CURRENT LEGAL DEVELOPMENTS

Individual Human Rights *v.* State Sovereignty: The Case of Peru's Withdrawal from the Contentious Jurisdiction of the Inter-American Court of Human Rights

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Abstract: Human rights law is often regarded as a discipline with aspirations of being an autonomous, self-contained regime within the general corpus of international law. Recent debates concerning reservations in the area of treaty law have reinforced views which claim the governing prinicples of human rights law depart – if not contradict – general rules of international law. By examining a landmark decision of the Inter-American Court of Human Rights which declared the recent purported Peruvian withdrawal from its compulsory jurisdiction invalid, against the background of general international law, the author aims to demonstrate that far from deviating from the general rules of the Vienna Convention of the Law of Treaties, this decision supports the view that human rights law is neither insulated from general international law nor divorced from the principle of sovereignty. For the principle of sovereignty has a twofold character: it is the fundament but also the limit of freedom of action by a state.

1. INTRODUCTION

A crucial aspect of the law concerning the international protection of human rights is its relationship with domestic legal systems. Whether it is a case of domestic courts having to take into account international law in their decisions or of international courts having to scrutinize domestic rulings and assess their fitness under international law, the relationship between national and international courts often does not appear to be an easy one; clashes seem unavoidable.

International courts may find themselves sometimes openly challenged by States. This can have irreparable consequences in cases where fundamental human rights issues are at stake, as a couple of recent cases before the International

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Court of Justice involving the death penalty show.[1] On the other hand, challenges of this sort can only be properly assessed against a background which points at the increasing role of international law in domestic courts and in the internal affairs of states.

One cannot stop noticing that even national courts of countries described as 'radically dualist',[2] such as the United Kingdom, cannot avoid to be confronted with international law and finding it crucial in deciding issues of utmost importance to sovereign states. It comes as no surprise therefore that it is precisely in these forums where landmark decisions of the stature of the *Pinochet* case[3] have been produced. Whether or not this indicates a change in the legal culture in most domestic legal systems,[4] it seems warranted to observe that the prevalence of international law today may take more subtle ways than the traditional approach would seem to point out.

Furthermore, the jurisprudence produced by international human rights courts have invigorated the way we currently understand state sovereignty and international human rights obligations. Take the case of *Loizidou* or *Belilos*[5] in the European region. Both cases concerned reservations to the European Convention on Human Rights, to which none of the state parties had ever objected, and which were declared invalid by the European Court of Human Rights. The legal effect of the Court's determination was that the treaty provisions in ques-

1. *See* Vienna Convention on Consular Relations (Paraguay *v.* United States of America), Provisional Measures, Order of 9 April 1998, ICJ Rep. 1998, case brought by Paraguay on 3 April 1998 and LaGrand Case (Germany *v.* United States of America), Provisional Measures, Order of 3 March 1999, ICJ Communiqué Nos. 99/07 and 99/08 of 2 and 3 March 1999. Both cases concerned a dispute alleging a violation of the 1963 Vienna Convention on Consular Relations (596 UNTS 261) by the United States which would have prevented Paraguay and Germany from exercising the consular functions provided for in Articles 5 and 36 of the Vienna Convention on Consular Relations and specifically for ensuring the protection of their interests and of those of their nationals in United States. Paraguay and Germany respectively alleged that Angel Francisco Breard of Paraguayan nationality and Karl and Walter LaGrand of German nationality had been tried and sentenced to death in the United States without having been informed, as it is required under Article 36 subparagraph 1(b) of the Vienna Convention on Consular Relations, of their rights under that provision. As a matter of urgency the International Court of Justice indicated in both cases provisional measures ordering United States to take all measures at its disposal to ensure that the individuals in question were not executed pending the final decision in those proceedings. In doing so it stressed that the international responsibility of a State is engaged by the action of the competent organs and authorities acting in that State. However, despite the orders of the Court, the executions were carried out in both cases. Paraguay discontinued its case and it was subsequently removed from the Courts' list but the case brought by Germany is still pending before the Court.
2. To use Pescatore's description of the United Kingdom as referred by Rosalyn Higgins. P.Pescatore, *Treaty-Making by the European Communities*, *in* F. Jacobs & S. Roberts (Eds.), The Effect of Treaties in Domestic Law 171, at 191 (1987). *See* R. Higgins, Problems and Process: International Law and How We Use It 210, at note 13 (1994).
3. Regina v. Bow Stipendiary Magistrate and others, *ex parte* Pinochet Ugarte (Amnesty International and others intervening) (No. 3) in [1999] 2 All E.R. 97.
4. *See* Higgins, *supra* note 2.
5. Belilos *v.* Switzerland, ECHR, 7 May 1986 and EcrtHR, 29 April 1988, both reported in 88 ILR 635. Loizidou *v.* Turkey, Preliminary objections, EcrtHR, 23 February 1995, 103 ILR 622.

tion applied in their integrity to the defendant States notwithstanding the reservations.

These decisions were perceived by some as having gone as far as challenging a fundamental principle of treaty law; *viz.* the concomitant right of states parties to limit their obligations to the extent of their consent.[6] However, far from being a 'deviation'[7] in the jurisprudence of human rights courts, they rather reflect a consistent trend in the interpretation of human rights treaties which places special emphasis on the object and purpose of the treaty and the effectiveness of their control machinery.[8]

Furthermore, neither Switzerland, in the case of *Belilos,* nor Turkey, in *Loizidou,* argued that such reservations had been fundamental to their acceptance of the European Convention on Human Rights. Had this been the case, their ratification of the Convention as a whole would have been invalid. Instead, both Switzerland and Turkey took the view that they were bound by the decision of the Court.

But how far can international human rights courts in fact go without risking states rebelling against their authority? After all, is it not true that international human rights treaties ultimately rely on States for their enforcement? The announcement of the Peruvian Government's withdrawal from the compulsory jurisdiction of the Inter-American Court last year raised this difficult question for the system of international protection of human rights. As noted by the Inter-American Commission, no State had ever attempted to withdraw its acceptance of the compulsory jurisdiction of the Inter-American Court while remaining a party to the Convention.[9]

2. A WITHDRAWAL WITH IMMEDIATE EFFECT

Peruvian Head of State, Alberto Fujimori, told reporters that "the Court was infringing on Peru's sovereignty and that Peru would withdraw from the jurisdic-

6. *See, for example,* H. Golsong *Interpreting the European Convention on Human Rights Beyond the Confines of the Vienna Convention on the Law of the Treaties?, in* R. Macdonald *et al.* (Eds.), The European System for the Protection of Human Rights 147, at 162 (1993).
7. As Golsong suggests: "[o]ne might therefore be allowed to view the above-mentioned deviations more as unfortunate accidents rather than as signs of a new and disturbing approach in the interpretation of the [European] Convention [on Human Rights]." *Id.*, at 162.
8. For more examples *see* Chrysostomos *v.* Turkey, ECHR, Decision of 4 March 1992, 12 Human Rights Law Journal (HRLJ) 113 (1991). *See also* Human Rights Committee, *General Comment 24 on Reservations to the International Covenant on Civil and Political Rights*, 15 HRLJ 464 (1995); 22 IHRR 10 (1995).
9. Inter-American Commission on Human Rights (hereafter IACommHR), Observations of the Inter-American Commission on Human Rights Concerning the Return of the Application in the Case of the Constitutional Court *v.* Peru (11.760) and the Jurisdiction of the Inter-American Court of Human Rights 2, 10 September 1999. *See* http://www.cidh.oas.org.

tion of the Court and would not abide by any of its decisions."[10] This announcement came at a time when reparation to the victims, in a couple of cases where Peru had been found responsible for serious violations of the Inter-American Convention on Human Rights, including the arbitrary arrest, torture and disappearance of Ernesto Castillo Paez,[11] and arbitrary arrest, torture and unfair trial of Maria Elena Loayza Tamayo,[12] were pending for compliance. In the *Loayza Tamayo* case the Inter-American Court not only took the unprecedented step to order the definitive release of the unfairly tried prisoner but it also ordered Peru to reform its emergency decrees concerning terrorism to make them compatible with the Convention.[13]

Moreover, the Peruvian announcement came at a time when the Inter-American Court just passed judgment ordering the retrial by a civilian court of four Chileans who had been deprived of due process, when they were convicted of treason and sentenced to life imprisonment by a faceless military tribunal in 1994.[14] But the Court went further. It also ordered that the Peruvian law that permitted those trials were reformed.[15] On 1 July 1999 the Peruvian Government informed the Secretary General of the Organization of the American States that it would not comply with this ruling, *inter alia*, because the Court's legal analysis "distanced from the terrorist atmosphere, reflect[ed] a 'notorious divorce from reality', it set a precedent for other similar cases, and the Court had no authority to order modification of national laws."[16]

On 7 July 1999 the Peruvian Congress voted to withdraw from the jurisdiction of the Inter-American Court of Human Rights.[17] On 9 July 1999, the State of Peru presented an instrument to the Secretariat of the Organization of American States making its communication of withdrawal official. It announced that it "withdraw[ed] its declaration of acceptance of the contentious jurisdiction" of the Inter-American Court of Human Rights and that the withdrawal would pro-

10. *Peru Withdraws From International Rights Court*, Washington Post, 8 July 1999.
11. IACtHR, Ernesto Castillo Paez *v.* Peru, Judgment of 3 November 1997, Series C No. 34, http://www.oas.org.
12. IACtHR, Loayza Tamayo *v.* Peru, Judgment of 17 September 1997, Series C No. 33, http://www.cidh.oas.org.
13. IACtHR, Loayza Tamayo *v.* Peru, Reparations, (Art. 63(1) of the American Convention on Human Rights), Judgment of 27 November 1998, Series C No. 42, http://www.cidh.oas.org.
14. IACtHR, Castillo Petruzzi *et al.*, Judgment of 30 May 1999, Series C No. 52, http://www.cidh.oas.org.
15. For an interesting analysis on the Court's authority to order the modification of national laws by way of a remedy to a violation of the Convention *see* D. Cassel, *Peru Withdraws From The Court: Will The Inter-American Human Rights System Meet The Challenge?*, *in* 20 HRLJ 4-6 (1999).
16. *See* Letter of Ambassador Beatriz Ramacciotti Permanent Representative of Peru before OAS to OAS Secretary General Cesar Gaviria, 1 July 1999 as referred in Cassel, *id.*, at 170-171 and Amnesty International Urgent Action dated 9 July 1999, AI Index: AMR 46/20/99. For a detail analysis of the Peruvian attack on the Court and the reasons exposed for its no compliance with the decision *see* Cassel, *id.*
17. *Id.*

duce an "immediate effect", applying to all cases in which it had not submitted its answer to applications initiated before the Court.[18]

The withdrawal, which was criticised by the European Union as being based on "regrettable" arguments and contrary to both the spirit and the letter of the commitments made in the Rio Summit Declaration, signed on 29 June 1999 by the Heads of States and Governments of the European Union, Latin American and the Caribbean States, including Peru,[19] appeared to be a test to the efficacy and the future of the Inter-American system in protecting individual human rights in the region at a time when Trinidad and Tobago had already announced its decision to withdraw from the Inter-American Convention of Human Rights as a whole.[20]

3. THE WITHDRAWAL IN THE LIGHT OF THE VIENNA CONVENTION ON THE LAW OF TREATIES

Since 28 July 1978, Peru has been a party to the Inter-American Convention on Human Rights. On 21 January 1981, by making a declaration in accordance with Article 62, it accepted the jurisdiction of the Court "on all matters relating to the interpretation or application of the Convention."[21]

One of the arguments used by the Peruvian Government to defend the legality of its decision to withdraw from the contentious jurisdiction of the Inter-American Court was based on the argument that such a decision was a sovereign act. As the Peruvian Minister of Justice put it: "the recognition by the Peruvian State of the jurisdiction of the Inter-American Court was a unilateral and sovereign act, therefore the withdrawal of such recognition is equally a unilateral and a sovereign act."[22]

The acceptance of the compulsory jurisdiction of the Court was indeed a facultative unilateral engagement that the States signatories of the Inter-American Convention were absolutely free to make or not to make. In making the declaration, Peru was equally free either to do so unconditionally or to qualify it with

18. *See* IACommHR, *supra* note 9, at 2.
19. *See* European Union Criticises Peru's Withdrawal from the Jurisdiction of the ICHR. Aide Memoire, European Union Press Release 19 July 1999 as reported by Nizkor International Human Rights Team (on file with the author).
20. *See* OEA Secretary Cesar Gaviria's statements to the press on the 21 September 1999. Cables Peru 9/22/99, Washington. Trinidad and Tobago's denunciation of the Inter-American Convention became effective on 26 May 1999. *See* Amnesty International, Trinidad and Tobago Repudiates American Convention on Human Rights, AI Index: AMR 49/04/99, 21 May 1999. For the entire text of the notice of definitive denunciation made by Trinidad and Tobago *see* 20 HRLJ 4-6 (1999).
21. *See* Article 62.1 1969 Inter-American Convention on Human Rights, 9 ILM 99 (1970).
22. Ministry of Justice Memo attached to the Draft Bill of Partial Denunciation of the Inter-American Convention submitted to the Peruvian Parliament on 6 July 1999, as referred in *Peru to Revoke IACTAR Jurisdiction*, Asociacion pro Derechos Humanos. Urgent Message. 7 July 1999, at 2. Margarita Lacabe's translation (on file with author).

conditions or reservations. In particular, it could have limited its effect for a specified period or for specific cases. Peru, however, accepted the jurisdiction of the Court as "binding and not requiring special agreement, with respect to all cases relating to the interpretation or application of the Convention."[23] It further indicated that the recognition of competence was made for an indefinite time. As noted by the Inter-American Commission, the sole condition invoked by the Peruvian State was that of reciprocity.[24]

Furthermore, as the International Court of Justice pointed out in the *Nicaragua* case, the unilateral nature of declarations does not signify that the State making the declaration is free to amend the scope and the contents of its solemn commitments as it pleases.[25] The International Court of Justice has, in fact, stressed in the same ruling the important role that the principle of good faith plays with respect to unilateral declarations. The declaration made by the Peruvian Government pursuant to Article 62.2 of the Inter-American Convention is therefore binding on Peru and in accordance with Article 26 of the Vienna Convention on the Law of Treaties[26], must be complied with in good faith. "Trust and confidence are inherent in international cooperation [...] just as the very rule of *pacta sunt servanda* in the law of treaties is based on good faith, so also is the binding character of an international obligation assumed by unilateral declaration" observed the Inter-American Commission in this respect, quoting the International Court of Justice in the *Nuclear Test* cases.[27]

There is no provision in the Inter-American Convention about the possibility of withdrawing from the jurisdiction of the Court once it has been accepted. One could say therefore that the parties did not envisage the possibility of such withdrawal. Contrary to the International Covenant on Civil and Political Rights (ICCPR),[28] where the parties intended to permit such a possibility. Article 41.2 of the ICCPR states that a declaration accepting the competence of the Human Rights Committee to receive and consider communications from a State Party against another State Party may be withdrawn at any time by notification to the Secretary General. The Optional Protocol to the ICCPR by which States Parties recognise the right to individual petition equally admits the possibility of denunciation as provided for in Article 12.

According to Article 56 of the Vienna Convention an express provision for denunciation or withdrawal would be necessary to allow such possibility unless

23. IACommHR, *supra* note 9, at 5.
24. *Id.*
25. *See* Military and Paramilitary Activities in and Against Nicaragua (Nicaragua *v.* United States of America), Jurisdiction and Admissibility Judgment of 26 November 1984, 1984 ICJ 392, at para. 59.
26. 1969 Vienna Convention on the Law of Treaties, 8 ILM 679 (1969).
27. Nuclear Test case (Australia *v.* France), Judgment of 20 December 1974, 1974 ICJ Rep. 253, para. 49; Nuclear Tests case (New Zealand *v.* France), Judgment of 20 December 1974, 1974 ICJ Rep. 457. As referred to in IACommHR, *supra* note 9, at 10.
28. 1966 International Covenant on Civil and Political Rights, 999 UNTS 71 (1976).

(a) it is established that the parties intended to admit the possibility of denunciation or withdrawal; or
(b) a right of denunciation or withdrawal may be implied by the nature of the treaty.

None of these exceptions would be relevant to this case.

The only provision regulating the possibility of denunciation of the Inter-American Convention is Article 78. However, this provision refers to the denunciation of the whole Convention and not of part of it. This is in accordance with the principle laid down in Article 44 of the Vienna Convention which states that "a right, provided for in a treaty or arising under Article 56, to denounce, withdraw from or suspend the operation of the treaty may be exercised only with respect to the whole treaty unless the treaty otherwise provides or the parties otherwise agree."

Furthermore, in accordance with Article 42(2) of the Vienna Convention a termination of, a suspension of and withdrawal from treaties may take place only as a result of the application of the provisions of the treaty or the Vienna convention. In accordance with the Vienna Convention regime, a declaration of acceptance could not be withdrawn without reasonable notice of termination. Article 56(2) provides that "a party shall not give less than twelve months' notice of its intention to denounce or withdraw from a treaty." This again would be based on the obligation to act in good faith and to have reasonable regard to the interests of the other parties.[29]

The Inter-American Commission quite rightly noticed in that regard that

> Acceptance of the compulsory jurisdiction of the Honorable Court by a State has a profound effect on the interests and expectations of persons subject to that State's jurisdiction, as well as on other States Parties, and the enforcement mechanisms of the Commission and the Court. Had the drafter's of the Convention contemplated that such acceptance of jurisdiction, once made without condition, could then be withdrawn at will –having in mind the far-reaching consequences of such act – the Commission considers that such an action would have been provided for in the text- which is clearly not.[30]

Moreover, the Commission stressed that

> Were States able thereafter to add restrictions not provided for or to revoke acceptance at will, not only would the expectations and interests of those parties be affected, but the juridical certainty and stability of the system of compulsory jurisdiction as a whole would be jeopardized. The enforcement system requires predictability and uniformity of undertakings and stability in the enforcement system. States parties may not be permitted, in light of the object and purpose of that system, to act unilaterally so as to establish their own regimes of undertaking and enforcement. This would

29. *See* Interpretation of the Agreement of 25 March 1951 between WHO and Egypt, Advisory Opinion of 20 December 1980, 1980 ICJ Rep. 73, at para. 95.
30. IACommHR, *supra* note 9, at 18.

> threaten the effectiveness of the enforcement machinery as an integral part of the regional human rights system.[31]

Therefore, even if Peru would have denounced the whole treaty, such withdrawal would have had effect only a year after the announcement.

In not complying with the decisions of the Court, Peru is in breach of Article 68 of the American Convention under which States Parties undertook to comply with the judgments of the Court.

As to the reluctance of the Peruvian State to comply with changes in national legislation, it should be noted that under Article 2 of the American Convention, Peru undertook to adopt legislative or other measures as may be necessary to give effect to the rights and freedoms set up therein, and in accordance with Article 27 of the Vienna Convention, a "Party cannot invoke the provisions of its internal law as justification for its failure to perform a treaty."

4. THE COURT'S RULING REJECTING PERU'S WITHDRAWAL.

During its XLV Regular Session (16 September-2 October 1999) in San Jose (Costa Rica), the Inter-American Court of Human Rights examined the purported Peruvian withdrawal in dealing with issues concerning its jurisdiction to adjudicate in two cases against Peru. Both, the *Constitutional Tribunal* case[32] and the *Ivcher Bronstein* case,[33] had been filed with the Court prior to the withdrawal.

In both cases the Court asserted its power to decide issues concerning its own jurisdiction. It stated that "the Inter-American Court, as any organ with jurisdictional competence, has the *inherent power* to determine the scope or extent of its own competence" (*compétence de la compétence / Kompetenz-Kompetenz*).[34] This, in the view of the Court, would not only be a prerogative but would arise as an obligation to the Court in accordance to Article 62.3 of the American Convention.[35]

In interpreting the American Convention in accordance with its object and purpose, the Court deemed it necessary to act in a way that preserved the integrity of the mechanism foreseen in Article 62.1 of the Convention.[36] It noted that the acceptance of its contentious jurisdiction did not admit limitations other than

31. *Id.*
32. IACtHR, Caso del Tribunal Constitucional, Competencia, Sentencia de 24 de Septiembre de 1999, Series C No. 55. Available only in Spanish, http://corteidh-oea.nu.or.cr/ci.
33. IACtHR, Caso Ivcher Bronstein, Competencia, Sentencia de 24 de Septiembre de 1999, Series C No. 54. Available only in Spanish, http://corteidh-oea.nu.or.cr/ci.
34. IACtHR, Caso del Tribunal Constitucional, *supra* note 32, at 8, para. 31. Author's own translation. (Emphasis added).
35. *Id.*, para. 32.
36. *Id.*, para. 34.

those expressly contained in Article 62.1 of the American Convention.[37] In view of the Court "due to the fundamental importance of such clause for the operation of the system of protection under the Convention, it could not be at the mercy of limitations not foreseen in the Convention and invoked by the State Parties based on reasons of internal order."[38]

This interpretation of the Court is in fact consistent with Article 29(a) of the American Convention which provides for a specific rule of interpretation of the Convention. This rule requires that none of the provisions of the treaty should be interpreted as permitting any State Party, group, or person to suppress the enjoyment or exercise of the rights and freedoms recognized in the American Convention or to restrict them to a greater extent than is provided for therein. As rightly noted by the Inter-American Commission, such rule would not only apply to substantive guarantees enshrined in the Convention, but would also cover any interpretation that could suppress or restrict the procedural means to realize such guarantees.[39]

Furthermore, the Court stressed that "an interpretation of the American Convention which allowed for a State Party's withdrawal of recognition of the Court's compulsory jurisdiction in the terms purported in the present case, would imply the suppression of the exercise of rights and freedoms enshrined in the Convention, would go against its object and purpose as a human rights treaty, and would deprive all beneficiaries of the Convention from the additional guarantee of protection of such rights through the action of its supervisory organ."[40]

In other words, according to this reasoning, the Court's supervisory jurisdiction became an intrinsic component of the guarantee of Convention-based rights and freedoms for individuals in Peru from the moment that Peru accepted its compulsory jurisdiction. It should be noted that in an Advisory Opinion the Court had already stressed that the American Convention, "unlike other international human rights treaties, including the European Convention [as originally configured], confers on private parties the right to file a petition with the Commission against any State as soon as it has ratified the Convention."[41] In the view of the Court this structure would indicate the "overriding importance the Convention attaches to the commitments of the States Parties *vis-à-vis* individuals, which can be readily implemented without the intervention of any other State."[42]

Therefore the principle of legal certainty, juridical security, and good faith would apply not only *vis-à-vis* other State Parties but *vis-à-vis* the beneficiaries

37. *Id.*, para. 35.
38. *Id.* Author's own translation.
39. *See* IACommHR, *supra* note 9, at 8.
40. IACtHR, Caso del Tribunal Constitutional, *supra* note 32, at 9, para. 40.
41. IACtHR, The Effect of Reservations on the Entry into Force of the American Convention (Arts. 74 and 75), Advisory Opinion OC-2/82 of 24 September 1982, Ser. A No. 2, at para. 32.
42. *Id.*

of the Convention: the petitioners and/or victims subjected to the jurisdiction of State Parties.

Central to the analysis of the Court is the acknowledgement that the beneficiaries of the American Convention are not State Parties but individuals within their jurisdiction, and that the object and purpose of the treaty is the protection of the rights and freedoms of those individuals as recognised in the Convention. Quoting its own jurisprudence the Court pointed out that

> modern human rights treaties in general, and the American Convention in particular, are not multilateral treaties of the traditional type concluded to accomplish the reciprocal exchange of rights for the mutual benefit of the Contracting States. Their object and purpose is the protection of the basic rights of individual human beings irrespective of their nationality, both against the State of their nationality and all contracting states. In concluding these human rights treaties states can be deemed to submit themselves to a legal order within which they, for the common good, assume various obligations, not in relation to other States, but toward all individuals within their jurisdiction.[43]

The Court noted that the European Court of Human Rights had similarly established in *Ireland v. UK* that

> [u]nlike international treaties of the classic kind the [European] Convention comprises more than mere reciprocal engagements between contracting States. It creates, over and above a network of mutual, bilateral undertakings, objective obligations which, in the words of the preamble, benefit from a 'collective enforcement.'[44]

It equally noted that given the nature of these treaties, the overriding principle of interpretation and application is to make the safeguards contained therein practical and effective.[45]

The Court further emphasized that by voluntarily accepting its compulsory jurisdiction, the State of Peru had bound itself to the entirety of the Convention, and could only withdraw from the jurisdiction of the Court by means of denouncing the treaty as a whole.[46] It indicated that this purpose of preserving the integrity of conventional obligations emanates from Article 44.1 of the Vienna Convention on the Law of Treaties and is reflected in Article 78 of the American Convention, which provides only for the denunciation of the treaty as whole.[47] It thus seemed clear to the Court that neither had it been the intention of the parties

43. *Id.*, at para. 29. Cited by the IACtHR, Caso del Tribunal Constitucional, *supra* note 32, at 9, para. 42.
44. Ireland *v.* United Kingdom, Judgment of 18 January 1978, (1978) EcrtHR (Ser. A), Vol. 25, para. 239.
45. *See* Soering *v.* United Kingdom, Decision of 26 January 1989, EcrtHR (Ser. A),Vol. 161, para. 87.
46. IACtHR, Caso del Tribunal Constitucional, *supra* note 32, at 10, paras. 45 and 49.
47. *Id.*, paras. 49 and 50.

to allow a partial withdrawal of the American Convention nor could such intention be inferred from the nature of the Convention as a human rights treaty.[48]

For all the above reasons, it unanimously declared the purported Peruvian withdrawal inadmissible and resolved that it would continue adjudicating the *Ivcher* and *Constitutional Court* cases.

5. CONCLUSION

The decision of the Inter-American Court of Human Rights is a landmark in the history of the Inter-American system of protection of human rights. It does not violate Peruvian sovereignty but rather enforces the obligations that Peru freely undertook. Peru's sovereign right was to decide what international obligations it entered into. In accepting the jurisdiction of the Court unconditionally (with respect to individual petitions) it bound itself to honour this undertaking. Any subsequent withdrawal could only be possible in accordance with the terms of its own acceptance and of the Convention itself.

This decision has far-reaching effects. Never in the history of international human rights adjudication a Court had to consider cases while the defendant Party was in contempt of its authority. In taking that decision though, the Court had a fundamental regard for the protection of the rights of individuals who had a legitimate expectation to have their claims against Peru heard by the Court.

In interpreting the Convention the Court placed great emphasis on the integrity of the treaty. It therefore took the view that its supervisory jurisdiction had become an intrinsic component of the guarantee of the American Convention-based rights and freedoms for individuals in Peru from the moment that Peru accepted its compulsory jurisdiction.

The Court therefore consolidated the principle that the overriding consideration in any interpretation of the Convention is towards those individuals to whom the State had assumed obligations.

As an ex-Justice from the Constitutional Court in Peru put it: "the Peruvian Government may renounce its own rights under the Convention but cannot renounced the rights of third parties."[49] For the people of the Americas, and in particular for those whose hopes of justice have been channeled through the complaint system of the Inter-American system, this decision represents a great precedent.

Such a strong standing for individual human rights however, has not been followed by appropriate action by the political organs of the OAS. Nevertheless, it has been the own government of Peru who has already attempted "negotia-

48. *Id.*, para.50.
49. Manuel Aguirre Roca statement for Diario la Republica 30/10/99. Author's translation.

tions" with the Court following the Court's decision.[50] The Court however, has already made clear its views.

It remains to be seen whether the political organs of the OAS will finally take action to force Peru to comply with its obligations.

50. Gobierno Replantea negociacion con CIDH (1999).