

MECHANISMS TO MEASURE THE EFFECTIVENESS OF INTERNATIONAL TRIBUNALS AND ITS RELATIONSHIP WITH JUDGEMENT COMPLIANCE

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RESUMEN

In the last 80 years, international tribunals have proliferated to address various disputes, ranging from territorial to commercial matters. This development has sparked a debate between two opposing tendencies: one advocating for the strengthening of international tribunals and the other seeking to undermine their influence. Both views are based on the understanding that these tribunals are unlikely to disappear and can play significant roles in international affairs, especially in the context of human rights.

This paper presents a critical analysis of the effectiveness of international human rights tribunals, focusing particularly on the compliance with their judgments.

It argues that effectiveness is the essential criterion for evaluating the performance of these institutions, as their true impact can only be measured through the extent to which their decisions are implemented by State parties. The analysis emphasizes the need for a compliance-based approach to assess the performance of tribunals, using the Inter-American Human Rights Court as a central case study. This approach sheds light on the tension between idealism and reality in ensuring compliance with international human rights rulings.

ABSTRACT

En los últimos 80 años, los tribunales internacionales se han proliferado para abordar diversas disputas, que van desde asuntos territoriales hasta comerciales. Este desarrollo ha generado un debate entre dos tendencias opuestas: una que aboga por el fortalecimiento de los tribunales internacionales y otra que busca socavar su influencia. Ambas perspectivas se basan en la premisa de que estos tribunales son poco probables de desaparecer y pueden jugar un papel significativo en los asuntos internacionales. Este artículo presenta un análisis crítico de la efectividad de los tribunales internacionales de derechos humanos, centrándose particularmente en el cumplimiento de sus sentencias. Se argumenta que la efectividad es el criterio esencial para evaluar el desempeño de estas instituciones, ya que su verdadero impacto solo puede medirse a través del grado en que sus decisiones son implementadas por los Estados parte. Destaca la necesidad de un enfoque basado en el cumplimiento para evaluar el desempeño de los tribunales, utilizando la Corte IDH como caso central. Este enfoque pone de relieve la tensión entre el idealismo y la realidad en cuanto a garantizar el cumplimiento de las sentencias en materia de derechos humanos.

PALABRAS CLAVE: tribunales internacionales; acercamiento de cumplimiento de los objetivos; eficacia; Corte Interamericana de Derechos Humanos

KEYWORDS: International tribunals; compliance-based approach; effectiveness; Inter-American Court of Human Rights

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INTRODUCTION

The international system created to solve international controversies is a mechanism to maintain peace and friendly relations between States. During the second half of the XX century, after the traumatic events of Second World War, the international community faced a new phenomenon: the proliferation of international tribunals in different regional, subregional and universal scenarios. This occurrence was due to several factor such as the expansion of the material regulation scope of Public International Law; to the increased number of economical regional integration agreements; amongst others. (Alter, 2008, pp. 33–34; Guzmán, 2008, p. 173; Jodoin, 2010, p. 1; Linton & Kebede Tiba, 2009, pp. 407–408; Romano, 1999, pp. 728–736)

Authors such as Shany assert that there has been a change in the balance of international power that grants more weight to the judicial Branch in comparison to “legislative” and “executive” branches of the international community. (Shany, 2016, p. 1) Linton and Kebede Tiba maintain that we can identify a system (of jurisdictional nature) for the peaceful settlement of international disputes that has reached a high degree of maturity. (Linton & Kebede Tiba, 2009, p. 411) This system is in the hands of international tribunals and, according to Sorensen, trusting their resolutions to determine the applicable law has become important and common in the international relations system. (Sorensen, 2011, p. 178)

The consolidation of international tribunals can be analyzed from two different perspectives. The first one has a formal and juridical approach. Posner and Yoo argue that the tribunals are growing more and more powerful keeping in mind that accepting their jurisdiction is becoming more and more mandatory. This argument doesn’t seem to hold regarding international human rights tribunals except for the European Court of Human Rights (“ECtHR”) ¹. For the African Court on Human and Peoples’ Rights (“ACtHPR”) and the Inter-American Court of Human Rights (“ICtHR”) its jurisdiction is based on the State’s volition.

¹ The ECtHR, after the entry into force of Additional Protocol No. 11, became the only international tribunal with a mandatory jurisdiction to all member States of the Council of Europe.

The second approach justifies this consolidation of international tribunals on the expansion of the material regulation scope of Public International Law. This phenomenon brings a fragmentation which is reflected on the rise of different tribunals, each with its own specific set of rules and tasks. This shows a lack of an understanding to create a single centralized justice administration system. (Posner & Yoo, 2005, p. 11)

Tomuschat explains that “(i)nternational courts and tribunals (“ICT”) are permanent judicial bodies made up of independent judges who are entrusted with adjudicating international disputes on the basis of international law according to a pre-determined set of rules of procedure and rendering decisions which are binding on the parties (Judicial Settlement of International Disputes).” (Alter, 2008, p. 34; Sorensen, 2011; Tomuschat, 2008, p. 179; Voeten, 2012, p. 422)

Romano adds two additional criteria: that the ICT was not created to address a particular issue (no more ad hoc tribunals), and that it solves disputes where at least one of the parties is a State. (Romano, 1999, p. 715) Guzmán, on the other hand, tries to relate international tribunals to national ones; (Guzmán, 2008, p. 185) However this obviates some substantial differences between national and international courts.

As has been said before, these international courts and tribunals (“ICT”) solve international disputes applying a wide range of Public International Law rules regarding topics as taxes, boundaries, human rights, amongst others. They not only interpret the existing rules but also developing their scope through their judgements. Having this in mind, the second criteria added by Romano seems to fade in a context where atypical subjects on International Law acquire rights and obligations, and, in many cases, have locus standi in front of international bodies (capacity to appear before the court).

In this scenario where ICT far from disappearing tend to become stronger, it is necessary to analyze their work to determine their effectiveness and the benefits of maintaining organs that, in many cases, imply high costs for the international community. Usually, research on ICT are centered on their creation and design (from a historical and procedural perspective) or on their working and relationship with other bodies from a judicial independence perspective (other ICT that solve controversies on the same area or

with the same parties) (Jodoin, 2010, pp. 1–2).

This paper is focused on the effectiveness of ICT and the relation with compliance with its judgements. I maintain that effectiveness is essential to measure its performance regarding States and those who use it. This has already been addressed by International Relations scientists. But legal doctrine has some methodological limitations because there is no clear definition of effectiveness, in many cases, confusing it with related but different concepts (Pellet, 2009; Shany, 2016).

WHAT IS EFFECTIVENESS?

Nowadays, there are two major approaches from different theoretical frameworks that, we consider, don't allow a global analysis on the effectiveness of international tribunals. On one side, there are those authors who analyze them through the relation between ICT and some of the authorized actors, such as States, persons, and companies. On the other hand, other authors identify the effectiveness of ICT as the compliance with their judgements. On the first group we can find Posner and Yoo who emphasize the use that the States make of those tribunals and their structure emphasizing judicial independence (they even propose a series of mechanisms to measure that independence), as central to assess the effectiveness of ICT. They argue that States create these entities because it is in their interest to have somebody to deliver a somewhat neutral analysis on the facts and the applicable law. Even if the international tribunal renders a “negative” decision, the benefits of having independent mechanisms to solve international controversies will still be greater than the losses for the “loosing” State. The authors conclude that non-independent tribunals, those controlled by the States, would be effective because they will be used more because they will render more favorable judgements and will not risk international cooperation. (Posner & Yoo, 2005, pp. 15–18, 21, 26–27)

On the other hand, Helfer and Slaughter criticize this argument mentioning some methodological problems in the definition of both the independent and dependent variables of their study. They conclude that independent tribunals (outside the control of

the State of on which they exert limited control) will be effective, admitting that this is an “elusive” concept that cannot be measured simply through judicial independence as argued by Posner and Yoo. (Helfer & Slaughter, 2005)

Regarding the effectiveness of international human rights tribunals, it is necessary to make two initial remarks. The first one is related to the limited juridical personality (recognition as a person before the law) of the human being in an international level and the restricted access to these tribunals. Only in the European Human Rights System, persons can appear directly before the ECtHR. In the African System, a person can do it only if the State has accepted that possibility according to article 34(6) of the Additional Protocol 1 to the African Charter. In the Interamerican System, a person cannot present a case before the IACtHR. Having in mind these limitations, regarding the effectiveness of international human rights tribunals as identical to the use the victims make of them presents a very narrow definition of effectiveness.

The second initial remark is related to the first one and addresses one of the consequences of using the narrow definition mentioned above. By employing “use” as a synonym of “effectiveness”, multiple elements are left behind. Amongst them is the fact that not all the different forums for human rights protection will issue a decision similar in nature (i.e. mandatory or not); the lack of knowledge of all the available forums by victims; and the requisite of exhaustion on local remedies. Guzmán seems to share this opinion when affirming that usage rates are not an indicator to measure the tribunal’s effectiveness nor the impact it may have on the conduct of the State. (Guzmán, 2008, p. 187)

Helfer, Slaughter and Pellet (Pellet, 2009) seem to navigate between the first group of authors and one that regard the compliance with treaties or judgements issued by a tribunal as identical to its effectiveness. So, when defining effectiveness, they refer to the tribunal’s capacity to force, directly or indirectly (through external pressure), to the “losing” State to comply with its decision through the modification of its conduct. (Helfer & Slaughter, 2005, pp. 917–919) It seems that they favor an equivalence (or a very close relation at least) between compliance and the effectiveness of an international tribunal.

Other authors such as Jacobson, Brown Weiss, Rodríguez Rescia, Baillet and

Hillebrecht base their arguments on a definition of effectiveness that implies a very close relation to compliance with its decisions. (Baillet, 2013; Hillebrecht, 2009; Jacobson & Brown Weiss, 2000; Rodríguez Rescia, 1997) For Hillebrecht, compliance is essential for legitimacy, the moral authority and effectiveness of international tribunals. She asserts that a tribunal whose decisions are not complied with can't be considered as legitimate and, in the long run, won't be effective. On the other hand, Jacobson and Brown Weiss, in a study of compliance with environmental international agreements, almost use effectiveness and compliance as synonyms, without suggesting an independent definition of the first one but defining it in relation to compliance of the obligations stated on the primary norma (whether from a treaty of international customary law). However, as we will later see, the effectiveness of the international tribunal can't solely be understood as compliance with its judgements. This idea seems to be shared by Jacoby and Hawkins (Hawkins & Jacoby, 2010, pp. 39–41), Guzmán (Guzmán, 2008, p. 187) (parcially), Alter (Alter, 2008, p. 52), and Shany (Shany, 2004, 2016).

On the other hand, González-Salsberg seems to partially agree with this position but considers an additional element: the relation between compliance with the tribunal's decisions and the objectives of the system on which said tribunal is based upon. Even if he mentions this element he doesn't determine the causal connection between the two. For him, the effectiveness can be understood as the degree on which these institutions play a crucial role on the conduct of international actors (such as States), but he asserts that it should be measured based on the compliance of the ITC decisions. (González-Salzberg, 2010, p. 121) As we will soon see, the effectiveness of an international tribunal can't be reduced to compliance with its judgements.

In other branches of social sciences (other than Law) there are theoretical frameworks to measure the effectiveness of an organization (national or international). Nonetheless, there is no consensus. It is necessary to mention there is very little on ITC and that academic research that analyze this topic tend to miss providing a clear theoretical framework and the measuring parameters. In the following paragraphs, we will review the main theories regarding measuring effectiveness of an organization; the goal-based approach, the open system approach, and the resources based approach

(Ashraf & Abd Kadir, 2012; Balduck & Buelens, 2008). (Shany, 2016, p. 16) Additionally, we can also identify the model-based approach, and the model based on the constituencies. In each section we will apply the main elements of the theoretical approach to international human rights tribunals to identify their strengths and weaknesses.

On the one hand, the open system approach considers an organization to be effective when it acts in a balanced and sustainable way with its environment (controlling it, to a certain extent). (Etzioni, 1960, pp. 261, 273; Shany, 2016, p. 14)

In this model, Martz says, for an organization to be effective it must acquire and transform inputs or contributions into products or services that stakeholders consider valuable. (Martz, 2008, p. 37) In applying this model to international courts, the inputs correspond to the cases submitted to them, and the final products will be the sentences issued by said court.

It is argued that this model has two shortcomings in the case of human rights courts. The first is that an effective court will be one that issues judgments responding to the interests of the parties involved, without taking into account their subsequent compliance. The right to access to justice does not end with the mere issuance of a judgment, but the judicial process will culminate with its execution. (Caso Acevedo Buendía y otros (“Cesantes y Jubilados de la Contraloría”) Vs. Perú. Excepción Preliminar, Fondo, Reparaciones y Costas, 2009; Caso Hornsby Vs. Grecia. Fondo, 1997) If only the issuance of the sentence were taken into account, the findings would not reflect the reality of the administration of justice but would qualify a court as effective only based on the number of sentences issued. Another shortcoming of the model is that it does not take into account the primary beneficiaries of the organization because, according to Martz, they are not fundamental elements for assessing its effectiveness. (Martz, 2008, p. 41) This does not fit into the study of international human rights tribunals, since it is necessary to keep in mind that the primary beneficiaries are the rights holders. Without taking them into account in the evaluation process, it is not possible to evaluate their effectiveness. Similarly, it will be useful for the State to have a system that reviews when it has fulfilled its obligations in relation to the victims. In view of the above, this approach

could be viable for the evaluation of the effectiveness of interstate international tribunals, but not for international human rights courts.

On the other hand, the approach focused on a system of resources, the most widely accepted today (Balduck & Buelens, 2008, p. 5), considers the ability to obtain scarce and valuable resources and the survival of the organization as parameters to measure its effectiveness (Ashraf & Abd Kadir, 2012, p. 81). Regarding this approach, it should be noted that, in the case of international courts (whatever their *ratione materiae* competence), their survival is not equivalent to effectiveness (Shany, 2016, p. 16). The starting point, says Etzioni, is not the objective of the court itself but the process of achieving a certain objective through an appropriate use of the available resources. However, the author argues, many resources are allocated to activities or functions that do not necessarily seek to achieve the organization's objectives. (Etzioni, 1960, p. 262) It may be the case that a court is eliminated because it has fulfilled the task entrusted to it in its founding instrument, not because it is or has been ineffective. This is the case of the international criminal tribunals of Rwanda and the former Yugoslavia. (United Nations Security Council, 2010, 2016) Additionally, this approach does not consider external actors as a fundamental element for its effectiveness since, in this scenario, the organization (the court) exists as an autonomous entity, independent of external actors. (Ephraim Yuchtman & Seashore, 1967, p. 897)

As in the previous model, it is argued that there are two shortcomings in its application to the functioning of human rights courts. In the case of human rights violations, considering the victims at the merits stage, as well as in determining reparation measures, is essential. This approach does not consider the victims and their demands when assessing the effectiveness of the court, since they are configured as actors external to the organization. Additionally, it evaluates the court's capacity to negotiate and to acquire scarce and valuable resources (Ephraim Yuchtman & Seashore, 1967, p. 898).

These resources correspond to cases that are submitted to the international human rights courts. The principle of subsidiarity, a fundamental pillar of the international system for the protection of human rights, does not effectively allow for measuring its capacity to negotiate and “acquire” new cases. In the case of the IACtHR, the power to

refer cases is the exclusive power of the IACtHR (not counting the system of interstate petitions) and there is no negotiation process in which the former obtains cases from the latter. Likewise, the element of competence has no meaning in the study of human rights courts: each one in its region has no one to compete with in the process of “acquiring cases” since it is the only entity of this nature.

Thirdly, the process-oriented model emphasizes, as its name suggests, the internal processes and operation of the organization. For Shany, Ashraf, and Abd Kadir, effectiveness, in this scenario, is understood as a continuous process and not as a final state. (Ashraf & Abd Kadir, 2012, p. 81; Shany, 2016) This position, despite being based on the organization's objectives, does not focus on their finite fulfillment, but on the optimization of a process aimed at that fulfillment. The process-oriented model is based on three interrelated components: a) the notion of optimization of objectives (not their fulfillment); b) an open system perspective recognizing that the context limits or prevents the full fulfillment of certain objectives; and c) the emphasis on human behavior in the context of the organization. (Martz, 2008, pp. 42–45) One shortcoming of this approach is that it does not consider external forces that cannot be controlled by the organization. In this sense, in the case of international courts, political forces, outside their control, are essential to assess their functioning. Without taking this into account, the findings from the application of this model will not be complete.

On the other hand, the stakeholders (constituencies) model is based on the interest that people or groups have in the performance of the organization. (Ashraf & Abd Kadir, 2012, p. 81) An organization will be effective when it can satisfy the preferences of its “stakeholders”, doing what these people or groups want it to do. We consider some shortcomings of this approach: one regarding the means used to satisfy these needs; and the second one, the preference that will be given to certain needs over others.

There is no agreement on this matter, but Martz ventures to present a classification of constituencies to assess which interests should prevail. Thus, the author divides them into two groups, each of them composed of people/groups with specific interests that must be considered. First, those “members” of the organization who act legally on its behalf; and second, those external actors that are affected by the performance of said

organization. (Martz, 2008, pp. 45–49) An element that differentiates this approach from those presented above is the importance of the context in which the organization is anchored, given that the previous approaches leave aside the influence of the context on the functioning of the object of study.

Taking up Zammuto's point, Martz mentions four models within this approach. The first of them is the realist one, which recognizes that it is wrong to give preference to the interests of a particular group because it is considered the only correct one. The second is the power perspective: the organization should appease those interested parties that could threaten the survival of the organization. The third is the one founded on social justice, according to which effectiveness would be based on the extent to which the least favored interested parties, in our case, the victims of human rights, will be affected as little as possible by the actions of the court. Finally, the evolutionary perspective proposes that the effectiveness of the organization should be valued as a continuous and not a finite process.

Despite these considerations, this approach will value the survival of the organization as the last criterion, placing emphasis on the second of the elements mentioned. (Martz, 2008, p. 45) This approach does not allow for an adequate assessment of international human rights courts since it would place emphasis on the interests of States (those fundamental actors in the existence of the court) over those of the victims.

Once the different theoretical approaches related to the effectiveness of organizations and their viability for the case of international human rights courts have been reviewed, the goal-based approach is proposed as the one that is viable for the study of ITC.

GOAL-BASED APPROACH TO MEASURE EFFECTIVENESS OF INTERNATIONAL COURTS AND TRIBUNALS

Another model for assessing the effectiveness of an organization, whatever its nature (Etzioni, 1960, p. 258), is the goal-based approach. According to this proposal, an organization that meets its objectives is considered effective, these being part of its design

and structure (Perrow, 1961; Shany, 2016, p. 14). This model is based on two assumptions: the first is that these objectives are “specific, measurable and operational”; and the second is that the main actors in each organization are committed to fulfilling them. (Ashraf & Abd Kadir, 2012, p. 81; Baldock & Buelens, 2008, p. 4; Martz, 2008, pp. 32–33) In this case, good faith is presumed in the conduct of the main actors in the organization when it is considered a “rational and deliberative” entity (Martz, 2008, pp. 32–33)

It is precisely these two premises that are the focus of the main critics of this model. On one hand, it is argued that the lack of specificity in the design of the objectives directly affects the criteria for measuring their fulfillment. However, this lack of specificity is less real than it seems since it is possible to identify the objectives in various instruments or in the same practice of the institution. On the other hand, there is an alleged lack of impartiality in the design of the objectives since these reveal the interests of the main actors (Etzioni, 1960, pp. 258, 274; Martz, 2008, p. 35). In this sense, for Etzioni, the problem lies in the fact that the so-called “institutional objectives” are nothing more than the values that observers project onto the unit of analysis. The author goes on to state that this alleged lack of impartiality is not insurmountable, and mentions that to identify the objectives, it is necessary to have proof that those are in fact the objectives of the organization. (Etzioni, 1960, p. 274) This is achieved through, among others, the specific methodology that seeks to avoid the preferences of those who study the organization.

According to Shany, to measure the fulfillment of the objectives of an international court and, therefore, measure its effectiveness, a study in three stages is necessary. The first of these is the identification of the objectives of the court studied; the second is the definition of measurement indicators, whether qualitative or quantitative; and the third is the establishment of a causal link between the conduct of the State and the functioning of a particular court.

HOW TO IDENTIFY THE OBJECTIVES OF AN INTERNATIONAL TRIBUNAL?

In this section and the next, the types of objectives that exist and the classification that will be used in the rest of the chapter are defined. In a second stage, the objectives of international jurisdictional bodies are proposed, with an emphasis on human rights courts.

A traditional proposal, taken up by Perrow, establishes that there are official objectives and operational objectives. The former are formally established in the constitutive instruments of the organization being analyzed and, therefore, are abstract and open-ended. In contrast, operational objectives are those that reflect the specific policies that the organization effectively prioritizes what the organization is trying to achieve. Understood as such, they become means to achieve official objectives and are defined by certain groups within the organization, responding to specific imperatives and contexts, unlike the former. Perrow points out that these become the unofficial uses that these groups give to the organization to achieve their own objectives (which do not always coincide with the official objectives of the organization). The author focuses on these two types of objectives; however, he admits the possibility that the organization carries out certain actions with a view to achieving the fulfillment of certain external objectives, specific to the system in which it is anchored. In this sense, Perrow states, it fulfills an “adaptive, gratifying, integrative and pattern-maintaining” function that is essential to achieve the official objectives. (Perrow, 1961, pp. 855–857)

In contrast to this traditional classification, Shany proposes a different one focused on three criteria from the perspective of the mandate providers (States). This is based on the fact that, in most international courts², it is the States that create them (they formulate mandates, finance the court and establish its objectives) and control their operation (they supervise, issue criteria on their performance and can even dissolve them), which makes it impossible to ignore them when assessing the effectiveness of such courts. As for the classification criteria, the author proposes that, depending on the source, the objectives can be external and internal. (Shany, 2016, pp. 18–19) The former are obligatory as they come from the principals and are included in the constitutive instruments of the organization. This means that any change sought must necessarily go through a review of

² A clarification should be made regarding the ad hoc international criminal tribunals. Although they were created by resolutions of the UN Security Council, the States (through the SC) remain the ones who control their operation.

the instrument, a procedure that is highly cumbersome and slow. On the other hand, the internal objectives are not obligatory and, because they are not included in the constitutive instrument of the organization, they can change quickly in response to specific needs.

According to the hierarchy relative to the level of abstraction as a classification criterion, the objectives may represent the ultimate goal of the organization or, on the other hand, be intermediate or strategic to achieve the final objective of the organization. The ultimate goals will be achieved in the long term while the others will be fulfilled in the short term. Finally, according to their form of articulation, the objectives may be explicit, implicit and derived from the practice of the organization. The explicit objectives are included in the constitutive instruments of the organizations while the other two can be identified in their practice or in instruments derived from the former. By being included in the constitutive instruments, these enjoy greater legitimacy since they come from the same States.

Both the classification presented by Shany and that of Perrow show some problems that do not have so much to do with the identification of the objectives themselves but with the interpretation made of them. In this sense, some of them may be stated using terms so broad that it is possible to reach different interpretations (even contradictory). This affects, on the one hand, the determination of indicators for their measurement, since it is not clear what is sought to be achieved. On the other hand, the adoption of strategic or operational objectives, which allow the achievement of the ultimate objectives, is harmed by the lack of a single and unequivocal interpretation. Finally, this translates into practical problems such as those related to the allocation of resources within an organization, since there is no hierarchy and, therefore, no prioritization in the fulfillment of the objectives because their content is not well defined.

Despite the individuality of each international court, it is possible to state that there are four generic objectives common to all international jurisdictional organizations, regardless of the subject matter they regulate. Each of them will be given greater or lesser weight depending on the specific objectives of the court, which prevents a general study of them without considering the particularities of each unit of analysis. In the following pages, each of these objectives is presented in a general manner, and then we focus on the

case of international human rights courts. Common generic objectives are: support for international norms; resolution of legal disputes; support for the regime to which a particular court belongs; and legitimization of public authority. (Shany, 2016, p. 38; Slaughter, 1994, pp. 114–122)

The first of these is based on the aforementioned densification of the international normative system. Faced with this proliferation of norms, international actors create institutions charged with ensuring their compliance. These can be judicial in nature (international courts) or quasi-jurisdictional in nature (such as the bodies created under human rights treaties within the UN). Whatever their nature, their objective is to support compliance with international norms to strengthen, consolidate and, in the long run, ensure the functioning of the international system.

For Guzmán, through the fulfillment of this generic objective, it will even be possible to generate what he calls a “de facto international common law,” through a strengthening of the norms of International Law that the court supervises, interprets and applies. It is worth clarifying this issue: when it is said that one of the common objectives of international courts is to ensure compliance with a norm, it should not only be understood formally but with emphasis on the underlying primary obligation. The effectiveness of the court, then, for Guzmán, considers its ability to guarantee compliance with the substantive obligation contained in the primary obligation. (Guzmán, 2008, pp. 174, 178, 188) In terms of human rights, the obligations common to human rights contained in the American Convention on Human Rights (“ACHR”) are those of respect, guarantee, non-discrimination and development (or change) of regulatory frameworks (in addition, the inclusion of the obligation of non-recognition of a situation that violates human rights was proposed). In view of this, the objective of supporting the international standard would translate into support for compliance with these obligations, following the argument correctly raised by Guzmán.

This objective goes hand in hand with that of supporting the regime to which a particular court belongs. This is because all international courts operate within the framework of a specific regime. For example, the Court of Justice of the African Union and the ADHPR Court operate within the framework of the African Union; the European

Court of First Instance and the European Human Rights Convention (“EHRC”) operate within the framework of the European Union. As parts of that particular regime, ICT they must ensure that their objectives are met. (Guzmán, 2008, p. 174; Jodoin, 2010, p. 7; Shany, 2016, p. 44) Based on this, in the process of measuring the effectiveness of an international court, it is not only necessary to refer to the objectives set out in its constitutive instrument, but it is also necessary to make the link with those that the system considers relevant, in order to establish whether the court helps the system to meet these objectives.

Another of the generic objectives, the resolution of legal disputes, is framed within two of the fundamental principles that govern the international relations between States: the prohibition of the use of force and the peaceful settlement of disputes. This “disagreement on a point of law or, in fact, an opposition of legal theses or interests between two” (Case of the Mavrommatis Concessions in Palestine Case, 1925, pp. 11–12; Guzmán, 2008, p. 174; Novak Talavera & García-Corrochano, 2005, p. 15; Slaughter, 1994, pp. 114–122) or more subjects of international law may be resolved through diplomatic mechanisms (Novak Talavera & García-Corrochano, 2005, pp. 99–109) or judicial mechanisms (action of an international court through the determination of the applicable law). In the case of the determination of the international responsibility of the State by human rights courts, the situation is no longer conceived in the traditional terms of “dispute” or “conflict” since the relationship between the intervening parties is of an asymmetrical nature. This would be verified, for example, in the evidentiary regime before the IACtHR. (Neira Alegría et al. vs. Peru. Merits, 1995, paras. 65–66; Velásquez Rodríguez vs. Honduras. Merits, 1988, paras. 135–136) For Shany, individual petitions and case resolution are support mechanisms for the objective of supporting the validity of international regulations, making the resolution of disputes an intermediate objective. (Shany, 2016, pp. 40–42, 107–109) This seems to align with Guzmán’s position mentioned in previous paragraphs. (Guzmán, 2008)

Finally, the fourth generic objective is to legitimize the public authority that created a particular court. Courts are expected to provide legitimacy to the actions of the social and political institutions of the system to which they belong (Shany, 2016, pp. 44–

46). In this sense, the actions of judicial bodies, whether national or international, contribute to the legitimation of an environment in which they are anchored. It is important to mention that the legitimation of the system is closely linked to the legitimacy of the court itself. Thus, if the body is not seen as legitimate, it will not be able to legitimize the actions of the other institutions that are part of the system to which it belongs.

THE GOALS OF INTERNATIONAL HUMAN RIGHTS TRIBUNALS: THE IACTHR

The protection of human rights in the Latin-American region has its milestone in the approval of the ACHR, but already at the beginning of the 20th century, the Latin American republics expressed the importance of respect for the rights of individuals in various international summits. ³ Pan-Americanism, which began at the end of the 19th century, brought respect for human rights into diplomatic discussion. ⁴ But it was in Chapultepec (Mexico), in 1945, during the Inter-American Conference on the Problems of War and Peace, that it became the prelude to the creation of the OAS. In Resolution XL, it was the first time that the need to have a system of protection of human rights based on a conventional instrument on the subject was discussed.

In Petropolis (Brazil), in 1947, the Inter-American Conference for the Maintenance of Peace and Security in the Continent was held, during which the Inter-American Treaty of Reciprocal Assistance (TIAR) was signed. And one year later, in 1948, during the IX Inter-American Conference, the OAS was created and the American Declaration of the Rights and Duties of Man (hereinafter “the DADDH”) was approved. In the final minutes of said meeting, the possibility of creating a jurisdictional system of

³ About the emergence of the Interamerican HumanRights Protection System, see: (Barbosa Delgado, 2002, pp. 71–78; Monterisi, 2009, pp. 36–38; Schneider, 2015, pp. 12–16)

⁴ For example, the First Pan-American Conference, held in Washington in 1889, outlined the principle of equality and non-discrimination by recognizing that foreigners have the same rights and obligations as nationals. The Sixth Pan-American Conference (1928) adopted the Havana Convention on Asylum, a topic that would be taken up again at the Seventh Pan-American Conference in Montevideo. In Lima, during the Eighth Pan-American Conference in 1938, several resolutions relating to specific human rights and a declaration on the defense of human rights were approved.

human rights was discussed. Additionally, the American Treaty on Pacific Solutions (which reaffirms the principle of peaceful settlement of international disputes), the International American Charter of Social Guarantees (or Declaration of the Social Rights of the Worker) and the Inter-American Convention on the Granting of Civil Rights to Women (in which its only relevant article established that the States Parties committed themselves to “grant women the same civil rights enjoyed by men”) were approved.

Although the DADDH was not approved as a treaty, in 1954, at the Tenth Inter-American Conference, held in Venezuela, Resolution XXXIX was approved on the possibility of creating a court on human rights and the need to have an international convention on human rights that would complement the DADDH. Within the framework of this concern for the protection of the person in the region, during the Fifth Meeting of Consultation of Ministers of Foreign Affairs (1959), the need for a convention on the subject was reaffirmed and, in Resolution III, the IACtHR was created (whose regulations were approved in 1960). Likewise, the Inter-American Council of Jurists was entrusted with developing a study on the relationship between democracy and human rights. In 1965, at the Second Extraordinary Inter-American Conference, held in Brazil, the powers of the IACtHR were expanded to be able to receive individual petitions of alleged violations of human rights. And in 1967, through the reform of the OAS Charter, the IACtHR became a principal organ of the OAS and indicated that an American convention should determine its structure, competence and operation (Article 150 of the OAS Charter).

In 1969, during the Specialized Conference on Human Rights, the ACHR was approved and entered into force in 1978. This instrument embodies more than 30 years of constant clash between the concern of the States for the protection and promotion of human rights in the region and their reluctance to cede spaces of their sovereignty to international entities. For Grossman, the process of creating the SIPDH responds to four needs: a) the first of these corresponds to the notion that the positive development of IHRL increases legitimacy beyond national borders; b) in its relationship with democracy, the SIPDH contributes to avoiding the deterioration and helping to improve democratic societies with the intervention of an international community interested in the protection

of human rights; c) these norms and institutions, arising from consensus between States, do not violate the principle of non-intervention in internal affairs. (Grossman, 1994)

During the first stage of the human rights protection system, it was plagued by ambiguities. These can be grouped into, on one hand, those that refer to the mechanisms used to create the system (which, many times, were carried out in response to global and regional historical events); and, on the other, those related to the functions performed by its organs. With the entry into force of the ACHR, an attempt was made to bring coherence to this system by creating a jurisdictional body with powers clearly established in its constitutive instrument that is binding on the parties.

Once the context in which the SIPDH was created has been analyzed, before moving on to its specific analysis, it is worth remembering that one of the strengths of the approach based on the fulfillment of objectives is that its application responds to the particularities of each of the organizations analyzed. This is because the measurement, although carried out through a specific methodology, will be based on the objectives identified for each unit of analysis. In this first stage, the study of the IACtHR is proposed through a classification based on the hierarchy relative to the level of abstraction, thus obtaining, on the one hand, ultimate or final objectives and, on the other, support or intermediate objectives (on the IACtHR, it is possible to review the study by Shany and Lovat) (Shany, 2016, pp. 253–276). This allows for analysis not only from the perspective of the mandate providers but also from the court itself, as well as its users. The final objectives will allow the evaluation of the position of the former, while the intermediate objectives collect those that the IACtHR itself sets or those that reflect the interests of the people who use the protection system.

To identify the final objectives, reference will be made to the constitutive instrument of the IACtHR. These types of objectives tend to be abstract and can suggest various interpretations. Reference will be made to official documents related to the IACtHR in which the mandate providers' intentions are expressed in relation to the identified objectives. For the intermediate ones, the Court's practice will be studied, as well as pronouncements it has made on the subject.

This paper proposes that the IACtHR will seek to achieve the aforementioned

generic objectives. The first of these is to support human rights law through the interpretation and application of the ACHR. This is reflected in article 62(3) of its own constitutive instrument in the following terms: “[t]he Court has jurisdiction to entertain any case concerning the interpretation and application of the provisions of this Convention submitted to it, provided that the States Parties to the case have recognized or recognize such jurisdiction, either by special declaration, as indicated in the preceding paragraphs, or by special convention.”

This is also contemplated in Article 1 of the Inter-American Court of Human Rights (approved by Resolution No. 448 adopted by the OAS General Assembly at its 9th session in 1979 and amended in 2009). This provision establishes that the Court is “an autonomous judicial institution whose objective is the application and interpretation of the American Convention on Human Rights.”

Additionally, the Court fulfills the objective of normative support in a system of rights protection that is broader than that formed by the ACHR. Thus, the Additional Protocol to the American Convention on Human Rights (also called the “San Salvador Protocol”) contemplates, in its Article 19(6), that the system of individual petitions will be activated for violations of the right to education (Article 13) and trade union rights (Article 8). This also occurs with the Inter-American Convention on Forced Disappearance of Persons, which, in its Article XIII, contemplates the possibility that the Inter-American Court of Human Rights may hear cases in which its violation is alleged. Regarding the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (or “Belem do Para Convention”), the Court's role in normative support is present, not in the exercise of its contentious jurisdiction, but in its advisory jurisdiction, in accordance with article 11.

In the mentioned treaties, the States themselves, through instruments that make up the regime of protection of rights additional to the ACHR, have decided that the objective of the IACtHR is to support respect for international human rights standards. Despite the clarity regarding this objective, there are cases in which the Court has exceeded its original jurisdiction, interpreting and applying standards whose supervision would not be its direct responsibility. This happened with the Inter-American Convention

to Prevent and Punish Torture. In the *Castro Castro Penal* case, ratifying its previous jurisprudence (*Gutiérrez Soler v. Colombia*, 2005, para. 54; *Tibi v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs, 2004, paras. 62, 145, 159), the IACtHR stated that it

will exercise its material jurisdiction to apply the Inter-American Convention to Prevent and Punish Torture and determine the responsibility of the State in accordance with this treaty, ratified by Peru on March 28, 1991, which was in force when the events occurred. Articles 1, 6 and 8 of the treaty oblige the States Parties to adopt all effective measures to prevent and punish all acts of torture within the scope of their jurisdiction. (*Miguel Castro Castro Prison v. Peru*. Merits, Reparations and Costs, 2006, para. 266)

On the other hand, considering that this is a court anchored to a regime, it is argued that it also seeks to strengthen it and help it achieve its objectives. Within the framework of the OAS, respect for human rights has been present since its formation. Already in 1945, at the Inter-American Conference on Problems of War and Peace, in Resolution XL, the States declared themselves in favor of the existence of a system for the protection of human rights (Inter-American Conference on Problems of War and Peace, 1945). In 1947, in the Inter-American Treaty of Reciprocal Assistance, the Latin American republics reaffirmed, in their Preamble, the importance of respect for human rights within the framework of the democratic system sought in the region. Additionally, in its founding instrument, the OAS establishes that one of its objectives is “to achieve 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” (OAS Charter, 1967). It continues in Article 3(l), stating that one of its principles is respect for “fundamental rights of the human person without distinction as to race, nationality, creed or sex” and that, according to Article 17, the “State shall respect the rights of the human person and the principles of universal morality.”

In 1959, the Fifth Meeting of Foreign Ministers approved the Santiago Declaration, which established that harmony among Latin American countries cannot be a reality without respect for democracy and human rights as one of its fundamental pillars. (Fifth Meeting of Consultation of Foreign Ministers, 1959) This importance was

reaffirmed with the approval of the ACHR and the creation of the IACtHR at the Specialized Conference on Human Rights held in Costa Rica in 1969. The Preamble of the ACHR establishes that its approval and the creation of the protection regime respond to the “purpose of consolidating in this continent, within the framework of democratic institutions, a regime of personal liberty and social justice, founded on respect for the essential rights of man”, anchored in the concern for respect and the guarantee of human rights in the American integration system. In this context, the IACtHR is configured as a jurisdictional body responsible for ensuring compliance with the international obligations on human rights contained in the ACHR and other instruments in which it is granted jurisdiction. Likewise, it will help legitimize and support the integration regime in which it is anchored.

On the other hand, with respect to the objective of resolving disputes, in the case of international human rights courts, the definition of disputes must be qualified since there is no equal relationship between two equal entities. In the case of interstate petitions, one could indeed be configured in the traditional sense, considering which the objective of resolving disputes will gain importance. However, it is possible to affirm that, in individual petitions, there is a discussion on points of fact and law that the jurisdictional body must resolve. Likewise, it is possible to argue that the controversial nature is present when the ACHR itself provides for the possibility that the IACtHR may make itself available to the parties (State and IACtHR) to reach a friendly settlement agreement, in accordance with Article 63 of the IACtHR. In this sense, the Court must achieve the objective of resolving the disputes submitted to it, recognizing the particularities of litigation in human rights matters.

This paper proposes that one of the intermediate objectives to achieve the objective of normative support, support for the system and resolution of disputes is the reparation of victims. In this sense, although achieving respect and guarantee of human rights in the region is the final objective of the IACtHR, it is done through reparation of victims of human rights violations. Cavallaro and Brewer agree on this point (Cavallaro & Brewer, 2008). This is particularly important, considering the predominance of the exercise of the Court's contentious jurisdiction (compared to the few advisory opinions it

has issued to date, in relation to the cases resolved). This reparation is the corollary of the State's international responsibility, and its modalities will be reflected in the judgment issued by the Court. Thus, to achieve its final objective, the Court must, in the first instance, achieve reparation for the victims through the implementation of the measures it has ordered in each case.

Based on the previous arguments, this research will focus on the study of compliance with reparation measures understood as an intermediate objective of the IACtHR that will allow it to achieve its ultimate objective of promoting respect for and guaranteeing human rights in the region, becoming an effective organization. To this end, the following section develops the second stage of the methodology proposed by Shany for measuring the effectiveness of international courts, starting from the definition of compliance based on the different theories relating to compliance with International Law.

THEORY ON COMPLIANCE WITH INTERNATIONAL JUDGEMENTS. WHAT IS COMPLIANCE?

As early as 1979, Henkin stated that almost all nations comply with almost all their international obligations almost all the time. (Henkin, 1979, p. 47) This reading shows that, despite the proliferation of international agreements, this has not meant full compliance with them. This point is especially important in those obligations that protect the person in the international sphere. The commitment to international standards on human rights does not reach full compliance and, in part, this is because the protection system is State-centric. On this, Komanovics reaffirms that the main problem is that the will of the State remains the central axis in International Law. (Komanovics, 2006, pp. 326–327)

Generally, studies on compliance with Public International Law are rooted in the issue of legality, since the rule of law is based on the idea that everyone must obey the law. (Huneus, 2015, p. 440) But this should not be limited to the law formally understood but must be extended to the rulings of judicial bodies, as a source of law with *inter parte* effect. These courts are charged with maintaining peaceful coexistence through the

resolution of disputes and as mentioned above, the exercise of the right to access justice does not end with the decision they will deliver but must include compliance with said ruling by those responsible. (Huneus, 2015, pp. 444–445)

Compliance with the State's international obligations is understood as the conformity between the State's conduct and what the law expects of it. However, this conformity may be the result of several things, even by mere coincidence. In this sense, Huneus proposes, contrary to what was proposed by Raustiala and Slaughter (Raustiala & Slaughter, 2002, p. 539), as well as by Chayes and Handler Chayes (Chayes & Handler Chayes, 1993), a tripartite definition of compliance: the existence of (a) State conduct that (b) coincides with what the international norm expects of the State and (c) the existence of a causal link between (a) and (b) (Huneus, 2011, pp. 438–443). According to Huneus, based on this relational conception, in order to assess compliance with a reparation measure, it is necessary to carry out a three-stage process: (i) it is necessary to identify the measure or measures ordered in order to subsequently (ii) assess the State's behavior and (iii) compare the result of (i) with the result of (ii) (Huneus, 2015, pp. 443–444). These three stages encounter their obstacles in certain factors that seem to influence compliance with the measures. Thus, for example, the first step may be difficult to accomplish due to the very design of the reparation measures; and the second may face a lack of access or lack of rigor in the information on the actions carried out by the State.

Hillebrecht also favors the need for a causal link in his study of compliance with obligations arising from EHR Court judgments (Hillebrecht, 2009, 2014). Jacoby and Hawkins agree in pointing out that “when a state persists in a certain behavior long enough for an international court to rule against that state's practices, and the country subsequently changes its practices, we assume that the court's ruling helped trigger that change in behavior, even if other factors may have been important.” (Hawkins & Jacoby, 2010, pp. 39–40)

Jacobson and Brown seem to take a similar position. In their study of compliance with procedural and substantive obligations, they assess the actions taken by States in response to the entry into force of environmental treaties. For the authors, such actions would not exist if the treaty did not impose them on the Parties (Jacobson & Brown Weiss,

2000), thus confirming the existence of a causal link. Dothan agrees with this, for whom international courts must ensure that the State complies with its judgments in order to modify its behavior (Dothan, 2013, p. 458).

Other authors such as Langer and Hansbury do not clearly define what they understand by compliance but seem to assume a causal relationship between the State's conduct and the decision of the IACtHR (Langer & Hansbury, 2012). In his study on the relationship between the Judiciary and the IACtHR, Huneeus states that compliance with an international judgment occurs when "a State carries out the actions ordered by a judgment against it, or refrains from carrying out actions prohibited by said judgment," and specifies that compliance can also be understood as implementation (Huneeus, 2011, pp. 504–505).

Finally, in this research, compliance with a judgment will be understood when "a State or other party subject to the court carries out the actions required by a court judgment or refrains from carrying out actions prohibited by said judgment" (Huneeus, 2015, p. 442). In this sense, the causal relationship must be present since the State's behavior changes based on the judgment.

Regarding the measurement of said compliance, this is usually dichotomous: the obligation is fulfilled, or it is not fulfilled. This is verified, for example, in the study carried out by Hillebrecht on the EHR Court (Hillebrecht, 2014). Staton and Romero criticize this approach by pointing out that it does not consider other important factors such as the time it takes the State to comply with the ordered measures. Based on this, the authors, although they continue to base their study on a dichotomous vision of compliance, add a variable to their study: resistance (time it takes to implement the reparation measures). (Romero & Staton, 2011, p. 9) For their part, Jacoby and Hawkins, in a comparative study between the IACtHR and the ECtHR, propose that it should be a tripartite study, including partial compliance as one of the most common (Hawkins & Jacoby, 2010). Huneeus supports this position and suggests that compliance should be seen as a process that, although it has two extremes (complies/does not comply), allows for intermediate responses (Huneeus, 2015, p. 444).

Komanovics, in the case of the UN HRC, proposes one of the most comprehensive

measurements using five levels: satisfactory response/action, partially satisfactory, unsatisfactory, non-cooperation with the Committee, measure contrary to the HRC recommendations (Komanovics, 2006, p. 334). Similarly, Viljoen and Louw, in their study of compliance with the decisions of the ADHP Commission, present five categories for analysis, starting from the conception of compliance as a “dynamic process”: total compliance; partial compliance; non-compliance; situational compliance; and “unclear cases”.

The first category consists of compliance with all the ordered measures or an unequivocal manifestation that it will comply, and the State has taken significant steps to do so. Non-compliance occurs in the case where the State has not complied with any of the recommendations of the ADHP Commission. Partial compliance, on the other hand, requires that the State has complied with some of the reparation measures and the implementation process continues. Regarding situational compliance, the authors argue that the dramatic change of government has repercussions on the political will to comply with the Commission's decisions. Finally, in the “unclear cases”, the information is insufficient (non-existence of files, difficulties in finding the victims or their representatives, communication problems, lack of continuity of the State agents involved in the process before the Commission) and it is not possible to clearly determine whether and to what extent the reparation measures have been complied with. (Viljoen & Louw, 2007, pp. 5–8)

The model proposed by Jacoby and Hawkins analyzes, based on the above, four types of partial compliance: divided decisions; state substitution; slow-motion compliance; and ambiguous compliance in the face of the complexity of the measure. Regarding the first point, the authors point out (and the data presented in later parts of this work confirm it) that States, in the checklist model, comply with certain measures but not with others, and this affects the overall assessment of whether the State complies with its international obligations in a dichotomous paradigm. Regarding state substitution, it is proposed that the State replaces one of the measures ordered by the IACtHR with another of a similar nature but that does not correspond exactly to what was ordered by the Court. Slow-motion compliance differs from the first category because the State states

that it will fully comply with a specific measure but in a longer time than expected. As for the latter, compliance is difficult because the measure itself implies difficult behavior on the part of the State either because it exceeds its capabilities or because the measure itself is unclear (what the Court seeks is not clearly defined in the decision). (Hawkins & Jacoby, 2010, pp. 77–83)

In the regional human rights courts, there are two compliance regimes. (Hawkins & Jacoby, 2010, p. 43) In the American case, a checklist system is set up in which the IACtHR orders a series of specific measures that must be complied with by the State, and will assess, through a report, the total, partial or null compliance of each of them. The measurement of compliance in the case of the IACtHR is based on the measure ordered and the information it collects from the State, the victims and their representatives and the IACtHR. In contrast, in the European system, a delegation regime is established in which the Court will delegate to the State the assessment of the appropriate reparation measures, and supervision will be in the hands of a third party not part of the process, i.e. the Council of Ministers.

IDENTIFICATION OF INDICATORS FOR MEASURING COMPLIANCE WITH THE JUDGMENTS OF INTERNATIONAL COURTS AS AN INTERMEDIATE OBJECTIVE

Regarding the effectiveness of ITC, we must identify those indicators necessary to measure the degree of compliance with the objectives of each tribunal/court. In this work compliance with the judgments is understood as an intermediate or supporting objective for the achievement of the final objectives of each court. To measure them, it is possible to follow Shany's approach, for whom the indicators can be structural, related to its process, related to its products and related to its results (or outputs). The former refer to the powers or capacities that the ITC has and that will be used to fulfill its objectives. The process refers to the way in which its resources are used and how these favors or impedes the fulfillment of its objectives. As for the products, it is considered that the sum of the structural and process aspects is what generates products that, in turn, cause results.

The products, in the case of international courts, correspond to the judgments that they issue in the resolution of the cases submitted to their knowledge. (Shany, 2016, pp. 49–61)

There are also other approaches to analyze compliance that are related to this intermediate objective. In some cases, a merely quantitative study is presented on which reparation measures are being complied with, without going into depth about the reasons for these degrees of compliance. This is present even in the monitoring or follow-up systems of international courts. Similarly, there are other approaches that seek to identify certain factors that may influence compliance with these measures, without being exhaustive. (Helfer & Slaughter, 2005, pp. 273–391; Tan, 2005) These, as will be seen in the following pages, correspond to the indicators that Shany proposes, although they are not categorized in the same way.

The state of the art shows that there are approaches to compliance with results that say a lot and little at the same time, mainly because they use of unclear terminology (using terms such as “acceptable level”, “impressive” rates (Tan, 2005, p. 10), “low rates” (Baillet, 2013, p. 483), “lack of compliance” (Rodríguez Garavito & Kauffman, 2015, p. 282), “satisfactory” (Komanovics, 2006, p. 340)) without specifying specifically what it means.

To assess compliance with their own judgments, ITC use their own measurement models, as mentioned above. However, there is no clear classification methodology, and the results are unfriendly to users, which prevents these conclusions from being useful tools to assess compliance with the system's objectives. In the European case, the supervision of implementation is the responsibility of an independent body of the EHRC: the Council of Ministers of the Council of Europe. The mechanism used by this body is equally ambiguous. The results of these analyses are not in a centralized database, and, with the elimination of the European Commission, the number of cases does not allow for the permanent updating of this information (it has not been updated since 2006). In practice, there are three classification parameters: compliance with individual measures (based on eleven parameters); compliance with general measures; and pending compliance.

From the academic point of view, the model proposed by Hillebrecht (Hillebrecht, 2009) is one of the most comprehensive. Although her study is comparative between the IACtHR and the ECtHR, the author proposes that this model can be used to assess compliance with any international judgment that includes reparation measures (for example, the African Court). Her proposal consists of three levels: micro, intermediate and macro. The micro level is composed, on the one hand of compensation measures (economic in nature); and, on the other, of individual measures of a non-economic nature. If there is full payment of the amount set by the court, the value corresponds to 1 or 100%; if the money has not been disbursed, the value is 0 or 0%. This value (or percentage) will vary depending on the amount that has been paid. As regards individual non-economic measures, the assessment is easier in the case of the IACtHR since it specifically determines which measures the State must comply with (unlike its European counterpart). The author proposes a two-step study: the first consists of identifying the universe of measures ordered by the court; and the second, identifying the percentage of compliance (1 or 100% will be compliance with all measures).

The second or intermediate level is composed of the aggregate of the components of the micro level (average, if the measures are given equal weight) and the percentage of compliance with the non-repetition measures ordered. As regards the latter, there is a difficulty in measuring them since many of them are repeated in various cases that arise from situations or contexts of systematic violations of human rights. Based on this, the author proposes that, first, the universe of measures be identified to subsequently eliminate those that are repeated in the sentences issued by the courts (for example, the modification of regulations).

Finally, the macro level consists of an aggregate (average) of the results of the components of the intermediate level. This level can be disaggregated for studies with material, temporal or global delimitations. One problem that the author herself identifies is the lack of considerations regarding the time in which the ordered measures are fulfilled. Furthermore, the limitation of this model is that it does not explain why the State complies with the ordered reparation measures or what factors influence said compliance. From reading Hillebrecht's text, the model focuses on the measure itself, from an analysis

that would seem to aim to go beyond the merely quantitative, but which does not allow determining those factors that influence compliance with the reparation measures ordered by ITC.

MODELS BASED ON FACTORS THAT INFLUENCE COMPLIANCE WITH THE REPARATION MEASURES ORDERED BY ITC

The following paragraphs present the development of a model based on the factors that influence compliance with the obligations contained in decisions of ITC, seeking the reasons why certain reparation measures are complied with and others are not. This proposal is based on the following assumptions. The first is that compliance with the ordered reparation measures is not unidimensional but is influenced by cultural, social, political and economic factors. The second is that, despite its preponderance in the levels of studies on the subject, the analysis of compliance, as mentioned, cannot be dichotomous. Thus, it is proposed, coinciding with Huneeus, Jacoby and Hawkins, as well as with the IACtHR itself, that partial compliance is a temporary stage until reaching full compliance. (Hawkins & Jacoby, 2010, pp. 36–37; Huneeus, 2015)

Another element to consider is that this proposal is based on the consideration that the existing measurement models do not cover all the factors that influence the measurement of compliance. In this context, it is proposed that it is possible to divide them in relation to the court that orders the reparation. Thus, there are two types of factors: external and institutional. Viljoen and Louw agree when they state that there are certain factors “inherent to the institutions [...] and others that fluctuate from case to case.” (Viljoen & Louw, 2007, pp. 12, 15–16) External factors can be measured through the following variables: international pressure on the State; the performance of civil actors; those elements that are specific to the case; those specific to the State; and those that are inherent to the court issuing the decision. As for institutional factors, these include: the nature of the body (taking into account the maturity of the body); the nature of the decision; the process of determining responsibility (brief reasoning, limited reasoning, substantial reasoning); the deficit of legitimacy; the lack of political will within the body;

the existence and nature of a follow-up mechanism; and the procedure (considering the length of the process and the participation of the State).

Helfer and Slaughter argue, on the other hand, that there are factors under the control of the States that created ITC (its composition through the constitutive instrument and the selection process; its capacity to operate; its capacity to carry out an independent investigation; the nature of the instruments that the court applies). They also identify those under the control of the ITC (independence and impartiality; expansion of its powers or incrementalism; quality of reasoning; judicial cross-fertilization and judicial dialogue; manner in which judges and the court render their opinions); and those that are outside the control of the States and the ITC (nature of the violations; autonomous national institutions committed to fulfilling obligations; cultural and political homogeneity of the States). (Helfer & Slaughter, 1997)

For Shany, some of the structural indicators are present in the proposals mentioned above. Admitting that they are not the only possible ones, the author mentions the jurisdictional powers (scope of the jurisdiction of the ITC); the capacity of the staff; the resources available; structural independence; the potential for use; reputation; and the relationship with other institutions. (Shany, 2016, pp. 58–59, 99) Contrary to this, we argue that the “potential for use” does not constitute an independent indicator but goes hand in hand with the so-called “jurisdictional powers”, since the potential for use depends on the powers that the mandate providers have granted them. Likewise, “structural independence” indicator should be unified with the “staff capacity” indicator, since it is stated that the second is a consequence of the first. It is also considered that the author leaves aside the power to supervise compliance with the court's decisions (supervisory power) as a structural indicator that should be considered.

CONCLUSION

This paper uses a relational definition of compliance with obligations arising from the rulings of international courts. Following Neuman's approach, compliance is understood as the implementation of the judgement showing a causal link between the

obligation (reparation of victims) and the conduct of the State (Neuman, 2014, p. 337). To measure compliance, we proposed to use the goal-based approach since its elements can be molded to fit the particularities of international human rights courts.

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