Chapter 1: The IACtHR as part of the inter-American human rights system

In order to understand the IACtHR's advisory practice and all the specific aspects of its advisory function it is necessary to have a basic understanding of the Court's role and position in the inter-American human rights system. In the first place, the IACtHR is in terms of Article 33 lit. b an organ established under the Convention which was adopted on 22 November 1969, and entered into force on 18 July 1978. The Court has its seat in San José, Costa Rica, and was formally inaugurated on 3 September 1979.[20]

In contrast to the Inter-American Commission on Human Rights (IACHR) which is, according to Article 33 lit. a, the second organ competent to oversee the fulfillment of the Convention and, like the Court, composed of seven members, the Court is not expressly listed as an organ of the OAS in terms of Article 53 OAS Charter. This is explained by the fact that the Commission already existed before the entry into force of the Convention, and that there was later apparently no momentum to change the OAS Charter again in order to incorporate the Court as well.

The OAS Charter, the founding instrument of the OAS, was signed in 1948.[21] The organization dates back to several International Conferences of American States, the first of which was held in 1889, which is why the OAS is also called the "world's oldest regional organization".[22] The purpose of the organization as set out in Article 1 of its Charter is "to achieve [among the member states] an order of peace and justice, to promote their solidarity, to strengthen their collaboration, and to defend their sovereignty, their territorial integrity, and their independence." Article 1 of the OAS Charter also explicitly recognizes that the organization is a regional agency in terms

20 Thomas Buergenthal, '*New Upload - Remembering the Early Years of the Inter-American Court of Human Rights*' (2005) 37 New York University Journal of International Law and Politics, 259, 261.

21 Charter of the Organization of American States (adopted 30 April 1948, entered into force 13 December 1951) 119 UNTS 3 (OAS Charter).

22 See e.g. the organization's self-description on its website: https://www.oas.org/en/about/who_we_are.asp.

of Chapter VIII of the UN Charter[23]. The General Secretariat of the OAS is based in Washington, D.C. At the time of writing, the organization itself still maintains to be composed of "[a]ll 35 independent states of the Americas", but in all likelihood this number will soon be reduced when Nicaragua's denunciation of the OAS Charter takes effect.[24]

23 Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945).

24 As to the number of member states and their representatives at the Permanent Mission of the OAS see the organization's website: https://www.oas.org/en/member_states/default.asp. The number of OAS member states has been subject of debates since the Maduro government announced Venezuela's withdrawal from the OAS in April 2017, and since in November 2021, also Nicaragua declared its denunciation of the OAS Charter. Article 143 OAS Charter states that a member state ceases to belong to the OAS two years after the denunciation and "after it has fulfilled the obligations arising from the [...] Charter". Despite the lapse of time, the OAS still counts Venezuela as a member state, because it recognized the re-entry declared by former interim president Juan Guaidó as valid. For more information on the case of Venezuela see *infra*: (n 725). Nicaragua already withdrew the credentials of its official representatives to the OAS, closed the OAS facilities in Managua, and the Permanent Council of the OAS bid farewell to Nicaragua on 8 November 2023. The denunciation is supposed to become finally effective on 19 November 2023. Once the withdrawal has become effective, the OAS will only have 34 member states, or only 33 if one considers the denunciation of Venezuela which had been declared by the Maduro government to be effective as well. For further information on the case of Nicaragua and on the interpretation of Article 143 OAS Charter see: *The obligations in matters of human rights of a state that has denounced the American Convention on Human Rights and the Charter of the Organization of American States (Interpretation and scope of Articles 1, 2, 27, 29, 30, 31, 32, 33 to 65 and 78 of the American Convention on Human Rights and 3(l), 17, 45, 53, 106 and 143 of the Charter of the Organization of American States)*, Advisory Opinion OC-26/20, Series A No. 26 (9 November 2020) paras 117–161; Alina M. Ripplinger and Florian Kriener, *'Nicaragua's OAS Raid and the Inter-American System'*, Verfassungsblog, 2 Mai 2022, available at: https://verfassungsblog.de/nicaraguas-oas-raid-and-the-inter-american-system/; Alina M. Ripplinger, *'Ante la salida de Nicaragua de la OEA'*, El País Agenda Pública, 1 December 2021, available at: https://agendapublica.elpais.com/noticia/13476/ante-salida-nicaragua-oea; *'Cuenta atras para la salida de Nicaragua de la OEA'*, Despacho 505, 23 September 2023, available at: https://www.despacho505.com/cuenta-atras-salida-de-nicaragua-oea-noviembre/; *'Gobierno de Nicargua ratifica su salida de la OEA y clausura la sede de la organicazión en el país'*, CNN, 24 April 2022, available at: https://cnnespanol.cnn.com/2022/04/24/gobierno-de-nicaragua-ratifica-su-salida-de-la-oea/; *'Nicargua llega a la mitad de su salida de la OEA: la ruta del autoaislamiento'*, Confidencial, 19 November 2022, available at: https://confidencial.digital/especiales/nicaragua-llega-a-la-mitad-de-su-salida-de-la-oea-la-ruta-del-autoaislamiento/; *'Nicaragua se retira formalmente de la OEA'*, Ciudadano.news, 8 November 2023, available at: https://ciudadano.news/internacionales/nicaragua-se-retira-formalmente-de-la-oea.

The IACHR was first created by Resolution VIII adopted by the Fifth Meeting of Consultation of Ministers of Foreign Affairs of the OAS, held 1959 in Santiago de Chile.[25] Later, through the Protocol of Buenos Aires that amended the OAS Charter, the status of the Commission was more formalized by incorporating it into the list of organs under the OAS Charter.[26] Since the entry into force of the Convention, the Commission has a twofold role, serving on the one hand as an OAS organ charged with fostering human rights in all OAS member states, and on the other hand acting as a competent organ under the Convention vis-à-vis the contracting states.[27]

With respect to the Court, the kind of role and status it should be assigned in relation to the OAS was debated. When the text of the ACHR was discussed at the 1969 Specialized Inter-American Conference, the Chilean representative in Commission II held that the Court was an "organism of the OAS".[28] Contrary to this, the Argentinian representative negated that the Court was an organ of the OAS, and held it to be an "organism of the Inter-American System".[29] That there was apparently resistance against recognizing the Court as an official OAS organ in terms of Article 53 OAS Charter is corroborated by the way the General Assembly of the OAS modified the wording of Article 1 of the Statute of the Court before it approved the text that had originally been drafted by the first judges of the Court.[30]

25 OAS, Final Act of the Fifth Meeting of Consultation of Ministers of Foreign Affairs (Santiago de Chile, 12–18 August 1959), Resolution VIII, part II.

26 Protocol of Amendment to the Charter of the Organization of American States "Protocol of Buenos Aires", 27 February 1967, entry into force 27 February 1970, OAS Treaty Series No. 1-A; see also: Héctor Faúndez Ledesma, *El Sistema Interamericano de Protección de los Derechos Humanos: Aspectos institucionales y procesales* (3rd edn. IIDH, 2004) pp. 49-50.

27 For further information on the function and work of the Commission see: Karsten Seifert, *Das interamerikanische System zum Schutz der Menschenrechte und seine Reformierung* (Peter Lang, 2008) p. 54ff.

28 OAS, Actas y Documentos, Conferencia Especializada Interamericana sobre Derechos Humanos, 7–22 November 1969, San José, Costa Rica, OEA/Ser.K/XVI/1.2, p. 359 (Mr. Magnet).

29 OAS, Actas y Documentos, Conferencia Especializada Interamericana sobre Derechos Humanos, 7–22 November 1969, San José, Costa Rica, OEA/Ser.K/XVI/1.2, p. 360 (Mr. Molina Salas).

30 On this see: Manuel E. Ventura Robles, 'El Proyecto de Estatuto de la Corte Interamericana de Derechos Humanos de 1979' in Daniel Zovatto (ed), *La Corte Interamericana de Derechos Humanos: Estudios y Documentos* (IIDD, 1985) p. 177–182.

Article 1 of the judges' draft had stated:

> *"The Inter-American Court of Human Rights is an autonomous judicial institution, a specialized organism of the Organization of American States (OAS) that exercises its functions in accordance with the provisions of the American Convention on Human Rights "Pact of San Jose, Costa Rica" and this Statute."*[31]

In contrast, the final Article 1 of the Statute as adopted by the General Assembly of the OAS reads:

> *"The Inter-American Court of Human Rights is an autonomous judicial institution whose purpose is the application and interpretation of the American Convention on Human Rights. The Court exercises its functions in accordance with the provisions of the aforementioned Convention and the present Statute."*[32]

The connection with the OAS was thus deleted from the text and the Court was not recognized as an organism of the OAS, but reduced to an institution established under the Convention. In terms of the OAS Charter, the Court can be qualified as an "other entity" which may, according to Article 53 OAS Charter be established when considered necessary.[33] Accordingly, the OAS refers to the Court as an "autonomous judicial body of the OAS whose purpose it is to apply and interpret the American Convention of Human Rights" and lists the Court on its website among the other "Autonomous and/or Decentralized Organs, Agencies, Entities and Dependencies."[34]

The former Judge Héctor Gros Espiell criticized the formulation "institution" instead of "organ" for being too political and pointed out that

31 Translation from Spanish by the author. As to the original Spanish text see: Manuel E. Ventura Robles, 'El Proyecto de Estatuto de la Corte Interamericana de Derechos Humanos de 1979' in Daniel Zovatto (ed), *La Corte Interamericana de Derechos Humanos: Estudios y Documentos* (IIDD, 1985) p. 180.

32 Statute of the IACtHR, adopted by the General Assembly of the OAS at its Ninth Regular Session held in La Paz Bolivia, October 1979 (Resolution No. 448). The whole text of the Court's Statute is available at: https://www.corteidh.or.cr/estatuto.cfm?lang=en.

33 Ventura Robles (n 30) p. 181.

34 See: http://www.oas.org/en/about/other_organs.asp; In the OAS Program-Budget the Court and other entities are however listed in the category of the Principal and Specialized Organs. See, OAS, Approved Program-Budget 2022, approved by the General Assembly 51 Regular Session in November 2021, AG/RES.2971 (LI-O/21) pp. 11, 47.

Article 92 of the UN Charter recognized the ICJ as the "principal judicial organ" and that neither the ECtHR was referred to as "institution" by the European Convention on Human Rights (ECHR)[35] and the ECtHR's Rules of Court.[36] Likewise, the former Secretary and later Judge Manuel Ventura Robles held that it was still indicated to incorporate the Court in the list of organs of the OAS as determined by Article 53 OAS Charter.[37] Similarly, the former member of the IACHR, Carlos Dunshee de Abranches, classified the Court as a specialized organ of the OAS in terms of Article 53 lit. h OAS Charter.[38]

However, former Judge Rodolfo Piza Escalante noted that an institution was, in contrast to an organ, vested with its own legal personality, and that this legal autonomy had allowed the Court to conclude agreements in its own name, for example with the Costa Rican government over the seat of the Court in San José.[39] Possibly, this greater independence made it also easier for the Court to take a different position than the OAS with regard to the recognition of the former interim President of Venezuela, Juan Guaidó.[40]

Despite the non-recognition as an official OAS organ under the Charter, the Court's ties with the OAS are various, and most authors agree that it is, in particular, the Court's advisory jurisdiction that leads to defining

35 Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 4 November 1950, entered into force 3 September 1951, since then several times amended) 213 UNTS 221 (ECHR).

36 Héctor Gros Espiell, ''El Procedimiento contencioso ante la Corte Interamericana de Derechos Humanos' in Daniel Zovatto (ed), *La Corte Intermamericana de Derechos Humanos: Estudios y Documentos* (IIDD, 1985) p. 68–69.

37 Ventura Robles (n 30) p. 180.

38 Carlos Dunshee de Abranches, *'The Inter-American Court of Human Rights'* (1980–1981) 30 The American University Law Review, 79, 85.

39 Rodolfo E. Piza Escalante, 'La Jurisdicción Contenciosa del tribunal Interamericano de Derechos Humanos' in Daniel Zovatto (ed), *La Corte Interamericana de Derechos Humanos: Estudios y Documentos* (IIDD, 1985) p. 168 fn. 13.

40 *'La OEA reconoce como president interino de Venezuela a Juan Guaidó'*, Perfil, 11 January 2019, available at: https://www.perfil.com/noticias/internacional/la-oea-reconoce-como-presidente-interino-de-venezuela-a-juan-guaido.phtml; Statement made by Alexei Julio Estrada, Legal Director of the Court, on the notification of the Chancellery of Venezuela in his presentation on the Legal Value and Impact of the Advisory Opinions available at: https://www.youtube.com/watch?v=kqEvKAEhB0E&t=2349s. On the controversial question of recognition in the case of Venezuela see *infra* (n 725).

the Court not only as an organ of the Convention, but also as a judicial institution of the OAS and the inter-American system in general.[41]

The Court itself held in its first advisory opinion that "the Court is a judicial institution of the inter-American system" and "that it is precisely its advisory jurisdiction which gives the Court a special place not only within the framework of the Convention but also within the system as a whole".[42] While the historic genesis of Article 64 and the broad advisory jurisdiction of the Court which addresses not only states parties to the Convention but all OAS member states shall be analyzed more in depth in the following chapters, it suffices at this point to shed some light on the other articles contained in the OAS Charter and the Convention which characterize and define the relationship between the Court and the Organization.

First, Articles 106 (2) and 145 OAS Charter which were inserted into the OAS Charter through the 1967 Protocol of Buenos Aires[43] both anticipated the adoption of the Convention and the creation of new organs beside the Commission. Although they do not expressly mention the establishment of a human rights court, it is clear that the drafters already intended the Commission to be complemented by another organ responsible for the protection of human rights.

41 Thomas Buergenthal, '*The Advisory Practice of the Inter-American Human Rights Court*' (1985) 79 American Journal of International Law, 1, 2; Piza Escalante (n 39) p. 157–158; Ventura Robles (n 30) p. 181; Gros Espiell, 'El Procedimiento contencioso ante la Corte Interamericana de Derechos Humanos' (n 36) p. 101–113; Guevara Palacios (n 12) p. 101–113.

42 *"Other treaties" subject to the consultative jurisdiction of the Court (Art. 64 American Convention on Human Rights)*, Advisory Opinion OC-1/82, Series A No. 1 (24 September 1982), para. 19.

43 When the OAS Charter was amended through the 1967 Protocol of Buenos Aires there existed already a draft for the later ACHR, but the Convention had not yet been adopted. The current Articles 106 and 145 were at first inserted as Articles 112 and 150. The numbering was changed through further amendments to the Charter. The articles state:
Article 106 (2) OAS Charter
"An inter-American convention on human rights shall determine the structure, competence, and procedure of this Commission, as well as those of ***other organs responsible for these matters****." [Emphasis added].*
Article 145 OAS Charter
"Until the inter-American convention on human rights, referred to in Chapter XV, enters into force, the present Inter-American Commission on Human Rights shall keep vigilance over the observance of human rights."

There are also several provisions in the ACHR that delineate the relationship between the Court and the OAS.[44] Pursuant to Articles 60 and 72, the OAS General Assembly has to approve the Court's Statute and its budget and under Article 73 it may, at the request of the Court, apply sanctions against members of the Court. Furthermore, Article 53 provides for the election of the judges by the states' parties to the Convention in the OAS General Assembly. Notably, Article 52 states that judges do not have to be nationals of a state party to the ACHR but that they may be nationals from any OAS member state.[45] According to Article 58, the states' parties to the Convention decide in the OAS General Assembly on the seat of the Court. Article 65 provides that also the Court's annual reports shall be submitted to the General Assembly. Lastly, Article 64, on which the following chapters will focus, allows all OAS member states, including those that are not party to the Convention, to request advisory opinions of the Court.

These provisions highlight that the Court is embedded in the inter-American human rights system and the structure of the OAS, irrespective of its non-recognition as an official organ under the Charter.

Compared to the Commission that is explicitly mentioned in the OAS Charter, this status was correctly described as "ambiguous".[46] However, contrary to what former Judge Héctor Gros Espiell's statement suggested, the ECtHR is also not mentioned in the Statute of the Council of Europe, and therefore not a statutory body, but formally only established under the ECHR and considered the Council of Europe's independent international judicial body.[47]

The decisive characteristic of the inter-American human rights system, and one of the main differences between it and the European system are rather the asymmetries in the inter-American human rights system which hold to this day.[48] While all members of the Council of Europe are required

44 On this see also Guevara Palacios (n 12) p. 105.

45 For example, Thomas Buergenthal was nominated by Costa Rica and served as US national as one of the first judges at the Court although the USA have not ratified the ACHR. See Buergenthal, *'New Upload - Remembering the Early Years of the Inter-American Court of Human Rights'* (n 20) p. 260.

46 Ventura Robles (n 30) p. 181.

47 *Cf.*: Council of Europe, Programme and Budget 2022–2025, p. 26.

48 On this see also: Sabrina Ragone, 'The Inter-American System of Human Rights: Essential Features' in Armin von Bogdandy *et al.* (eds), *Transformative Constitutionalism in Latin America: The Emergence of a New Ius Commune* (OUP, 2017) p. 283–285; Jo M. Pasqualucci, *The Practice and Procedure of the Inter-American Court of Human Rights* (2nd edn CUP, 2013) p. 26–27.

to ratify the ECHR, and while the ECtHR today has compulsory jurisdiction, only 23 of the 35[49] OAS member states are currently parties to the ACHR, and of these only 20 have also accepted the Court's contentious jurisdiction pursuant to Article 62.[50] Thus, what has been more decisive for the Court's functioning than the ambiguous formal status is the reluctant attitude of the OAS and its members towards the Court.

The difference between the role of the ICJ in the UN and the IACtHR in the OAS is evident. The former is according to Article 7 one of the principal organs of the UN with general jurisdiction which fits to the general field of activities and tasks of the UN. In contrast, the IACtHR's jurisdiction is limited to the area of human rights, while the protection and promotion of the latter is only one of many other tasks undertaken by the OAS.

The relationship of the ECtHR to the Council of Europe also appears to be more consolidated than the relationship between the IACtHR and the OAS. The protection of human rights and the rule of law was one of the main focuses of the Council of Europe right from the beginning and under its auspices effective human rights institutions were established relatively quickly.[51] In

49 On the disputed question of the number of OAS member states see *supra*: (n 24) and *infra*: (n 725).

50 Article 32 ECHR; Council of Europe, Honouring of commitments entered into by member states when joining the Council of Europe, Resolution 1031 (1994), para. 9; As to the ratification status of the ACHR see: http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights_sign.htm and the Annual Report 2022 of the Court, p. 14–15. While the OAS recognized the re-entry to the Convention declared by Juan Guaidó, the Court is of the opinion that Venezuela's denunciation of the ACHR took effect on 10 September 2013. While the position of the OAS is in this work regarded as authoritative as concerns the number of its own member states, when it comes to the number of contracting states of the ACHR, this works follows the opinion of the Court, and does not count Venezuela as 24th contracting state. The States that have recognized the Court's contentious jurisdiction are: Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Uruguay. The three states that are parties to the ACHR without having accepted the Court's contentious jurisdiction are: Dominica, Grenada and Jamaica. So far, Nicaragua has only denounced the OAS Charta but has not withdrawn from the ACHR so that it will continue to be bound by the ACHR even after the denunciation of the OAS Charta takes effect.

51 Already one year after the creation of the Council of Europe, the ECHR was adopted and nine more years later, in 1959, the ECtHR held its first session. By contrast, after the OAS Charter was adopted in 1948, it took until 1969 for the ACHR to be adopted and ten more years until the Court was effectively established in 1979 and even then eight more years until it could render its first judgement in 1987.

contrast, the OAS's main concern in the beginning was securing the sovereignty of its member states and the principle of non-intervention.[52] Even when the Commission was created, it was by most member states not envisaged to become an active body seeking to effectively protect human rights in the member states, but rather thought to be a "study group" that should do no more than study and promote human rights.[53]

To date, while the protection of human rights is by now considered one of the four main pillars of the OAS, and although the member states "have affirmed their unequivocal commitment to democracy and human rights", both the Commission and the Court have remained chronically underfunded.[54] This impedes in particular a more efficient processing of individual petitions. Except for the President, all the remaining six judges of the Court still only serve on a part-time basis.[55]

Despite these obstacles, both the Commission and the Court have developed their own strategies to maximize their impact in order to achieve the most effective human rights protection that is possible under the given circumstances.[56] In particular, the cooperation between the Court and the Commission has improved significantly. In the beginning, the relationship between the two bodies was unclear and characterized by rivalry and tensions.[57] It took until 1986, seven years after the Court's inauguration, for the

52 Soley Echeverría, *The Transformation of the Americas* (n 19) p. 69–76.

53 Soley Echeverría, *The Transformation of the Americas* (n 19) p. 69–77; José A. Cabranes, '*The Protection of Human Rights by the Organization of American States*' (1968) 62 (4) American Journal of International Law, 889, 894.

54 See the self-description on the OAS webpage: http://www.oas.org/en/about/what_we_do.asp; http://www.oas.org/en/topics/human_rights.asp; Pasqualucci, *The Practice and Procedure of the Inter-American Court of Human Rights* (n 48) p. 24; Ximena Soley Echeverría, 'The Transformative Dimension of Inter-American Jurisprudence' in Armin von Bogdandy *et al.* (eds), *Transformative Constitutionalism in Latin America: The Emergence of a New Ius Commune* (OUP, 2017) p. 350; Ragone (n 48) p. 299. In 2022 the Court received a total income of US$ 8,458,288.00 of which 59,40 % was provided by the OAS Regular Fund. In comparison, the ECtHR's total income in 2022 amounted to € 74,510,300. See: IACtHR, Annual Report 2022, p. 177; Council of Europe, Programme and Budget 2022–2025, p. 2 table 1.

55 Buergenthal, *'New Upload - Remembering the Early Years of the Inter-American Court of Human Rights'* (n 20) p. 269; Pasqualucci, *The Practice and Procedure of the Inter-American Court of Human Rights* (n 48) p. 25.

56 For an in-depth analysis of why and how the Commission and the Court boldly interpreted their mandates and sought to maximize their impact see: Soley Echeverría, *The Transformation of the Americas* (n 19).

57 Buergenthal, *'New Upload - Remembering the Early Years of the Inter-American Court of Human Rights'* (n 20) p. 269.

Commission to refer the first contentious case to the Court.[58] Yet, throughout the years, both the Commission and the Court have reformed their respective Rules of Procedure several times in order to strengthen the whole system and make it more efficient.[59] Since the 2001 amendments, the Commission's Rules of Procedure provide for an referral to the Court of all cases that are directed against a state that has recognized the Court's jurisdiction, if the Commission holds that the state has not complied with its recommendations, and "unless there is a reasoned decision by an absolute majority of the members of the Commission to the contrary".[60]

Today, the Court has decided about 500 contentious cases and usually holds about nine sessions per year, either at its seat in Costa Rica or in another state that has invited the Court.[61] Apart from its contentious and advisory function, the Court also issues provisional measures, monitors the compliance with its judgments and may, within 90 days from the notification of a judgment, be requested by one of the parties to the case to interpret the judgment.

Overall, it can be concluded that the Court is no official organ of the OAS, but an autonomous institution which is embedded in the OAS structure. The Court functions as the judicial institution in the two-tier inter-American human rights system. It sees itself as "the ultimate interpreter of the American Convention"[62], and why and how precisely its advisory function also connects the Court with the OAS member states that have not ratified the Convention will be shown in the following chapters.

58 On 24 April 1986 the IACHR referred the case of *Velásquez Rodríguez v. Honduras* to the Court which handed down its first judgment on preliminary objections in 1987: IACtHR, *Case of Velásquez Rodríguez v. Honduras*, Judgment of 26 June 1987 (Preliminary Objections), Series C No. 1.

59 Pasqualucci, *The Practice and Procedure of the Inter-American Court of Human Rights* (n 48) p. 18.

60 At first this was provided for in Article 44 (1), today it is contained in Article 45 (1) Rules of Procedure of the IACHR. On the changes introduced by the 2001 amendments to the Commission's Rules of Procedure see: Jo M. Pasqualucci, *The Practice and Procedure of the Inter-American Court of Human Rights* (1st edn CUP, 2003) pp. 18–22.

61 *Cf.*: IACtHR, Annual Report 2022, p. 26; All information on the pending cases and the next sessions of the Court are available on the Court's website: https://www.corteidh.or.cr/index.cfm?lang=en.

62 *Cf.*: IACtHR, *Case of Almonacid-Arellano et al v. Chile*, Judgment of 26 September 2006 (Preliminary Objections, Merits, Reparations and Costs), Series C No. 154, para. 124; OC-23/17 (n 4) para. 16.