an instance of anti-conventionality, it should at least interpret the instrument in accordance with Inter-American law and the block of conventionality.[55] In other words, domestic authorities need to apply the conventionality control not just with regard to the text of the treaty but also in conjunction with whatever interpretations the Court itself has made of it.[56]

40 With the above in mind, the following section addresses how the conventionality control doctrine has impacted the law of different Latin American jurisdictions. In particular, it will focus on two areas: the fight against impunity and same-sex marriage.

I. Fight Against Impunity

41 The conventionality control doctrine evolved, as noted above, from the Court's experience with anti-impunity and amnesty laws. This would mean

51 *Rosendo Radilla Pacheco*, 912/2010 (Supreme Court of Justice, Mexico) Judgment of 14 July 2011.

52 For an analysis of these experiences, see: Claudio Nash, 'Control de Convencionalidad. Precisiones Conceptuales y Desafíos a La Luz de La Jurisprudencia de La Corte Interamericana de Derechos Humanos' (2013) XIX Anuario de Derecho Constitucional Latinoamericano 489.

53 *Cabrera García and Montiel Flores v. Mexico* (Inter-American Court of Human Rights) Judgment of 26 November 2010 (Preliminary Exceptions, Merits, Reparations and Costs) para. 225.

54 Id.

55 Eduardo Ferrer Mac-Gregor, 'Interpretación Conforme y Control Difuso de Convencionalidad. El Nuevo Paradigma Para El Juez Mexicano' (2011) 9 Estudios Constitucionales 578.

56 *Cabrera García y Montiel Flores v. México* (n 53) para. 227.

that cases related to amnesty laws would be particularly influential in domestic law. Simultaneously though, the ambitious remedial approach taken by the Court in *Barrios Altos*, coupled with shifting approaches by the Court itself since *Almonacid Arellano* and *Alban Cornejo*, has created rich domestic practice in the region. This section will look into the practices of Peru, Chile and Brazil to offer the most diverse possible array of practical experiences to accurately depict developments in the region, in the context of this chapter.

a) Peru

As noted above, Peru was an early and strict adopter of the 'Barrios Altos standard' and its Constitutional Tribunal has also become a frequent supporter of the conventionality control doctrine. As a result of *La Cantuta* and *Barrios Altos*, Peru's Constitutional Tribunal decided Case No. 679–2005-PA/TC (hereinafter the *Martin Rivas* case), in 2007.[57] 42

Santiago Martin Rivas was a member of the *Grupo Colina* death squad, referenced above, directly involved in the *Cantuta* massacre. When Peruvian courts annulled the decisions that upheld his amnesty and restarted his trial, he filed a claim for constitutional protection, called an *amparo*, arguing that his due process right to *res judicata* had been violated. In 2007, the Constitutional Tribunal decided the case by referring to the IACtHR's decision in *La Cantuta* and noting that 43

> "the *non bis in idem* principle is not applicable when the proceeding in which the case has been dismissed or the author of a violation of human rights has been acquitted, in violation of international law".[58]

This was, the Tribunal concluded, a "fictitious or fraudulent" *res judicata* and, as such, the case could be reopened so long as his amnesty had been granted contrary to international law. 44

The Constitutional Tribunal proceeded to examine the Peruvian amnesty laws in light of the 'Barrios Altos standard'. It began by noting that Peru could not assume a "dualist thesis" whereby international law is given primacy over domestic law or vice versa. Instead, the Tribunal sought an "in- 45

57 *Santiago Enrique Martin Rivas*, STC 679–2005-PA/TC (Constitutional Tribunal, Peru) Judgment of 2 March 2007.

58 *La Cantuta v. Peru* (n 30) para. 153.

tegrating solution of jurisprudential construction" whereby a "relationship of cooperation" is established between both domestic and Inter-American jurisdictions, premised on their common aim to "defend the human person and the respect of its dignity".[59]

46 Within this "thesis of coordination", the Constitutional Tribunal concluded that amnesty laws "lack legal effect" for any case dealing with gross human rights violations, including *Martin Rivas.* Because of this, and following the expansive interpretation of *Barrios Altos* by the Cançado Trindade Court, Peru's amnesty laws were declared "null" and deemed to "lack legal effects *ab initio*", with all judgments that upheld them in the past following the same fate.[60] This set a precedent that impacted all subsequent human rights cases that were tried in Peru.

47 A particularly high-profile example of this emerged in 2017 when Peruvian courts annulled a humanitarian pardon issued in favour of Alberto Fujimori, who was allegedly terminally ill.[61] The Special Criminal Court in charge of overseeing the legality of the pardon disagreed, holding that Fujimori did not qualify for a humanitarian pardon as he was not actually sick and his release was the product of a negotiation between political parties. The Court concluded that the annulment of the pardon, which was *res judicata* under domestic law, could proceed nonetheless under the umbrella of conventionality control as this was a case that deal with crimes against humanity. As before, it argued that *ne bis in idem* did not apply.

b) Chile

48 After the Pinochet dictatorship, democratic actors tackled its amnesty law through strategic litigation. In 1998, years before the 'Barrios Altos standard' was even created, the Chilean Supreme Court decided Case No. 469–1998 (hereinafter *Poblete Córdova*).[62] Pedro Enrique Poblete Córdova was a union leader and militant in an armed resistance movement called *Movimiento de Izquierda Revolucionaria*, he was arrested by Pinochet's security forces, tortured and then disappeared. Poblete's family sued for redress, including

59 *Santiago Enrique Martin Rivas* (n 57) para. 36.
60 Id. para. 60.
61 Case Docket No. 00006–2001–4–5001-SU-PE-01 (Supreme Court, Peru) Judgment of 13 February 2019. It should be noted that, since publication of this decision, the Constitutional Tribunal upheld Fujimori's pardon, leading to the IACtHR intervening to prevent his release. He remains in jail at time of writing.
62 *Poblete Córdova*, 465–1998 (Supreme Court, Chile) Judgment of 9 September 1998.

a request for the authorities to identify his torturers. The Supreme Court argued that the government had issued the amnesty law in the context of what it had described as a "state of war" under the Geneva Conventions and these conventions set out an obligation for Chile to find those responsible for grave breaches. This meant that, under Chilean criminal law, an amnesty cannot be invoked before a person has been clearly identified as responsible for the felony under investigation. Only after responsibility has been established, and not before, can the accused be excused of criminal responsibility through the application of their amnesty. In other words, Poblete's family could not seek the prosecution of those responsible, but they did have a right to find and identify them.

This situation continued until 2006 when the IACtHR decided *Almonacid Arellano*. However, in contrast to Peru, in Chile "[t]he effects of the Inter-American Court's amnesty jurisprudence, though considerable, are somewhat less evident" and the implementation of *Almonacid* "was more indirect".[63] Indeed, while the Chilean Supreme Court established that since *Almonacid*, the amnesty law must be set aside and cannot constitute an obstacle to the prosecution of cases related to war crimes or crimes against humanity, the law's specific position within Chile's legislation continued to be a problem. For Chilean legal scholar, Barbara Ivanschitz, for example, the amnesty law was technically still part of Chilean law and would remain so unless repealed,[64] something that has been repeatedly but unsuccessfully attempted through domestic law. As such, a judge can still, in theory, apply it for cases that fall outside the limitations set out by the Supreme Court meaning, in essence, that under Chilean domestic law, international law does not directly annul the amnesty law. Thus, while Chile has complied by not applying the amnesty law, it does not do so through the Court's own *ab initio* nullity argument, as expressed in *Barrios Altos* and *La Cantuta* or through conventionality control. This is why, in *Almonacid Arellano*, Chilean authorities were required to formally remove the amnesty law's effects through the conventionality control doctrine.

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63 Christina Binder, 'The Prohibition of Amnesties by the Inter-American Court of Human Rights' (2011) 12 German Law Journal 1220.

64 Barbara Ivanschitz Boudeguer, 'Un Estudio Sobre El Cumplimiento y Ejecución de Las Sentencias de La Corte Interamericana de Derechos Humanos Por El Estado de Chile' (2012) 11 Estudios constitucionales 309.

c) Brazil

50 Similar to Chile, Brazil's process of democratisation in the late 1980s came tied to an amnesty law. Despite efforts at the IAComHR level since the mid-1990s, the Brazilian amnesty law would only start to be challenged in the early 2010s. In April 2010, the Brazilian Supreme Federal Tribunal (STF, Brazil's Supreme Court) issued decision ADPF 153, deciding on a lawsuit by the Brazilian Bar seeking to annul the amnesty law.[65]

51 The STF majority argued it could not alter the text of the amnesty law as it was limited to an examination of its constitutionality. Modification or even repeal of the law's terms, the STF said, had to come from the legislator. In analysing its constitutionality, the majority decided that the law had been a specific measure designed to address a specific situation. It, therefore, had to be interpreted in light of the historical context in which it was created, not the context in which it was now being examined.[66] Ultimately, the STF upheld the law, declaring the lawsuit inadmissible.

52 A few months after this decision, the IACtHR issued its decision in *Gomez Lund v. Brazil*, also known as the *Guerrilha do Araguaia* case.[67] The Court noted the STF's decision in ADPF 153,[68] arguing that the judgment had "affected the international obligations of the State".[69] Referencing *Barrios Altos* directly, the Court stated that Brazil's amnesty law was expressly non-compatible with the Convention and "lack[s] legal effect".[70] Moreover, the Court added that Brazil's judicial branch was "internationally obligated to exercise control of constitutionality ex officio", specifically protesting that this doctrine had been rejected by the STF.[71]

53 Despite this clear rebuttal, Brazilian courts were unphased and, in December 2010, during an interview with the press, the STF Chief Justice, Cezar Peluso, stated that the *Gomes Lund* judgment "did not revoke, annul,

65 Arguição de Descumprimento de Preceito Fundamental No. 153 (Supreme Federal Tribunal, Brazil) Judgment of 29 April 2010.
66 Id. para. 35.
67 *Gomes Lund et. al. v. Brazil* (n 25).
68 Id. para. 136.
69 Id. para. 172.
70 Id. para. 174. In this case, the IACtHR did specifically use this wording in its official translation.
71 Id. para. 176–177

indict" the ADPF 153 decision.[72] Another judge, Marco Aurélio Mello, stated that the decision lacked "judicial title" in Brazil and therefore "would not have any effect" in the country.[73]

In 2014, PSOL, a political party in Brazil, filed ADPF 320 seeking to revert the STF's prior decision, however, the case has been dormant since with no relevant action taken by the STF.[74] As such, the situation remains largely unchanged, even after the IACtHR once again chastised Brazil in 2018 for not repealing its amnesty law in *Herzog v. Brazil*.[75] 54

One significant change in the status quo happened in 2019, when the 2nd Regional Federal Tribunal (TRF2), based in Rio de Janeiro, decided Case No. 0500068–73.2018.4.02.5106, against Antônio Waneir Pinheiro Lima, a retired army sergeant accused of raping and torturing Inês Etienne Romeu, the sole survivor of a clandestine torture centre known as the 'House of Death'.[76] 55

In deciding the case, the TRF2 made specific reference to the conventionality control doctrine, stating that "the conceptual differences between both institutions allow us to conclude that the constitutionality of a rule does not necessarily impact on its conventionality".[77] In fact, the judge noted that 56

> "it is beyond question that the [2010 STF] judgment (…) did not exhaust and could not exhaust the discussion regarding the amnesty law's enforcement, in particular, because of Brazil's condemnation by the Inter-American Court of Human Rights in the following years".[78]

However, at the time of writing, this decision remains subject to appeal before the STF where it is unlikely to succeed. 57

72 'Condenação do Brasil não anula decisão do Supremo' *Consultor Jurídico* <http://www.conjur.com.br/2010-dez-15/sentenca-corte-interamericana-nao-anula-decisao-supremo> last accessed 15 March 2022. My translation.

73 Id.

74 See, e.g.: 'Ação do PSOL que questiona a Lei da Anistia espera julgamento no STF há 5 anos' (*PSOL 50*, 31 July 2019) <https://psol50.org.br/acao-do-psol-que-questiona-a-lei-da-anistia-espera-julgamento-no-stf-ha-5-anos/> last accessed 15 March 2022.

75 *Herzog et. al. v. Brazil* (Inter-American Court of Human Rights) Judgment of 15 March 2018 (Preliminary Exceptions, Merits, Reparations and Costs).

76 *Antônio Waneir Pinheiro Lima*, Case No. 0500068–73.2018.4.02.5106 (2nd Regional Federal Tribunal, Brazil).

77 Id. 15

78 Id. 25

2. Same-Sex Marriage

58 In November 2017, the IACtHR issued Advisory Opinion OC-24/17, interpreting Member State obligations in relation to, *inter alia*, the rights derived from a relationship between same-sex couples.[79] This was the first time that the Court had issued any kind of sweeping analysis on the specific matter of same-sex marriage. Before this case, in *Atala Riffo v. Chile*, the Court had stated that sexual orientation and gender identity were "protected categories". Therefore,

> "any regulation, act, or practice considered discriminatory based on a person's sexual orientation is prohibited" and
> "no domestic regulation, decision, or practice, whether by state authorities or individuals, may diminish or restrict, in any way whatsoever, the rights of a person based on his or her sexual orientation".[80]

59 Through OC-24/17 the Court made it clear that "the scope of the protection of the family relationship of a same-sex couple goes beyond mere patrimonial rights".[81] The Court made a point to emphasise that

> "[t]he establishment of a differentiated treatment between heterosexual couples and couples of the same sex regarding the way in which they can form a family – either by a de facto marital union or a civil marriage – cannot pass the strict test of equality".[82]

60 Because of this, the Court concluded that

> "[s]tates that do not yet ensure the right of access to marriage to same-sex couples are obliged not to violate the provisions that prohibit discriminating against them and must, consequently, ensure them the same rights derived from marriage in the understanding that this is a transitional situation".[83]

61 Having laid this contextual foundation, the following section will discuss the experience of Ecuadorean and Peruvian domestic courts with this Advi-

79 Advisory Opinion OC-24/17 (Inter-American Court of Human Rights) Opinion of 24 November 2017.
80 *Atala Riffo and Daughters v. Chile* (Inter-American Court of Human Rights) Judgment of 24 February 2012 (Merits, Reparations and Costs) para. 91.
81 Advisory Opinion OC-24/17 (n 79) para. 198.
82 Id. para. 220.
83 Id. para. 227.

sory Opinion and their reaction to the conventionality control doctrine. It is worth noting, however, and as seen above, that the conventionality control doctrine is not limited solely to courts. Other entities, such as public registries and municipal authorities, play an equally crucial role in the promotion of LGBTQ+ rights in the region and are also bound by conventionality obligations.

a) Ecuador

After OC-24/17, an Ecuadorean same-sex couple filed for a marriage licence in the Civil Registry, a request denied on the basis that, under the Ecuadorean Constitution, marriage is only possible between a man and a woman. They swiftly filed for protection under Ecuador's constitutional jurisdiction. The case was eventually heard before the Ecuadorean Constitutional Court, which decided the matter in Case No. 11–18-CN in June 2019.[84] 62

The Constitutional Court approached the case as one of a conflict between two rules: on the one hand, the Ecuadorean Constitution's definition of marriage as the union of a man and a woman and, on the other, the IACtHR's interpretation of the ACHR under OC-24/17. The Court noted that the Constitution had to be interpreted in accordance with human rights law, in order to determine whether an antinomy exists and, if so, how to solve it.[85] 63

For the Constitutional Court, excluding same-sex couples from the rights of married life could not possibly be a constitutionally valid objective to be protected as it would run in tension with the prohibition of discrimination and the right to equality. The harm caused to same-sex couples through their exclusion was simply disproportionate because an interpretation that led to exclusion would not be a valid goal for the Ecuadorean State to promote.[86] 64

The Constitutional Court based its decision to allow same-sex marriage on the IACtHR doctrine of conventionality control. Under Article 426 of Ecuador's Constitution, courts must directly apply the rules contained in "international instruments".[87] According to the Constitutional Court, 65

84 Docket No. 11–18-CN (Constitutional Court, Ecuador) Judgment of 12 June 2019.
85 Id. para. 48–49.
86 Id. para. 108–109.
87 Id. para. 283.

OC-24/17 was "clearly a binding instrument of direct application within Ecuador's legal system".[88]

66 With this background, the Constitutional Court concluded that there was no contradiction between the Constitution and the Convention since interpretation techniques could be used to overcome the antinomy. In this case, the recognition that marriage is between a man and a woman cannot imply that there is a constitutional mandate to exclude same-sex couples from marriage. The Constitutional Court ordered the lower instance judge to order the Civil Registry to record the applicants' marriage.

b) Peru

67 The Peruvian Civil Code also defines marriage as the union between a man and a woman. Legislative initiatives to change the legal definition to include same-sex couples have been consistently unsuccessful. Therefore, many impacted Peruvians have begun travelling abroad to conclude their marriages, particularly in cases where their spouse is a foreigner. Since the mid-2010s, Peruvians have been trying to have these foreign same-sex marriages recognised under Peruvian law.

68 In 2016, the 7th Constitutional District Court of Lima decided Case No. 22863–2012–0–1801-JR-CI-08 (also known as the *Ugarteche* case). In this case, a same-sex couple composed of a Peruvian and a Mexican had gotten married in Mexico and sought recognition of their marriage by the Peruvian Civil Registry, which dismissed it on the grounds that same-sex couples could not be recognised as spouses under Peruvian law. The District Court overturned the Civil Registry's resolution by noting, *inter alia*, that the IACtHR's case law on non-discrimination of LGBTIQ+ peoples was controlling on its interpretation. Quoting from *Duque v. Colombia,* the District Court held that sexual orientation was a protected category for matters of non-discrimination and that no domestic rule, decision or practice could restrict a person's rights based on their sexual orientation.[89]

69 In 2020, however, the *Ugarteche* case reached Peru's Constitutional Tribunal. The Constitutional Tribunal dismissed it in a one-page decision, on grounds of inadmissibility. Despite the brevity of the opinion, the justices

88 Id. para. 280.

89 *Oscar Ugarteche Galarza v. RENIEC*, Case No. 22863–2012–0–1801-JR-CI-08 (7th Constitutional Court, Peru), Considerando Trigésimo Primero.

themselves attached extensive separate opinions, some of them quoting from Inter-American case law.

Justice Sardón, for instance, noted that OC-24/17 had been an "evident excess" from the IACtHR that, he said, "suffered from serious structural defects" that have turned it into an "ideological" court.[90] On the other hand, Justices Ramos and Ledesma argued that sexual orientation is a protected category that could not be the basis for discrimination and exclusion. They argued that the Constitution had to be understood through the IACtHR interpretations and therefore argued denying marriage for same-sex couples was unconstitutional.[91] Despite the foregoing, same-sex marriage is currently not allowed in Peru, although several cases are still pending at the time of writing. 70

V. The Future of Conventionality Control

The recent experience with OC-24/17 has shown the potential that Advisory Opinions have in the progressive development of Inter-American law at the domestic level. It is likely, therefore, that other such opinions will be key to driving this evolutionary development further, with a particularly relevant candidate in this regard being OC-23/17, an opinion that deals with State obligations in relation to the environment.[92] 71

The Court noted, for example, that the term "jurisdiction" referred to in Article 1(1) of the Convention is not limited to the national territory of an offending State, but "contemplates circumstances in which the extraterritorial conduct of a State constitutes an exercise of its jurisdiction", such as when it exercises "effective control" of a person.[93] In other words, according to this opinion, States have an obligation to remedy transboundary environmental damage in the sense that 72

90 *Óscar Ugarteche Galarza*, STC 01739–2018-PA/TC (Constitutional Tribunal, Peru) Judgment of 3 November 2020, Separate Opinion of Justice Sardón, 16

91 Id. Separate Opinion of Justices Ramos and Ledesma 32, ¶¶40–42.

92 Advisory Opinion OC-23/17 (Inter-American Court of Human Rights) Opinion of 15 November 2017.

93 Id. para. 78–82. To reach this conclusion, the Court built on the European Court of Human Right's constant caselaw on jurisdiction, particularly since Bankovic and Others v. Belgium. See : *Bankovic and Others v. Belgium* (European Court of Human Rights) Decision on Admissibility of December 12, 2001.

> "the persons whose rights have been violated are under the jurisdiction of the State of origin if there is a causal link between the act that originated in its territory and the infringement of the human rights of persons outside its territory".[94]

73 The Court also pointed out that States have more than an obligation to react to environmental damage. States have, the Court said, an "obligation of prevention", which includes duties to regulate, supervise and monitor relevant actors, require and approve environmental impact assessments, establish contingency plans and undertake mitigation efforts when environmental damage has occurred.[95] States also have to abide by the precautionary principle, meaning that where there are threats of serious or irreversible damage, "lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation".[96] Furthermore, States also have an obligation to cooperate with one another to develop and protect economic, social and cultural rights as well as procedural obligations to ensure access to information, public participation (including indigenous communities' right to consultation) and access to justice.

74 These obligations are likely to have a profound impact on domestic law and will be a rich source for strategic litigation in domestic courts under the banner of conventionality control. Looking into the future, it is here where the system will likely have its greatest impact.

VI. Conclusion

75 The Inter-American human rights system and the conventionality control doctrine have been instrumental in redefining domestic law in Latin America. It is impossible to study law in Latin America without understanding its relationship to the IACtHR's case law and Advisory Opinions. Since the issuance of OC-23/17, the potential impact of conventionality control in domestic litigation is likely to filter through into many areas of the regulatory state.

76 Since local authorities, even those not directly involved in the judicial system, are expected to police compliance with Inter-American law in their

94 Id. para. 101.
95 Id. para. 145.
96 Id. para. 175.

daily operations, it is not far-fetched to say that more often than not the content of Latin American law will hinge on its conventionality.

Further Reading

Ferrer Mac-Gregor E, 'Conventionality Control the New Doctrine of the Inter-American Court of Human Rights' (2015) 109 AJIL Unbound 93

Ariel E Dulitzky, 'An Alternative Approach to the Conventionality Control Doctrine' (2015) 109 American Journal of International Law 100.

Jorge Contesse, 'Resisting the Inter-American Human Rights System' (2019) 44(2) Yale Journal of International Law 179.

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