

POLITICS AND LAW. NATIONAL JUDICIAL RESISTANCE BEFORE INTERNATIONAL COURTS?

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I. Framework

October 4, 2011 sealed the new destiny of domestic legal affairs. After the widespread discussions held on July 4, 5, 11, 12 and 14, 2011, the Plenum of the Supreme Court of Justice of the Nation decided to publish the 912/2010 resolution,¹ which had been already widely analyzed by the doctrine, the Judicial Power of the Federation's thesis, and several forums.

Thus began the "fad" (I can't call it any other way) of extreme national style "conventionality." Despite the fact that Mexico ratified the American Convention on Human Rights since February 3, 1981, and acknowledged its Court's jurisdiction on December 16, 1988, in the local and federal courts' practice and effective implementation this was neither known nor acknowledged. The federal Constitution

¹ By the way, there were some dissenting voices such as that of minister Margarita Beatriz Luna Ramos (who was not present at the meetings held on July 11 and 12, 2011, because she had been sent to represent the Supreme Court in an international event), and notably that of the nowadays retired minister, Sergio Salvador Aguirre Anguiano. The latter strongly criticized the **unconditional** subordination of the Supreme Court to the Inter-American Court, and during the debates he clearly identified it as an issue of sovereignty. He stressed the principle of international reciprocity, and cited Article 3 of the OAS Charter, according to which, the international order "is essentially constituted by the respect to the personality, **sovereignty** and independence of the States ..."

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acted as lord and master of jurisdictional decisions, and federal courts concentrated the analysis of constitutionality around acts of authority.²

The 912/2010 resolution changed everything, and not all of it was for good: for starters, a true frenzy took over some jurists, litigants and judges. A metalanguage, which still remains indistinct to those who currently use it, appeared. Here we have a beginners catalogue: “conventionality,” “unconventionality,” “conventionality control,” a ridiculous and even corny principle of “equality of arms” (*égalité des arms*, originating from the European Commission of Human Rights), parameter (by the way, now any comparison, measurement and reference is a “parameter”), “normative portion,” “constitutionality block,” “suspicious categories,” etc. Coincidentally, the list keeps going on.

For said conventionality implementation and subsequent “conventionality control,”³ it did not matter that their creator, the United States of America, in a paramount act of

² For some, this “conventional furor” was a product of the reform of June 10, 2011, especially, to Article 1 of the Constitution of the United Mexican States. But the truth is that the constitutional acceptance of international treaties was already provided for in Article 133 of the Basic Rule. Although, as background, it was timidly mentioned in Article 161, sections I and II, of the Constitution of 1824; although it was drafted, in the current terms, in Article 136 of the Constitution of 1857, by means of an almost literal translation of Article VII, paragraph 2, of the US Constitution. In turn, this provision was born in the New Jersey Plan or the Small State Plan, presented by William Paterson during the Philadelphia Constituent, 1787, conceived as a faculty of the Federation. See, Ruiz Torres, Humberto Enrique, *Curso general de amparo*, Mexico, Oxford University Press, 2007, p.33.

³ The now accepted expression “conventionality control” seems to have been coined by Sergio Garcia Ramirez in 2006, in his then capacity as President of the Inter-American Commission of Human Rights, when solving the *Almonacid Arellano et al v Chile* case (preliminary objections, background, reparations and costs). Paragraph 124 of such judgment recites: “The Court is aware that domestic judges and courts are subject to the rule of law and, therefore, are obliged to enforce the applicable provisions in effect in the law. But when a State has ratified an international treaty such as the American Convention, its judges, as part of the state apparatus, are also subject to it, which requires them to ensure that the effects of the provisions of the Convention are not

arrogance, did not subscribe the Convention it designed, prepared and propelled through Americans Richard D. Kearney and Robert J. Redington, in the same fashion as the President of that Court, Vice President and judge, Thomas Burgental. In other words, it was made in the American way, for American interests; but it was not made to be subjected to it. And in the same manner, as it is well known, the continent's second most powerful country, Canada, also reserved its right to not be "Inter-American."

Even more questionable than the fact that from the beginning both Americans and Canadians marked a dividing line, a real and non-virtual legal barrier to the aforementioned "Inter-American system," is that the Mexican Supreme Court of Justice of the Nation abdicated substantially to the constitutional court functions in the already mentioned 912/2010 resolution.

As it has already been widely explored, but not adequately criticized, in paragraphs 13-22 of this resolution, the Mexican Court not only acknowledged the full effectiveness of the contentious competence of the Inter-American Court of Human Rights, but it also made clear in all its terms, as *res judicata*, that the Mexican Supreme Court: "...does not have the jurisdiction to analyze, review, grade or decide if a judgment passed by the Inter-American Court... is correct or incorrect..." (Paragraph 17). On that October 4, 2011, the Mexican Supreme Court officially abdicated to being

undermined by the application of laws contrary to its object and purpose, and which from the beginning lack legal effects. In other words, the Judiciary Power **must exercise a sort of "conventionality control"** between the domestic legal provisions which apply in specific cases and the American Convention on Human Rights. In this task, the Judiciary Power must take into account not only the treaty, but also the interpretation thereof by the Inter-American Court, ultimate interpreter of the American Convention." [Boldface added by the author of this essay]. Another act of arrogance, although this one at the service of the United States of America, which would have nothing reprehensible, except because this country excluded itself from the so called "Inter-American system."

supreme. In terms of human rights (whatever this means),⁴ that day the Supreme Court stopped being "Supreme."

Now, it's important to make a clarification. The author of these lines does not stand for the isolation or failure to recognize an undeniable reality (it would be absurd): the reality of the international treaties and the contribution of some international courts, such as the European Court of Human Rights, the International Criminal Court or the International Court of Justice. What I notice is a lack of balance, restraint, prudence and even dignity. The Mexican Court (which, I repeat, is no longer supreme), should continue to exercise a fundamental role: to be a judge and not a mere passive recipient of the resolutions determined in the international seat of the court. To do so, would a reservation to the jurisdiction of the Inter-American Court be necessary? Yes, certainly, as well as a new resolution that voids the 912/2010 resolution and, furthermore, an amendment to the 5/2013 agreement of the Plenum of the "Supreme" Court of Justice, which second paragraph, section XV, granted powers to the Plenum of that body to receive the resolutions of the IACHR "in cases where the Mexican State is a party." So ... from being "Supreme," the Mexican Court assumed the unworthy role of becoming registry of a body that is far from "Inter-American."

A second clarification. There's no use in being naive. The political factor is present in every legal decision of great significance. In 2006, Felipe Calderon Hinojosa started a war (not in the tone of euphemism, a real guerrilla war against diverse criminal groups). The clear objective was to seek a common enemy to society and the public power to legitimize his power, after having reached the Executive in the midst of severe questioning. For this purpose, he used the Army and the Navy of Mexico, in

⁴ This issue deserves a separate debate. Beyond the official discourse and vision of some interest groups, so far human rights have failed to protect the citizens who obey the law. On the contrary, in a distorted perspective, in practice they have served to protect kidnappers (many, by the way), murderers and all kind of lawbreakers, where they are main characters that deserve the "compassionate" constitutional protection and the "conventional" protection of judges, facing an increasingly unprotected society. See "Estudios Jurídicos HERT" estudiosjuridicos-hert.com (official website of Humberto Enrique Ruiz Torres).

clear violation of Article 129 of the Federal Constitution.⁵ The official armed forces left their barracks to start a costly war, in every sense of the word, especially with regards to human lives, which became a big business for arms dealers. Therefore, a war lost in advance started, which in the official discourse was intended to be a "frontal war" against organized crime.⁶

Soon during the administration of Felipe Calderon, national and international organizations, as well as the press, denounced the arrest, torture and killing of civilians not involved in this "war." Homicides were referred to with another insulting euphemism: slaughters. Was this war, like in Colombia, a product of an impulsive decision of the United States of America, a part of a political strategy to blame only the initial provider and not their own agents and their large mass of consumers? It is difficult to have a serious answer on hand, as it is also hard to think that a war of this nature has begun on the southern border of the most powerful country in the world without it having had any interference in such decision.

But still, the damage to society was done.⁷ It was necessary, then, to make responsible decisions; to establish substantial State policies to face such serious

⁵ Article 129 of the United Mexican States Constitution: "In peacetime, no military authority may exercise functions other than those directly connected to military discipline..." Perhaps it is the most neglected article since the beginning of this absurd war.

⁶As a simple reference, it is clear that in the main narcotics or psychotropic consuming countries like the United States, Canada, Germany, Spain or France, the "war against drugs" is not waged militarily. They have established **financial intelligence** systems to detect and monitor illicit resources and thereby attack the backbone of the business: the free collection and management of financial resources. This action, along with institutions to combat corruption better. Although with a hint of irony, it can be argued, for instance, that no American soldier has left his positions in Afghanistan to fight, street by street, "organized crime" in New York, Miami or San Francisco. Why? I think the answer is pretty obvious.

⁷ The US news network CNN recorded, between 2006 and 2012, 48,000 deaths and a cost of 39 billion dollars. In just the first three quarters of 2011, the shameful sum of

situation. Unfortunately, it was not the case. Instead of rectifying a huge chain of errors, the option (did we even get to choose?) was to claim for a misleading protection of human rights (from which, by the way, none of the innocent civilian victims of this war have been benefited) through absolute and unconditional submission to the Inter-American Court of Human Rights.

May others, outside the country, be the ones to judge us, unrestrictedly. No further comment...

II. A great source of resistance

The American case represents, due to its self-exclusion of the "Inter-American system" and its international influence, the best example to establish the correlation between the international treaties, the courts that emanate from it, and the compliance with international rulings in the so-called "conventionality control."

It is idle to cite Article VI, paragraph 2, of the Constitution of the United States of America, since Article 133 of the corresponding Mexican Constitution is merely an almost literal transcription of it. It's important to remember that, in its relevant part, that paragraph states that "all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land".⁸ At first sight, the idea that the agreements executed by the United States of America benefit from the

13,000 deaths. A figure that, by the way, does not include the number of missing people: edition.cnn.com.

Besides, in real life, this failed war has only served to increase the presence and power of criminal organizations in the country. In many places, including the capital city, they are at executive, legislative and even judiciary level. No, it is not an exaggeration; it is easy to demonstrate empirically.

⁸ Of course, in the first place it sought its recognition from the international community and its initial geographic definition. And yet, at that historical moment, the world was awaiting the Peace Treaty of Versailles, which was finally held in 1783 between Great Britain, the United States, France and Spain, in which the independence of the United States of America was recognized. Back then treaties suited the US!

special preeminence of constitutional supremacy seems to prevail. But that's not the case.

In that country, only bilaterally or multilaterally subscribed agreements are considered international treaties, under the terms of Article II of its supreme law: "The Executive Power ... (2.2.) Shall Have the Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two Thirds of the Senators present concur..." Then, are "treaties" binding in the Supreme Court of the United States of America and in supreme courts of the States of the Union? The categorical answer is ... no, as it will be pointed out later.

For now, let's keep in mind that, ultimately, compliance or non-compliance with international treaties and their consequences is merely a matter of power, covered by many layers of interpretations, product of interests to be protected or not, including the principle of national sovereignty, which many assumed had already been overcome, or, quite simply, to impose a series of values to the rest of the world, but not to abide by them. From the list of relevant treaties signed but not ratified, we can easily deduce that the United States of America, for almost fifty years, has not entered into any international treaty under the rules of Articles II and III of the Constitution. Among them, in a very relevant way, as it was mentioned before, besides not being part of the "Inter-American system", the Statute of the International Court of Justice (signed in 1946, but voided in 1985), the Rome Statute of the International Criminal Court (signed in 2000, but pushed aside in 2002), the Vienna Convention on the Law of Treaties (signed in 1970, but never ratified).⁹

⁹ Similarly, among others: The Convention on the Elimination of All Forms of Discrimination Against Women, signed in 1980, but not ratified; the famous Kyoto Protocol, neither signed nor ratified; the Convention on the Rights of the Child signed in 1995, but not ratified; the International Covenant on Economic, Social and Cultural Rights, signed in 1997, but not ratified, and so on. For further details see Hervella, Beatriz, "Tratados internacionales hasta la fecha no firmados o ratificados por los Estados Unidos," prensapcv.wordpress.com

But let's go back to our starting point and assume that the United States has signed and ratified an international treaty under the rules of Articles II and III of the Federal Constitution. However, as we mentioned above, that does not guarantee its enforcement. For one simple reason. There are ideologies in the shape of doctrines. You bet! The US Supreme Court came up with, regarding the very much respected international treaties, the doctrine of self-executing and non-self-executing. That means something like some international treaties are self-executing and others are not. And this doctrine was born very early: in 1829, with the resolution of the *Foster & Eleam v. Neilson* case, by the famous chief justice John Marshall.

The issue arose from a territorial dispute between the two aforementioned parties and the second one of them. It turns out that on October 1, 1800, Spain held the Treaty of San Ildefonso by which France ceded the territory of Louisiana. On April 30, 1803, France in turn held the Treaty of Paris with the United States of America, by which the latter "acquired" (unnecessary euphemism) the territory between Iberville and Perdido. Spain argued that the transfer to France (in 1800) included only the territory known as Louisiana, which comprised the New Orleans area and the area originally transferred to France, west of the Mississippi.

The thing is that the land claimed by Foster and Eleam (acquired by them, in the name of Spain, before holding the treaty of San Ildefonso) was in the disputed territory. The issue focused on establishing who owed the lands between Iberville and Perdido before holding the aforementioned treaty. Being, as they were already, in possession of the United States of America, could it be established that Spain remained the owner, fundamental aspect which should be defined by the US Supreme Court? The answer is pretty obvious.

Although one of the stipulations of the Treaty of San Ildefonso allowed the claimants to keep the land transferred by Spain, the US Supreme Court concluded that such a provision was non-self-executing. Why? Here's the magic: the Court noted that the treaty was written in Spanish and that the English version of the provision in dispute concerning the granting of land would have to be "ratified and confirmed," and then concluded:

“(A treaty) to be regarded in courts of justice as equivalent to an act of the legislature, whenever it operates of itself without the aid of any legislative provision. But when the terms of the stipulation import a contract, when either of the parties engages to perform a particular act, the treaty addresses itself to the political, not the judicial department; and the legislature must execute the contract before it can become a rule for the Court.”¹⁰

Settled issue. Thus, a doctrine was born for posterity. But perhaps most relevant at the present time is the fact that this doctrine has been used in a variety of different cases and with criteria that lacks of consistency.¹¹ Experts on American law have referred to this doctrine as "highly complex" and "perhaps one of the most confusing in the law of treaties." But no, it is not confusing. It is flexible and adaptable to the taste of internal compliance

¹⁰ With due proportion, this case is *the Marbury v. Madison* of international treaties (and conventionality) concluded by the United States of America. The full version of the judgment can be consulted in *Justia. U.S Law*: supreme.justia.com

See also, McGuinness, Margaret E., "Medellin v. Texas, U.S. Supreme Court review on state courts' obligation to respect an International Court of Justice judgment and on the president's power to enforce it" in *American Journal of International Law*, vol. 102, no. 3 Washington D.C., 2008, pp. 622-627.

Also, Curtis A. Bradley, *International Law in the U.S. Legal System*, New York, Oxford University Press, 2015 (2nd ed.), P 305.

¹¹ By the way, in a subsequent judgment (for the *States v. Percheman* case, 1833), the Supreme Court itself changed the criteria that it had held in the *Foster* case. After reviewing the English version of the provision, it found that the simple English translation led to the conclusion that the provision was self-executing. However, unlike the disputed territories in the *Foster* case, it was determined that the land that was now matter of controversy, in 1819 was unquestionably Spanish property, so there was no matter of conflict. Vine. Curtis A. op. cit. *supra* note 12.

or non-compliance with treaties already held by the United States of America.

But, as it was already mentioned, the most powerful country on earth no longer holds international treaties, nor has a need for them. Where's the internal conventionality control? For some writers of American law, there has been a constant use of international treaties to settle disputes of some significance. However, in practice, I have observed the constant and repeated preeminence of the US domestic law and its rulings as means of settling disputes, which are completely alien to international law. I have repeatedly wondered: Why use an international law or "conventionality control" like the one they imposed on Mexico, if they are the judges of the world?

They don't need international treaties, but they do have the ability and power to impose them on others. It is regrettable that those "others" do not have the strength and dignity to oppose a legal colonialism that can be insulting, but is still celebrated as an achievement. I repeat, I have nothing against international treaties or the so-called "conventionality control" by national judges, except that this implies a decision that involves national sovereignty, in a world that is increasingly closer to the revival of nationalisms than the professed "global village".¹² It is a decision that must be made with caution, placing national interests first, rather than foreign ones.

As the United States of America did in the controversial *Medellín v. Texas* case, Jose Ernesto Medellin, 18 year-old Mexican citizen, was indicted on charges of rape and murder. After his arrest, he was subject to the Miranda

¹² United States of America, with its Trump and Hilary Clinton styled models. UK, with "Brexit." Germany, with a dangerous return to nationalism: Adolf Hitler's *Mein Kampf*, written in 1925, which reprinting had been banned for 70 years, became a best-seller in January 2016, as reported by the weekly newspaper *Der Spiegel*.

Warning; but he was not informed that he was entitled to consular assistance under Article 36, subsection c) of the Vienna Convention on Consular Relations. In 1997, Medellín was sentenced to death and executed on August 5, 2008. The Supreme Court of the United States of America argued that the decision of the International Court of Justice in the *Avena* case (*Avena v. US*, 2004 ICJ)¹³ was not automatically compulsory as a domestic law of the United States and that the President, **in the absence of a law emanating from Congress**, had no authority to oblige the States of the American federation. That is to say, it was treated as a non-self-executing case.

After all, America, leading economic power on the planet, does not need international treaties or conventionality control. However, it does need agreements with other countries, which is why it has executive agreements and congressional-executive-agreements, which are not strictly treaties, and therefore are more malleable and manageable for America.

By the way, the NAFTA was not a treaty, but a congressional-executive-agreement.¹⁴

¹³ Judgment given by the International Court of Justice on March 3, 2004.

¹⁴ Congressional-executive-agreements were designed as an alternative for the President of the United States of America to acquire international commitments for his country without the approval of two thirds of the Senate, as required by the Constitution. Therefore, these commitments cannot be strictly considered as international treaties and subsequently they are not part of the supreme law of the land, under the Supremacy Clause under Article VI, paragraph 2, of the American Constitution. They are, after all, political acts, rather than legal.

III. Other resistances

The reception – whether automatic or not – of the jurisdictional decisions issued by international courts, as it is with any submission to the rules of international law, necessarily implies the impairment of any country's political autonomy.

Therefore, the reception of an international judgment means, obviously, its legal analysis and, in contrast, not to have as true and perfect, unconditionally, the interpretation made by the international body. Nothing and nobody can ensure and guarantee that such international body, in an exercise of prudence, shall subordinate the "conventional interpretation" to the rules of the national Constitution, as virtuous as it may be. And much less "ensure" the national, legitimate and valid interests of the country prosecuted.

It is clear that the automatic reception of international judicial decisions unequivocally affects the ability of an ultimate national decision. That is why, in protection of the domestic political autonomy, few international judicial decisions are subject to an unconditional reception, strictly speaking, by the national courts.¹⁵ The limits of a thoughtless compliance with international rulings allow political authorities to have a sufficient margin of discretionary nature for the efficient exercise of their powers and restrict the possibility that international courts meddle in matters where they do not have jurisdiction.

The countries conforming the strongly questioned European Union have given a good lesson on prudence in the matter. In particular, Germany, Poland and the Netherlands, whose national courts reserve the right to reject – yes, to reject! – the normative interpretation performed, by means of a sentence, by the Court of Justice of

¹⁵ See Bedjauoui, Mohammed, "The Reception by National Courts of Decisions of International Tribunals" in *Journal of International Politics*, vol. 28, no. 1-2, New York University, 1995-1996, pp. 45-64.

the European Union,¹⁶ even if it means violating the provisions of a national Constitution, or results incompatible with the minimum guarantees of the Constitution. In addition, the German Constitutional Court has maintained its prerogative to reject – yes, again to reject! – the decisions of the Court of Justice of the European Union, if the protection of human rights of the latter, is insufficient or defective, and when bodies of the Union act beyond their jurisdiction.¹⁷

Regarding the European Court of Human Rights, its position is even more radical:

"... The European doctrine has argued that the judgments of the European Court have a *declaratory* character, even though this term does not match the one that was established by the general science of procedural law, in the sense that, since those judgments passed domestically are intended only to clarify (*sic.*) the existence of a right, but do not impose a particular compliance to the parties, therefore those judgments lack *enforceability*. In this sense, we can say that the decisions of the European Court are imperative, i.e. compulsory for the applicable State, but lack mandatory character, since they must be completed at a national level."¹⁸

In the particular case of Germany, its Constitutional Court stated that the European Union law, exceeding its powers, is not mandatory for Germany. In the *Görgülü*

¹⁶ Court created in 1952 as Court of the European Coal and Steel Community. Later in 1957, it became the Court of Justice of the European Communities. In 2009, it acquired its current name.

¹⁷ Sloss, David, *Treaty Enforcement in Domestic Courts: A Comparative Analysis*, January 2009, at: http://law.scu.edu/wp-content/uploads/Introduction20Jan_202009.pdf, p. 12.

¹⁸ Fix-Zamudio, Héctor, “La necesidad de expedir leyes nacionales en el ámbito latinoamericano para regular la ejecución de las resoluciones de organismos internacionales” (“The need to issue national laws in the Latin American context to regulate the implementation of the resolutions of international organizations”), in *Impacto de las Sentencias de la Corte Interamericana de Derechos Humanos de Derechos Humanos (sic)*, Tirant lo Blanch, Mexico, 2013, pp. 252 and 253.

decision, the German Court complied with the decision of the ECHR, but refused its automatic enforcement. Also, in the *Waldschlösschen* case, the Constitutional Court decided that a treaty held by the Executive Power, without the approval of the Parliament (*Bundestag*), is not mandatory. This implies that the German Constitutional Court has assumed, unlike in the past, an active protective role of the national headquarters to decide which international rulings may go beyond its border and be part of its legal system.

Consequently, the German Constitutional Court has made it clear that its role is not limited to a mere endorsement of the decisions of international courts in the application of international treaties.¹⁹

In the case of Great Britain, and similarly to the United States, treaties are not applicable in the same way as national law in domestic courts. International treaties are held by the Crown, but the issue of laws is carried on by the Parliament. If the treaty establishes that individuals should be treated in a certain way or that their rights and obligations are to be subject to certain rules, then the rules of the treaty must be the responsibility of the Parliament and have to be made positive by it: only then shall they become law. Therefore, the law applied by the domestic courts is the rule, and not the treaty itself. In this context, international treaties entered into by Great Britain are non-self-executing.²⁰

We must add to this the principle of parliamentary sovereignty of Great Britain, under which only the Parliament has the authority to issue, abrogate or repeal the national legal regime. And no person or organization can be above the parliamentary legislative function; this includes, of course, international standards.²¹

¹⁹ Sloss, David, *The Role of Domestic Courts in Treaty Enforcement: A comparative study*, Cambridge University Press, Santa Clara University School of Law, New York, 2009, pp. 212-213.

²⁰ Cfr. Vázquez, Carlos Manuel, "The Four Doctrines of Self-Executing Treaties", paper no. 12-101, at <http://scholarship.law.georgetown.edu/facpub/1016>, Georgetown University Law Center, 1995, p. 697.

²¹ Parliamentary Sovereignty in <http://www.parliament.uk/about/how/sovereignty/>

In this context, the *Blackburn v. Attorney-General* case (1971), in which the income from the UK was disputed to the European Union, is very instructive. It was argued that the attribution to hold treaties is the responsibility of the Crown acting under the advice of its ministers, and its actions cannot be challenged before the courts. However, the Parliament is not bound and it can even fail to acknowledge an international treaty later on, by virtue of the parliamentary sovereignty.²²

On the other hand, in the *Socobelge v. Greece* case, the *Société Commerciale de Belgique* sought, in a national court, the compliance of a judgment pronounced by the International Court of Justice, which ordered to freeze Greek assets deposited in a Belgian bank. The Belgian court refused to recognize such ruling because of the absence of a specific authority with necessary powers to execute that decision.²³

Also, in Europe, the "margin of appreciation" doctrine was developed by the ECHR. By virtue of which, national authorities are given room for maneuver to overcome conflicts in the implementation of the European Convention on Human Rights, taking into account the national law and particular factors of the contracting countries of such Convention. Under this doctrine, the *Klass and others v. Germany* case, *judgment of 6 September 1978, A 28* case is instructive. The lawsuit focused on the fact that the German legislation violated Articles 6, 8 and 13 of the Convention, which established the possibility of intervening private correspondence and telecommunications. The ECHR argued that these provisions were in violation of the respect to private life in terms of Article 8 and that such interference was permissible under the Convention only if it was strictly necessary to safeguard democratic institutions. In an almost predictable twist, the ECHR subsequently revised its judgment and decided that the German legislation did not violate the Convention, which was intended to protect

²² <http://ebooks.cambridge.org/clr/case.jsf?bid=CBO9781316151792&id=CBO9781316151792A051>

²³ Bedjauoui, Mohammed, op. cit., p. 48.

national security. Ultimately, national authority efficiently used its "margin of appreciation;" the ECHR agreed with it. Everyone was satisfied.²⁴

On the other side, Manuel Fernando Quinche Ramirez stands against the adaptation, in Latin America, of the "margin of national appreciation".²⁵ He considers that the States could avoid the measures imposed by international rulings. However, the margin of appreciation represents a space for States to verify their constitutionality, conventionality and legality, both substantive and procedural, of the judgments issued in international headquarters, avoiding thereby the arbitrariness that no judge is exempt from. Impartiality cannot be presumed or taken for granted in advance; case by case should be recorded, sentence by sentence.

Hector Fix-Zamudio is in favor of States, particularly Latin American States, issuing provisions to comply with the judgments of international courts, particularly those of the Inter-American Court of Human Rights. Furthermore, he argues that the IACHR sentences should be considered as mandatory, but not as executive, and since compliance thereof is up to the countries involved, there is no body that effectively monitors their compliance.²⁶ This is the most significant issue. Any law practitioner knows that having a favorable sentence is, in most cases, the same as nothing. One of the greatest problems is its execution. It is true what Fix-Zamudio argues. But ... before thinking about the execution of the sentence, one must consider the sentence itself. International headquarters is not a synonym of infallibility, nor of immanent justice.

²⁴ Greer, Steven, *The Margin of Appreciation: Interpretation and discretion under the European Convention on Human Rights*, University of Bristol, United Kingdom, 2000, pp. 5 and 36.

²⁵ Quinche Ramírez, Manuel Fernando, *El Control de Convencionalidad (Conventionality Control)*, Derecho Procesal de los Derechos Humanos Collection, Ubijus, Vol. 11, p. 272.

²⁶ Fix-Zamudio, Héctor, *op. cit.*, pp. 253-254.

IV. An endless argument ...

Up to this date, Mexico has ratified over 1,400 international treaties on a variety of matters with scattered contents. Opposite to what is usually said, such treaties are far from being an organized and systematic set of provisions. On the contrary, when reviewed carefully, under the eyes of a critical analyst, they look like an amorphous and imperfect mass, which additionally, due to their generality, admit the most diverse interpretations.

Hence, their application by international tribunals can often be subjective and even arbitrary. Not to mention that, as stated above, every sentence is a product not only of the circumstances that originated it, but also of the values, beliefs and, of course, interests of the judge on duty.

The reception of international sentences for application in national headquarters is not a purely mechanical issue, as intended (sorry, I meant: as settled) by the Mexican Supreme Court. Our legal system, without denying efficacy of international commitments contracted, cannot and should not be a mere passive spectator of what is resolved outside. It is undoubtedly an issue of sovereignty, which cannot be waived. It is a practical question that leads to questioning the whole process followed in international headquarters. Any litigant with minimal experience knows and understands this. I do not know why the Supreme Court doesn't.

Furthermore, various countries, around which the Mexican legal system orbits, especially the powerful ones, have generated various means of resistance to an absolute submission of the national headquarters before the international ones for the protection of domestic interests as opposed to external interests. There is a clear resistance, a message of effective internal political-legal control, that there is a principle of authority and a sovereign exercise thereof. To huddle under what others have decided for us, without any kind of legal analysis, is an unnecessary abdication, which has not produced any beneficial results in practice.

Almost five years have passed since the 912/2010 resolution of the Plenum of the Supreme Court. Nothing has changed for good. Nothing has transformed national life nor its institutions. Nothing and nobody, except criminality, has benefited. And yet, voices to challenge these results do not show up anywhere.

It's time to start a serious discussion on this subject. It's a priority for the social, legal and political life of the Mexican State. It is necessary to start now, even though the discussion might go on, as on many other issues, ad infinitum...