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APPENDIXES

I. ORIGIN, STRUCTURE AND JURISDICTIONS OF THE COURT

A. Creation of the Court

The Inter-American Court of Human Rights (hereinafter "the Court", "the Inter-American Court" or "the Tribunal") was brought into being by the entry into force of the American Convention on Human Rights "Pact of San José, Costa Rica" (hereinafter "the Convention" or "the American Convention"), which occurred on July 18, 1978, upon the deposit of the eleventh instrument of ratification by a Member State of the Organization of American States (hereinafter "the OAS" or "the Organization"). The Convention was adopted at the Inter-American Specialized Conference on Human Rights, which took place November 7-22, 1969, in San José, Costa Rica.

The two organs for the protection of human rights provided for under Article 33 of the Pact of San José, Costa Rica, are the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") and the Court. The function of these organs is to ensure the fulfillment of the commitments made by the States Parties to the Convention.

B. Organization of the Court

In accordance with the terms of the Statute of the Court (hereinafter "the Statute"), the Court is an autonomous judicial institution which has its seat in San José, Costa Rica, and whose purpose is the application and interpretation of the Convention.

The Court consists of seven judges, nationals of the Member States of the OAS, who act in an individual capacity and are elected *"from among jurists of the highest moral authority and of recognized competence in the field of human rights, who possess the qualifications required for the exercise of the highest judicial functions in conformity with the law of the state of which they are nationals or of the state that proposes them as candidates"* (Article 52 of the Convention). Article 8 of the Statute provides that the Secretary General of the OAS shall request the States Parties to the Convention to submit a list of their candidates for the position of judge of the Court. In accordance with Article 53(2) of the Convention, each State Party may propose up to three candidates.

The judges are elected by the States Parties to the Convention for a term of six years. The election is by secret ballot and by an absolute majority vote in the OAS General Assembly immediately prior to the expiration of the terms of the outgoing judges. Vacancies on the Court caused by death, permanent disability, resignation or dismissal, shall be filled, if possible, at the next session of the OAS General Assembly. (Article 6(1) and 6(2) of the Statute.) Judges whose terms have expired shall continue to serve with regard to cases that they have begun to hear and that are still pending. (Article 54(3) of the Convention.)

If necessary in order to preserve a quorum of the Court, one or more interim judges may be appointed by the States Parties to the Convention. (Article 6(3) of the Statute.) "*If a judge is a national of any of the States Parties to a case submitted to the Court, he shall retain his right to hear that case. If one of the judges called upon to hear a case is a national of one of the States Parties to the case, any other State Party to the case may appoint a person to serve on the Court as an ad hoc judge. If among the judges called upon to hear a case, none is a national of the States Parties to the case, each of the latter may appoint an ad hoc judge*" (Article 10(1), 10(2) and 10(3) of the Statute.)

States parties to a case are represented in the proceedings before the Court by the Agents they designate. (Article 21 of the Rules of Procedure.)

The judges are at the disposal of the Court and hold two regular sessions a year. They may also meet in special sessions when convoked by the President of the Court (hereinafter "the President") or at the request of a majority of the judges. Although the judges are not required to reside at the seat of the Court, the President renders his services on a permanent basis. (Article 16 of the Statute.)

The President and Vice-President are elected by the judges for a period of two years and may be reelected. (Article 12 of the Statute.)

There is a Permanent Commission of the Court (hereinafter "the Permanent Commission") composed of the President, Vice-President and any other judge that the President considers convenient, according to the needs of the Court. The Court may also create other commissions for specific matters. (Article 6 of the Rules of Procedure.)

The Secretariat functions under the direction of a Secretary, who is elected by the Court. (Article 14 of the Statute.)

C. Composition of the Court

The composition of the Court is as follows, in order of precedence (Article 13 of the Statute):

Héctor Fix-Zamudio (Mexico), President
Hernán Salgado-Pesantes (Ecuador), Vice-President
Alejandro Montiel-Argüello (Nicaragua)
Máximo Pacheco-Gómez (Chile)
Oliver Jackman (Barbados)
Alirio Abreu-Burelli (Venezuela)
Antônio A, Cançado Trindade (Brasil)

The Secretary of the Court is Manuel E. Ventura-Robles (Costa Rica) and the Deputy Secretary is Ana María Reina (Argentina).

D. Jurisdictions of the Court

The Convention gives the Court contentious and advisory functions. The first function involves the power to adjudicate disputes relating to charges that a State Party has violated the Convention. The second function involves the power to interpret the Convention or *"other treaties concerning the protection of Human Rights in the American states"* at the request of the Member States of the OAS. Within their spheres of competence, the organs listed in the OAS Charter may in like manner consult the Court.

1. The Court's Contentious Jurisdiction

The contentious jurisdiction of the Court is spelled out in Article 62 of the Convention, which reads as follows:

> 1. A State Party may, upon depositing its instrument of ratification or adherence to this Convention, or at any subsequent time, declare that it recognizes as binding, ipso facto, and not requiring special agreement, the jurisdiction of the Court on all matters relating to the interpretation or application of this Convention.

> 2. Such declaration may be made unconditionally, on the condition of reciprocity, for a specified period, or for specific cases. It shall be presented to the Secretary General of the Organization, who shall transmit copies thereof to the other member states of the Organization and to the Secretary of the Court.
>
> 3. The jurisdiction of the Court shall comprise all cases concerning the interpretation and application of the provisions of this Convention that are submitted to it, provided that the States Parties to the case recognize or have recognized such jurisdiction, whether by special declaration pursuant to the preceding paragraphs, or by a special agreement.

Since States Parties are free to accept the Court's jurisdiction at any time, it is possible to invite a State to do so for a specific case.

Pursuant to Article 61(1) of the Convention, *"[o]nly the States Parties and the Commission shall have the right to submit a case to the Court."*

Article 63(1) of the Convention contains the following provision relating to the judgments that the Court may render:

> If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.

Paragraph 2 of Article 68 of the Convention provides *"[t]hat part of a judgment that stipulates compensatory damages may be executed in the country concerned in accordance with domestic procedure governing the execution of judgments against the state."*

Article 63(2) of the Convention reads as follows:

> In cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent in matters it has under consideration. With respect to a case not yet submitted to the Court, it may act at the request of the Commission.

The judgment rendered by the Court in any dispute is *"final and not subject to appeal."* Nevertheless, *"[i]n case of disagreement as to the meaning or scope of the judgment, the Court shall interpret it at the request of any of the parties, provided the request is made within ninety days from the date of notification of the judgment."* (Article 67 of the Convention.) Moreover, *"[t]he States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties."* (Article 68 of the Convention.)

The Court submits a report on its work to each regular session of the OAS General Assembly, and it *"shall specify, in particular, the cases in which a state has not complied with its judgments."* (Article 65 of the Convention.)

2. The Court's Advisory Jurisdiction

Article 64 of the Convention reads as follows:

> 1. The member states of the Organization may consult the Court regarding the interpretation of this Convention or of other treaties concerning the protection of human rights in the American states. Within their spheres of competence, the organs listed in Chapter X of the Charter of the Organization of American States, as amended by the Protocol of Buenos Aires, may in like manner consult the Court.

2. The Court, at the request of a member state of the Organization, may provide that state with opinions regarding the compatibility of any of its domestic laws with the aforesaid international instruments.

The standing to request an advisory opinion from the Court is not limited to the States Parties to the Convention; any OAS Member State may request such an opinion.

Likewise, the advisory jurisdiction of the Court enhances the Organization's capacity to deal with questions arising under the Convention, for it enables the organs of the OAS to consult the Court within their spheres of competence.

3. Recognition of the Jurisdiction of the Court

Seventeen States Parties have now recognized the contentious jurisdiction of the Court. They are: Costa Rica, Peru, Venezuela, Honduras, Ecuador, Argentina, Uruguay, Colombia, Guatemala, Suriname, Panama, Chile, Nicaragua, Trinidad and Tobago, Paraguay, Bolivia and El Salvador.

A table showing the status of ratifications and accessions to the Convention may be found at the end of this report. (Appendix XXIV)

E. Budget

Article 72 of the Convention provides that *"the Court shall draw up its own budget and submit it for approval to the General Assembly through the General Secretariat. The latter may not introduce any changes in it."* Pursuant to Article 26 of its Statute, the Court administers its own budget.

F. Relations with other Regional Organizations

The Court has close institutional ties with the Commission. These ties have been strengthened by meetings between the members of the two bodies, held at the recommendation of the General Assembly. The Court also maintains cooperative relations with the Inter-American Institute of Human Rights, established under an agreement between the Government of Costa Rica and the Court which entered into force on November 17, 1980. The Institute is an autonomous international academic institution with a global, multidisciplinary approach to the teaching, research and promotion of human rights. From time to time, the Court holds working sessions with the European Court of Human Rights, which was established by the Council of Europe with functions similar to those of the Inter-American Court.

II. ACTIVITIES OF THE COURT

A. XXXI Regular Session of the Court

The Court held its XXXI Regular Session from January 16 to January 18 and on January 20, 1995, at its seat in San José, Costa Rica. The composition of the Court was as follows: Héctor Fix-Zamudio, (Mexico) President; Hernán-Salgado Pesantes, (Ecuador) Vice President; Alejandro Montiel-Argüello, (Nicaragua); Máximo Pacheco- Gómez,(Chile); Oliver Jackman (Barbados) and Antônio A. Cançado Trindade (Brazil). For reasons beyond his control, Judge elect Alirio Abreu-Burelli (Venezuela) was not able to attend this session. Manuel

E. Ventura-Robles, Secretary of the Court, and Ana María Reina, Deputy Secretary, were also present.

During this Session the following matters were considered:

1. The Swearing in of New Judges

The President of the Court swore in new judges Oliver Jackman (Barbados) and Antônio A. Cançado Trindade (Brazil).

2. El Amparo Case

During this session the Tribunal rendered a judgment on January 18, 1995, on the merits of the El Amparo Case. The Court took note of the acceptance of responsibility made by the Republic of Venezuela and decided that the controversy as to the facts that gave rise to the instant case had ceased; decided that the Republic of Venezuela is obligated to make reparations for the damages and to pay fair compensation to the surviving victims and the families of the deceased; decided that the reparations and the form and amount of compensation were to be determined by the Republic of Venezuela and the Inter-American Commission, by mutual agreement, within six months from the date of notification of the judgment; and reserved the right to review and approve the agreement, and in the event that an agreement could not be reached, to determine the scope of the reparations and the amount of the compensation and costs, for which the Court left the case open. (Appendix I).

3. Maqueda Case

The Court analyzed the friendly settlement in the Maqueda Case against Argentina, signed by the Inter-American Commission and the Parties to the proceedings. In the friendly settlement, the Argentine Government committed to issue a decree which would commute the sentence that Guillermo Maqueda was condemned to spend in prison and grant him conditional liberty. In view of the fact that Argentina complied with the agreement, and that Mr. Maqueda is conditionally at liberty, the Court rendered a judgment on January 17, 1995 in which it decided: to admit the discontinuance of the action brought by the Inter-American Commission in the Maqueda Case against the Republic of Argentina, to close the Maqueda Case, and to reserve the right to reopen and continue consideration of the case should at any future time a change occur in the circumstances that gave rise to the agreement. (Appendix II)

4. Agreement on the Joint Library of the Court and the Inter-American Institute of Human Rights

On January 17, the President of the Court, Judge Héctor Fix-Zamudio, the President of the Inter-American Institute of Human Rights, Doctor Pedro Nikken, and the Executive Director of the Institute, Judge Antônio A. Cançado Trindade signed an agreement in which they agreed that the library is the joint property, shared and indivisible, of the Court and the Inter-American Institute of Human Rights; that the library collection located at the seat of the Court will remain there unless both parties, by mutual agreement, determine otherwise; and that both parties will make a special effort to periodically allot sufficient material resources to permit the collection to grow and to remain up-to-date. This agreement can only be terminated by mutual agreement. (Appendix III)

5. Other Matters

In addition to considering administrative and budgetary matters, the Tribunal reviewed and approved the Annual Report of the activities of the Court for 1994 which would be presented to the General Assembly of the OAS in Montrouis, Haiti at its next regular session.

B. XVI Special Session of the Court

The Court held its XVI Special Session from January 19 to 27, 1995. For this Special Session the composition of the Court was as follows: Héctor Fix-Zamudio, (Mexico) President; Hernán Salgado-Pesantes, (Ecuador) Vice President; Rafael Nieto-Navia (Colombia); Alejandro Montiel-Argüello (Nicaragua); and Máximo Pacheco-Gómez (Chile). Manuel E. Ventura-Robles, Secretary, and Ana María Reina, Deputy Secretary were also present. During this Special Session the Court considered the following matters:

1. Neira Alegría *et al.* Case

On January 19, 1995, the Court rendered the Judgment on the merits of the Neira Alegría *et al.* Case against Peru, in which it unanimously, decided to declare that Peru had violated to the detriment of Víctor Neira-Alegría, Edgar Zenteno-Escobar and William Zenteno-Escobar the right to life as recognized by Article 4(1) of the American Convention, in conjunction with Article 1(1) of the same; to declare that Peru has violated to the detriment of the three persons named, the right to habeas corpus set forth in Article 7(6) in connection with the prohibition of Article 27(2) of the American Convention; to decide that Peru is obligated to pay to the relatives of the victims, as a result of these proceedings, fair compensation and to reimburse the expenses they have incurred in their actions before the national authorities; to decide that the manner and amount of compensation and reimbursement of expenses would be fixed by Peru and the Commission, by mutual agreement, within a period of six months from the date of notification of this judgment; to reserve to the Court the authority to review and approve the agreement, and, in the event that an agreement could not be reached, to determine the scope of reparations and the amount of compensation and costs, for which the case remained open. (Appendix IV)

2. Genie Lacayo Case

On January 27, 1995, the Court rendered a judgment on preliminary objections in the Genie Lacayo Case against Nicaragua and unanimously decided to declare that the Court has jurisdiction to consider the case, except as to pass judgment on the compatibility, in abstract, of Nicaraguan Decrees 591 and 600 with the American Convention; to reject the preliminary objections interposed by the Government of Nicaragua, except that of non-exhaustion of domestic remedies, which will be resolved together with the merits of the case; to decide that the the Government of Nicaragua's objections to the arguments raised in the application of the Inter-American Commission, referring to the obligatory nature of the Commission's recommendations, are not preliminary objections but rather questions going to the merits that should be resolved at that time. The Court decided that it was not justified in awarding costs, and it resolved to continue hearing the case. The preliminary objections interposed by the Government and rejected by the Court were the following: lack of jurisdiction of the Court; lack of the requirements of admissibility set forth in Article 46 of the American Convention; procedural errors of the Inter-American Commission in the consideration of the case and in the application presented to the Court, and the undue accumulation of claims in the application presented by the Inter-American Commission. (Appendix V)

C. Presentation of the Court's Annual Report to the Committee on Juridical and Political Matters of the Permanent Council of the OAS and Presentation of the Draft Budget of the Court to the Committee on Administrative and Budgetary Matters

From April 3 to 12, 1995, Judges Héctor Fix-Zamudio, President, and Hernán Salgado-Pesantes, Vice President, accompanied by the Secretary of the Tribunal Manuel E. Ventura-Robles, visited the seat of the OAS in Washington, D.C. in order to present the Court's 1994 Annual Report to the Committee on Juridical and Political Matters of the Permanent Council of the OAS and to present the Court's 1996 draft budget to the Committee on Administrative and Budgetary Matters.

The Recommendations presented by the Committee on Juridical and Political Matters to the Permanent Council of the OAS are as follows:

1. To receive the OAS permanent Council's observations and recommendations on the Annual Report and transmit them to the Inter-American Court of Human Rights.

2. To thank the Government of Canada and the European Union for their contributions to the Court.

3. To urge the Government of Suriname to report to the Inter-American Court of Human Rights on the status of compliance with the Court's judgments on the Aloeboetoe *et al.* and the Gangaram Panday cases.

4. To urge those OAS member states which have not yet done so to ratify or accede to the American Convention on Human Rights, "Pact of San José," and to accept the contentious jurisdiction of the Inter-American Court of Human Rights.

5. To provide the Inter-American Court of Human Rights with the support it needs to continue performing the lofty functions assigned to it in the American Convention on Human Rights.

6. To express to the Inter-American Court of Human Rights its recognition for the work accomplished during the period covered by this report, and to urge the Court to continue performing these important functions.

7. To recommend to the Inter-American Court of Human Rights that its Annual Report include specific details not only regarding the purposes of its periodic meetings with the Inter-American Commission on Human Rights, but also as to the results of those meetings.

Subsequently, the Permanent Council, based on the report presented to it by the Committee on Juridical and Political Matters, agreed to forward the draft resolution prepared by the Committee to the General Assembly, as an antecedent for the consideration of the corresponding item on the agenda

During this visit to Washington D.C. the judges of the Inter-American Court were received by the Committee on Administrative and Budgetary Matters, to which the President of the Court explained the projected budget for the year 1996. He also answered many questions about the proposed budget from the representatives of the member States, who considered the visit as very important for their full understanding of the functioning and needs of the Tribunal.

D. Donation of the Government of The Netherlands

On April 24, on the occasion of the XXIV External Program of the Academy of International Law of The Hague, co-sponsored by the Inter-American Institute of Human Rights and the Government of The Netherlands, the Academy presented the Joint Documentation Center and Library of the Inter-American Court and the Inter-American Institute of Human Rights with 246 volumes of the *"Recueil des Cours"*, published by the Academy, as well as the volumes containing the Colloquiums.

E. XVII Special Session of the Court

The Court celebrated its XVII Special Session on May 17 and 18, 1995. The composition of the Court was as

follows: Héctor Fix-Zamudio, (Mexico) President; Hernán Salgado-Pesantes, (Ecuador) Vice President; Alejandro Montiel-Argüello (Nicaragua); Máximo Pacheco-Gómez (Chile); Oliver Jackman (Barbados); Alirio Abreu-Burelli (Venezuela) and Antônio A. Cançado Trindade (Brazil). Judge *ad hoc* Edgar Enrique Larraondo-Salguero, appointed by Guatemala for the Paniagua Morales *et al.* Case, also attended the relevant meetings. Manuel E. Ventura-Robles, Secretary, and Ana María Reina, Deputy Secretary were also present.

In this Special Session the Court considered the following matters:

1. The Swearing In of New Judges

On May 17, the President swore in Judge Alirio Abreu-Burelli (Venezuela), who assumed his office as of that date. Attorney Edgar Enrique Larraondo-Salguero, appointed Judge *ad hoc* for the Paniagua Morales *et al.* Case by the Government of Guatemala, was also sworn in.

2. El Amparo Case

The Court analyzed the April 18, 1995, writing of the Inter-American Commission concerning several requests relative to the interpretation of the Court's January 18, 1995 Judgment in the El Amparo Case. By Order of May 17, 1995, the Court decided not to pass judgment at that time on the Commission's petition and decided that "[u]*pon expiration of the six-month deadline, if the Republic of Venezuela and the Inter-American Commission on Human Rights have reached an agreement, the Court shall exercise its authority to review and approve it if the Court deems it appropriate; and if no agreement has been reached between the parties, the Court shall determine the scope of the reparations and the amount of the indemnification and the court costs and attorneys' fees and other matters of the case.*" (Appendix VI)

3. Castillo Páez, Loayza Tamayo, and Paniagua Morales *et al.* Cases

In the three cases, the Court, in accordance with Article 31(4) of the Rules of Procedure, considered the requests presented by the respective Governments to suspend the proceedings on the merits until the preliminary objections are resolved. By Orders of the Court of May 17, 1995, it decided to declare these requests inadmissible and to continue consideration of the cases in their distinct procedural stages.

4. Genie Lacayo Case

By Order of May 18, 1995, the Court determined the composition of the Tribunal to hear and resolve the merits of the Genie Lacayo Case against Nicaragua. The Court unanimously declared that it had jurisdiction *"as currently composed, to decide on its composition for the continuation of the Genie Lacayo Case."* It decided by six votes to one *"to continue hearing the merits of the Genie Lacayo Case with the composition of the Court that delivered the judgment on preliminary objections."* (Appendix VII)

5. Provisional Measures Involving Guatemala-Colotenango Case

In view of the fact that the term of the extension of provisional measures set forth in the December 1, 1994 Decision involving Guatemala (Colotenango Case), terminated on June 1, 1995, the Court rendered an Order on May 18, 1995. In that Order, the Court provided for an extension until February 1, 1996, of the provisional measures ordered by the Court on June 22, 1994 and expanded by the Decision of December 1, 1994. The Court also requested that the Republic of Guatemala submit to the Court every forty-five days, from the date of the May, 1995 Order, information certifying the actual results of the measures that have been taken or that are taken during that period. (Appendix VIII)

F. XXV Regular Session of the General Assembly of the OAS

During the XXV Regular Session of the General Assembly of the OAS, which took place in Montrouis, Haiti from June 5 to 9, 1995, the Court was represented by its President, Judge Héctor Fix-Zamudio, and its Vice President, Judge Hernán Salgado-Pesantes. Secretary, Manuel E. Ventura-Robles, was also present.

1. Annual Report of the Court for the Year 1994

By means of Resolution AG/RES.1330(XXV-O/95), approved at the ninth Plenary Session held on June 9, 1995, the Assembly approved the following observations and recommendations about the Annual Report of the activities of the Court for the year 1994:

1. To welcome the OAS permanent Council's observations and recommendations on the Annual Report and transmit them to the Inter-American Court of Human Rights.

2. To thank the Government of Canada and the European Union for their contributions to the Court.

3. To urge the Government of Suriname to report to the Inter-American Court of Human Rights on the status of compliance with the Court's judgments in the Aloeboetoe *et al.* and Gangaram Panday cases.

4. To urge those OAS member states which have not done so to give serious consideration to ratifying or acceding to the American Convention on Human Rights, "Pact of San José," and to accept the contentious jurisdiction of the Inter-American Court of Human Rights.

5. To provide the Inter-American Court of Human Rights with the support it needs to continue performing the lofty functions assigned to it in the American Convention on Human Rights.

6. To express to the Inter-American Court of Human Rights its appreciation for the work accomplished during the period covered by this report, and to urge the Court to continue performing these important functions.

7. To recommend to the Inter-American Court of Human Rights that its Annual Report include specific details regarding not only the purposes of its periodic meetings with the Inter-American Commission on Human Rights but also the results of those meetings.

2. Approval of the 1996 Budget of the Court

The Assembly approved the budget of the Court for the year 1996 and increased it by 16% in relation to the previous year.

3. Acceptance of the Contentious Jurisdiction of the Court

On June 6, 1995, during the meeting of the General Assembly, El Salvador presented the document to the Secretary General of the OAS in which it recognized as binding, *ipso facto*, and not requiring special agreement, the jurisdiction of the Inter-American Court.

G. XXXII Regular Session of the Court

From September 11 to 22, 1995, the XXXII Regular Session of the Court was held at its seat in San José, Costa

Rica. The composition of the Court was as follows: Héctor Fix-Zamudio, (Mexico) President; Hernán Salgado-Pesantes, (Ecuador) Vice President; Alejandro Montiel-Argüello (Nicaragua); Máximo Pacheco- Gómez (Chile); Oliver Jackman (Barbados); Alirio Abreu-Burelli (Venezuela); Antônio A. Cançado Trindade (Brazil); and Edgar Enrique Larraondo-Salguero, Judge *ad hoc* for the Paniagua Morales *et al.* Case. Manuel E. Ventura-Robles, Secretary, and Ana María Reina, Deputy Secretary were also present. During this session the Court considered the following matters:

1. Election of the President and Vice President

The Court re-elected Judge Héctor Fix-Zamudio as President and Hernán Salgado-Pesantes as Vice President for the regulation period of two years, which will end on June 30, 1997.

2. Public Hearings and the Consideration of New Cases

During this session the Court held public hearings on preliminary objections in the Paniagua Morales *et al.* Case against Guatemala and the Castillo Páez and Loayza Tamayo Cases against Peru. The Court was also informed of the submission of the Garrido and Baigorria Case against Argentina and the Blake Case against Guatemala. The Court decided to consider these last two cases at its next session, after the swearing in of the *ad hoc* judges appointed by the respective governments to hear these cases. The Judges *ad hoc* are Julio A. Barberis (Argentina) and Alfonso Novales-Aguirre (Guatemala).

3. El Amparo Case

On September 21, 1995, the Tribunal issued an Order in which it decided not to admit the April 18, 1995, request of the Inter-American Commission related to the application for an interpretation of the Judgment and to declare inadmissible the requests of the Government of the Republic of Venezuela and the Commission to extend the time period set in the January 18, 1995 Judgment to arrive at an agreement on reparations. The Court, on directly assuming the determination of these reparations, granted the parties time periods for the presentation of their memoranda on the issue. (Appendix IX)

4. Provisional Measures Involving Guatemala-Carpio Nicolle Case

On June 1, 1995, the Inter-American Commission requested that the Court order provisional measures to protect the witnesses to the assassination of Jorge Carpio-Nicolle (Case No. 11.333). The President issued an Order on June 4, 1995, in which he requested the Government of the Republic of Guatemala to adopt without delay the urgent measures necessary to protect the persons named in the request. (Appendix X) Subsequently, by means of an Order of July 26, 1995, the President expanded the urgent measures. (Appendix XI) On September 16 the Court held a public hearing on the Commission's request, and on September 19 it decided to confirm and to adopt as its own the urgent measures taken by the President. (Appendix XII) By means of these provisional measures, the Court ordered the protection of the lives and physical integrity of Marta Elena Arrivillaga de Carpio, Karen Fischer de Carpio, Mario López-Arrivillaga, Angel Isidro Girón-Girón, Abraham Méndez-García, and Lorraine Maric Fisher-Pivaral. These provisional measures were ordered for a time period of six months.

5. Provisional Measures Involving Guatemala-Blake Case

On August 11, 1995, the Inter-American Commission requested that the Court adopt provisional measures in the Blake Case (No. 11.219), under consideration by the Tribunal, to protect the life and personal integrity of the witness in the case, Justo Victoriano Martínez-Morales, and of the following members of his family: Floridalma Rosalina López-Molina, Víctor Hansel Morales-López, Edgar Ibal Martínez-López, and Silvia Patricia

Martínez-López. By Order of August 16, 1995, the President ordered urgent measures requiring the Government of Guatemala to adopt without delay those measures necessary to protect the lives and personal integrity of the persons named above. (Appendix XIII) On September 22 the Court ratified the Order of the President. (Appendix XIV)

6. Order of the Court not Accepting the Substitution of the Judge *ad hoc* in the Paniagua Morales *et al.* Case Against Guatemala

On the date of September 11, 1995, the Court decided not to accept the substitution of Judge *ad hoc* Edgar Enrique Larraondo-Salguero by Attorney Alfonso Novales-Aguirre as requested by the Government in the Paniagua Morales *et al.* Case against Guatemala. (Appendix XV)

7. Order of the Court that Determined the Composition of the Tribunal for the Consideration of Reparations and Compensation and the Supervision of Compliance with the Judgments

By Order of September 19, 1995, the Court unanimously decided that all issues related to a decision on reparations and compensation, as well as to the supervision of compliance with this Court's judgments, corresponds to the judges who served on the Court at the time the Court decided those matters, unless a public hearing has already taken place, in which case the judges that were present at that hearing will decide the issue. (Appendix XVI)

H. The Contribution of the European Union to the Court

On September 25, 1995, the Inter-American Court and the European Union (EU) signed an agreement in which the sum of ECU 200,000 (two hundred thousand ECUs) was approved to carry out the Court's project entitled "Assistance to the Inter-American Court of Human Rights, Second Stage" which attempts to strengthen the inter-American system for the protection of human rights by assistance to the Court, its only jurisdictional organ. The assistance is provided to develop an adequate system to disseminate the Court's jurisprudence, to set up a system of information and modern electronic communication, and to make improvements to its Library.

By means of this one year project, it is hoped that Series A and C of the publications of the Court will be brought up-to-date and some of those which are out of print will be re-issued. The project will also strengthen the Library collection in human rights and public international law. In the information area, it is hoped that the Court will be connected in general to the different international law databases. The institution will also be provided with all the equipment necessary for it to successfully fulfill its functions.

On April 6 the first project of cooperation between the Court and the European Union entitled "Assistance to the Inter-American Court of Human Rights," the goals of which were completely fulfilled, was completed. Through this project the publications of the Court were brought up-to-date —a total of 16 were published— including a commemorative book entitled "La Corte y el Sistema Interamericanos de Derechos Humanos"; the information system was improved, and the library was strengthened by the purchase of books and the subscription to periodic publications for the next five years.

I. XVIII Special Session of the Court

From November 27 to December 8, 1995, the XVIII Special Session of the Tribunal was held at its seat. The composition of the Court was as follows: Héctor Fix-Zamudio, (Mexico) President; Hernán Salgado-Pesantes,

(Ecuador) Vice President; Rafael Nieto-Navia (Colombia); Alejandro Montiel-Argüello (Nicaragua); and Máximo Pacheco-Gómez (Chile). Manuel E. Ventura-Robles, Secretary, and Ana María Reina, Deputy Secretary were also present.

During this Special Session the Court considered the following:

1. Genie Lacayo Case

The Court held a public hearing on November 27 to consider the objections to the appearance of witnesses and demands for their disqualification made by the Government of Nicaragua. On the following day, the Court received the testimony of three witnesses who were neither objected to nor disqualified. By Order of November 28, 1995, the Tribunal rejected the objection to the appearance of and the demand to disqualify the abovementioned witnesses, reserving to itself the right to subsequently assess the value of their testimony. It also authorized the President to convoke a public hearing at a convenient time to receive the testimony of the witnesses.

2. Caballero Delgado and Santana Case

On December 8, 1995, the Court rendered a Judgment on the merits in the Caballero-Delgado and Santana Case, in which it decided that the Republic of Colombia violated, to the detriment of Isidro Caballero-Delgado and María del Carmen Santana the rights to personal liberty and to life contained in Articles 7 and 4, read in conjunction with Article 1(1) of the American Convention; that the Republic of Colombia is obligated to continue judicial proceedings into the disappearance and presumed death of the persons named and to punish them in accordance with internal law; that the Republic of Colombia is obligated to pay fair compensation to the relatives of the victims and to reimburse the expenses they have incurred in their actions before the Colombian authorities in relation to the proceedings, and that the manner and amount of the compensation and reimbursement of the expenses would be fixed by the Court, and for that purpose the corresponding proceeding would remain open. (Appendix XVII)

J. December 2, 1995 Session of the Court

The Court, composed of Judges Héctor Fix-Zamudio, President (Mexico); Hernán Salgado-Pesantes, Vice President (Ecuador); Alejandro Montiel-Argüello (Nicaragua); Máximo Pacheco-Gómez (Chile); Antônio A. Cançado Trindade (Brazil) and assisted by Secretaries Manuel E. Ventura-Robles and Ana María Reina, held a session on December 2, 1995 in which they agreed to amend Article 6(1) of the Rules of Procedure. Pursuant to the new text of this Article, the Permanent Commission, which assists the President in the exercise of his functions, will be composed of the President, the Vice President, and any other judges that the President considers necessary in accordance with the needs of the Court.

K. Submission of New Contentious Cases

During 1995 six new contentious cases were submitted to the Court. They are:

1. Loayza Tamayo Case

On January 12, 1995, the Inter-American Commission submitted for the consideration of the Court, Case No. 11.154 against the State of Peru for events which occurred as of February 6, 1993, when, according to the

application, María Elena Loayza-Tamayo was subjected to illegal deprivation of liberty, torture, cruel, inhuman, and degrading treatment, the violation of judicial guarantees, and double jeopardy, all based on the same acts of the alleged victim. (Appendix XVIII)

The Commission designated Oscar Luján Fappiano as its Delegate and the Government of Peru named Mario Cavagnaro-Basile as Agent and Julio Mazuelos-Coello as Alternate Agent.

2. Castillo Páez Case

On January 13, 1995, the Inter-American Commission submitted for the consideration of the Court, Case No. 10.733 against the State of Peru for events which occurred as of October 21, 1990, when, according to the application, Ernesto Rafael Castillo-Páez was detained by agents of the National Police of Peru. His whereabouts since that time are unknown. (Appendix XIX)

The Commission designated Patrick Robinson as its Delegate and the Government of Peru named Mario Cavagnaro-Basile as Agent and Julio Mazuelos-Coello as Alternate Agent.

3. Paniagua Morales *et al.* Case

On January 19, 1995, the Inter-American Commission submitted for the consideration of the Court, Case No. 10.154 against the State of Guatemala for events which occurred as of June 2, 1987, when, according to the application, agents of the Guatemalan Treasury Police kidnapped, tortured, and murdered several civilians. (Appendix XX)

The Commission designated Claudio Grossman as its Delegate and the Government of Guatemala named Acisclo Valladares-Molina as Agent and Vicente Arranz-Sanz as Alternate Agent.

4. Garrido and Baigorria Case

On May 29, 1995, the Inter-American Commission submitted for the consideration of the Court, Case No. 11.009 against the State of Argentina for the events which took place as of April 28, 1990, when, according to the application, Adolfo Garrido and Raúl Baigorria were detained by the police of the Province of Mendoza. Their whereabouts since that time are unknown. (Appendix XXI)

The Commission designated Michael Reisman as its Delegate and the Government of Argentina named Zelmira Regazzoli as Agent and Mónica Pinto as Alternate Agent.

5. Blake Case

On August 3, 1995, the Inter-American Commission submitted for the consideration of the Court, Case No. 11.219 against the State of Guatemala for the events occurring during the year 1985, when, according to the application, members of the civil self-defense patrols of Guatemala murdered Nicholas Chapman Blake. (Appendix XXII)

The Commission designated Claudio Grossman as its delegate and the Government of Guatemala named Dennis Alonzo Mazariegos as Agent and Vicente Arranz-Sanz as Alternate Agent.

6. Suárez Rosero Case

On December 22, 1995, the Inter-American Commission submitted for the consideration of the Court, Case

No. 11.273 against the State of Ecuador for events occurring as of June 23, 1992, when, according to the application, agents of the State of Ecuador arbitrarily and illegally arrested Rafael Iván Suárez-Rosero, who is still detained. (Appendix XXIII)

The Commission designated Leo Valladares-Lanza as its Delegate. As of the date of the completion of the present report the Government of Ecuador had not yet been notified of this case.

L. Meetings with the Inter-American Commission on Human Rights

In observation of the recommendation of the General Assembly in resolutory point eight of the Resolution AG/RES. 1041 (XX-O/90), judges of the Court and members of the Inter-American Commission met in Washington, D.C, on April 12, 1995. Judges Héctor Fix-Zamudio, President, Hernán Salgado-Pesantes, Vice President, Antônio A. Cançado Trindade, and Secretary Manuel E. Ventura-Robles were present for the Inter-American Court. The majority of the Inter-American Commission's members and its Executive Secretary and Deputy Executive Secretary were present for the Commission.

The subjects discussed were as follows: possible reforms to the American Convention on Human Rights; contentious cases, their submission to the Court, the memorials, and testimonial, documentary, and expert evidence; precautionary and provisional measures; and the presence of representatives of the Commission at the reading of the Court's judgments and advisory opinions.

As a consequence of this meeting, the Presidents of the Court and the Commission sent a letter to the President of the Permanent Council of the OAS informing him that in the judgment of both organs it was not yet the proper time to introduce reforms to the American Convention. This action was taken in response to the request of the Permanent Council for the opinion of both organs on the subject.

An agreement was also reached on the structure and contents of the applications submitted by the Commission to the Court and on the time permitted to present evidence, whether it be in the form of testimony, documents or experts. Additionally they reached an agreement on the grounds that the requests for provisional measures that the Commission submits to the Court should meet, and it was agreed that the Commission will do everything possible so that one of its members will always be present at the reading of the judgments in contentious cases and of advisory opinions. Moreover, topics of future discussion were identified with a view to improving the inter-American system for the protection of human rights.

On June 7, 1995, during the General Assembly of the OAS, in Montrouis, Haiti, a meeting was held between Judges Héctor Fix-Zamudio, President, Hernán Salgado-Pesantes, Vice President, and the Secretary of the Court, Manuel E. Ventura-Robles, with the following members of the Inter-American Commission: Alvaro Tirado-Mejía, Claudio Grossman, Patrick Robinson, and John Donaldson, as well as with its Executive Secretary, Edith Márquez-Rodríguez, and its Deputy Executive Secretary, David Padilla. The purpose of this meeting was to coordinate the dates of the public hearings to be held at its next session in view of the fact that the Commission would be in session on the same dates. It was agreed to hold the public hearings during the week ends so that the Commissioners could travel to Costa Rica without affecting the quorum of the meetings that were planned in Washington, D.C.

M. Meetings of the Permanent Commission of the Court

The Permanent Commission of the Court, composed of Judges Fix-Zamudio, Salgado-Pesantes, Montiel-

Argüello, and Pacheco-Gómez met on May 19 and 20, 1995. In that meeting they discussed matters relating to cases under consideration by the Court and approved the restructuring of the Secretariat of the Court.

Subsequently, on December 2, 1995, the Permanent Commission, composed of the Judges named in the previous paragraph and Judge Antônio A. Cançado Trindade, met to approve the program of activities and the agendas of future sessions of the Court.

N. External Financial Audit of the Court

President of the Court, Judge Héctor Fix-Zamudio, ordered an external audit of the Court covering the period between January 1 and December 31, 1995. This audit was conducted by the firm Fernando Fumero & Associates, S.C., and will be delivered to the Secretary General of the OAS in the early months of 1996.

O. Academic Activities of the Judges

1. Judges Alejandro Montiel-Argüello and Antônio A. Cançado Trindade represented the Court at a meeting of the Latin American Inter-Parliamentary Commission of Human Rights which took place in San José, Costa Rica from March 24 to 26, 1995. At the meeting, Judge Antônio A. Cançado Trindade delivered a lecture on The Current State of the International Law of Human Rights in Light of the Vienna World Conference of 1993.

2. Judge Antônio A. Cançado Trindade delivered a series of five lectures on Future Developments of the Inter-American System for the Protection of Human Rights at the XXIV External Session of the Academy of International Law at The Hague, which took place in Costa Rica from April 24 to May 6, 1995. Subsequently, he taught the same course at the XXVI Session of Studies of the International Institute of Human Rights, which took place in Strasbourg, France during the month of July 1995. On July 13 he gave a lecture on Aspects of the Jurisprudence of the Inter-American and European Courts of Human Rights at the III Joint Conference of the Asser Institute (Holland) and the American Society of International Law, which was held in The Hague, Holland.

3. Judge Alejandro Montiel-Argüello delivered two lectures on the Jurisprudence of the Inter-American Court at the XXII Course on International Law that took place in Rio de Janeiro, Brazil from August 7 to 31, 1995, under the auspices of the Inter-American Juridical Committee.

4. Judge Alirio Abreu-Burelli participated as a lecturer in the "Stages of Constitutional Amparo", held by the Bar Association of the Lara State (Venezuela). On October 12, 1995, he lectured on the theme, "The Remedy of Amparo and Human Rights."

5. Judge Máximo Pacheco-Gómez, represented the Court in the Second Conference on Justice and Development which was held by the Inter-American Development Bank, with the sponsorship of the Government of Uruguay, in Montevideo, Oriental Republic of Uruguay, on October 19 and 20, 1995.

6. Judge Máximo Pacheco-Gómez, represented the Court in the Regional Conference on Ways to Foster Confidence and Security which was held in Santiago, Chile from November 8 to 10, 1995.

7. Vice President of the Court, Hernán Salgado-Pesantes, represented the Tribunal in the capacity of observer at the XXXII Conference of the Inter-American Federation of Attorneys which was held in Quito,

Ecuador from November 12 to 17, 1995.

8. Judge Antônio A. Cançado Trindade gave a lecture on the Jurisprudence of the Inter-American Court at the Seminar on the Future of the Inter-American System for the Protection of Human Rights, convoked by the University of Nottingham and held at the University of London (Institute of Advanced Legal Studies), on November 17, 1995.

P. Academic Activities of the Secretary

1. The Secretary of the Court, Manuel E. Ventura-Robles, gave five lectures on August 4 and 5, 1995, on the Inter-American System for the Protection of Human Rights in the Course on Human Rights at the University of Navarra, Pamplona, Spain, which was held from July 24 to August 5, 1995.

2. The Secretary of the Court gave a lecture at the Costa Rican Bar Association on August 18, 1995, on the Inter-American System for the Protection of Human Rights during the Convention on the New Outlook of Human Rights in America, which was held by the Costa Rican Association of International Law from August 16 to 23, 1995.

3. The Secretary of the Court participated as a joint lecturer with the Executive Secretary of the Inter-American Commission, Doctor Edith Márquez-Rodríguez, at a seminar on the Inter-American System for the Protection of Human Rights that was given during the Program of Continuing Education in Law, which took place at the University of Costa Rica from October 18 to 20, 1995.

APPENDIX I

INTER-AMERICAN COURT OF HUMAN RIGHTS

EL AMPARO CASE

JUDGMENT OF JANUARY 18, 1995

In the El Amparo Case,

the Inter-American Court of Human Rights, composed of the following judges(*):

Héctor Fix-Zamudio, President
Hernán Salgado-Pesantes, Vice President
Alejandro Montiel-Argüello, Judge
Máximo Pacheco-Gómez, Judge
Antônio A. Cançado Trindade, Judge;

also present:

Manuel E. Ventura-Robles, Secretary, and
Ana María Reina, Deputy Secretary

delivers the following judgment pursuant to Articles 45 and 46 of the Rules of Procedure of the Inter-American Court of Human Rights (hereinafter "the Rules of Procedure") on the instant case submitted by the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") against the Republic of Venezuela (hereinafter "the Government" or "Venezuela").

(*)Judge Oliver Jackman abstained from hearing this case due to his previous participation in several stages of the case while it was being examined by the Inter-American Commission on Human Rights.

I

1. This case was submitted to the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court") by the Inter-American Commission by note of January 14, 1994, which was accompanied by Report Nº 29/93 of October 12, 1993. It originated in a petition (Nº 10.602) against Venezuela lodged with the Secretariat of the Commission on August 10, 1990.

2. The Commission submitted this case in order for the Court to determine whether there had been a violation, by the Government, of the following Articles of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"): 2 (Domestic Legal Effects); 4 (Right to Life); 5 (Right to Humane Treatment); 8(1) (Right to a Fair Trial); 24 (Right to Equal Protection); 25 (Right to Judicial Protection), and all of the above in relation to Article 1(1) (Obligation to Respect Rights) of the same Convention, for the deaths of

> José R. Araujo, Luis A. Berríos, Moisés A. Blanco, Julio P. Ceballos, Antonio Eregua, Rafael M. Moreno, José Indalecio Guerrero, Arín O. Maldonado, Justo Mercado, Pedro Mosquera, José Puerta, Marino Torrealba, José Torrealba and Marino Rivas, [on account of the] events that occurred on October 29, 1988 on the "La Colorada" Canal, Páez District, State of Apure, Venezuela.

3. It also requested the Court to find that Venezuela is responsible for "*the violation of the right to humane treatment, to a fair trial, to equal protection and to judicial protection of Wollmer Gregorio Pinilla and José Augusto Arias (Articles 5, 8(1), 24 and 25 of the Convention), survivors of the events that occurred on October 29, 1988 on the 'La Colorada' Canal.*"

4. The Commission further asked the Court:

> 3. That, on the basis of the pacta sunt servanda principle it declare that the State of Venezuela has violated Article 51(2) of the American Convention by not carrying out the recommendations made by the Commission.
>
> 4. That the State of Venezuela be required to identify and punish, on the basis of investigations made, the intellectual and accessory violators, thereby preventing the consummation of acts of grave impunity that damage the foundations of legal order.
>
> 5. That it declare that the enforceability of Article 54, paragraphs 2 and 3 of the Military Code of Justice analyzed in confidential Report Nº 29/93, is incompatible with the purpose and objective of the American Convention on Human Rights, and that it must be adjusted to the latter in conformity with the commitments acquired pursuant to Article 2 thereof.
>
> 6. That it declare that the State of Venezuela must provide reparation and indemnification to the next-of-kin of the victims for the acts committed by State agents, as described in this petition, in accordance with Article 63(1) of the Convention.
>
> 7. That the State of Venezuela be sentenced to pay court costs and attorneys' fees of this action.

5. In submitting the case to the Court, the Commission designated Oscar Luján Fappiano and Michael Reisman as its Delegates, and David J. Padilla, Deputy Executive Secretary, and Milton Castillo, an attorney of the Secretariat of the Commission, as Assistants. By note of February 2, 1994, the Commission informed the Court that Claudio Grossman would replace Michael Reisman as Delegate.

6. On May 3, 1994, the Commission also designated Pedro Nikken (Programa Venezolano de Educación-

Acción en Derechos Humanos, PROVEA / Venezuelan Program of Education-Action on Human Rights), Juan Méndez (Americas Watch), José Miguel Vivanco (Center for Justice and International Law, CEJIL) and Ligia Bolívar (PROVEA), as Assistants in this case. These same people were designated by the relatives of the victims as their representatives, in conformity with the provisions of Article 22(2) of the Rules of Procedure.

7. On February 17, 1994, the Secretariat of the Court (hereinafter "the Secretariat"), after the President of the Court (hereinafter "the President") had concluded his preliminary study, notified the Government of the petition. It advised the Government that it had the right to file a written response to the petition within three months (Art. 29(1) of the Rules of Procedure) and to file preliminary objections within 30 days following notification of the application (Art. 31(1) of the Rules of Procedure).

8. By note of February 28, 1994 the Government informed the Court of the designation of Ildegar Pérez-Segnini, Ambassador of Venezuela to Costa Rica, as Agent and Luis Herrera-Marcano as Attorney in this case. By communication of May 16, 1994, the Government appointed Rodolfo Enrique Piza-Rocafort as its Legal Advisor for this case.

9. On May 20, 1994 Venezuela requested that the President grant an extension of three months to answer the petition. It further informed the President that it had decided "*not to interpose the objection of failure to exhaust domestic legal remedies.*" By note of the same date, the Secretariat transmitted to the Government the President's decision to grant an additional 30 days to answer the complaint. By note of June 13, 1994 the Government asked the President to reconsider the 30-day extension and to grant the extension that had originally been requested. In its communication of June 16, 1994, the President extended the term to answer the petition until August 1, 1994. On this date the answer to the complaint was received by the Secretariat.

II

10. According to the petition, the events occurred when "*16 fishermen who resided in the town of 'El Amparo' were traveling in the direction of the 'La Colorada' Canal on the Arauca River, in the Páez District of the State of Apure, to participate in a fishing trip . . . on board* [a] *boat driven by José Indalecio Guerrero.*" The complaint indicates that at

> approximately 11:20 a.m. they stopped and it was under such circumstances —when some of the fishermen were leaving the boat— that members of the military and the police of the "José Antonio Páez Specific Command" [hereinafter "CEJAP"] —who at that time were conducting a military operation known as "Anguila III"— killed 14 of the 16 fishermen who were at the site of the events.

11. The Inter-American Commission expressed that "*Wollmer Gregorio Pinilla and José Augusto Arias, who were still inside the boat, escaped by jumping into the water and swimming across the 'La Colorada' Canal ... The survivors took refuge in the 'Buena Vista' farm located 15 Km. from the site of the events,*" and the following day turned themselves in to the Commandant of the Police of "El Amparo," Adán de Jesús Tovar-Araque, "*who, together with other police officials of the area, immediately offered them protection.*" The complaint further states that "*Tovar was subject to pressure by police and military functionaries of San Cristóbal, State of Táchira, to turn the survivors over to the Army, resulting in an attempt to seize them by force . . . which was thwarted by the presence of numerous persons who stood in front of the police post.*"

12. According to the petition, Celso José Rincón-Fuentes, Chief Inspector of the DISIP (Dirección de los Servicios de Inteligencia y Prevención / Intelligence and Prevention Services Directorate), visited Tovar in the afternoon of October 29, and "*inform*[ed] *him that they had killed 14 guerrillas and that two had escaped.*" The Commission expressed that

> [o]n that very afternoon and early the following day, Tovar was approached by relatives of several fishermen who inquired about the whereabouts of those who had gone fishing on the 29th, since they had not yet returned and the media was beginning to air news about an armed confrontation with irregular Colombian combatants.

13. According to the Commission, the following Government agents participated as military and police members of the CEJAP in the October 29, 1988 "Anguila III" military operation:

> Lieutenant Commander, Alí Coromoto González; First-Class Technical Master (Army), Ernesto Morales-Gómez; First-Class Technical Sergeant (Army), Omar Antonio Pérez-Hudson; Second-Class Sergeant Major (Army), Salvador Ortiz-Hernández; Chief Commissioner (DISIP), Andrés Alberto Román-Romero; Commissioner (DISIP), Maximiliano José Monsalve-Planchart; Chief Inspector (DISIP), Celso José Rincón-Fuentes; Chief Inspector (DISIP), Carlos Alberto Durán-Tolosa; Inspector (DISIP), José Ramón Zerpa-Poveda; Inspector (DISIP), Luis Alberto Villamizar; Deputy Inspector (DISIP), Franklin Gómez-Rodríguez; Deputy Inspector (DISIP), Omar Gregorio Márquez; Detective (DISIP), Tony Richard Urbina-Sojo; Chief of Summary Proceedings III (PTJ) [Policía Técnica Judicial / Technical Judicial Police], Gerardo Rugeles-Molina; Chief Inspector (PTJ), Edgar Arturo Mendoza-Guanaguey; Deputy Commissioner (PTJ), Florentino Javier López; Deputy Inspector (PTJ), Alfredo José Montero; Principal Agent (PTJ), Daniel Virgilio Gómez; Police Official (PTJ), Rafael Rodríguez-Salazar; and, Huber Bayona-Ríos (a Colombian citizen who provided intelligence services to the CEJAP).

14. On August 10, 1990 the Commission opened Case Nº 10.602 which it maintained under consideration until October 12, 1993, when, pursuant to Article 50 of the American Convention, it adopted Report Nº 29/93 containing the following provisions:

> 7.1 It is recommended that the Venezuelan Government punish the persons responsible for the commission and covering-up of the crime of homicide to the detriment of the victims from "El Amparo."
>
> 7.2 It is recommended that the Venezuelan Government pay fair compensation to the next-of-kin of the victims.
>
> 7.3 It is recommended that the Venezuelan Government adopt domestic legislative provisions, in accordance with its constitutional and legal procedures, in order to revise and modify the Military Code of Justice in regards to the articles analyzed in this Report.
>
> 7.4 It is recommended that the Venezuelan Government (in accordance with the recommendations in paragraphs 7(1), 7(2) and 7(3)) inform the Inter-American Commission on Human Rights, within three months, about the measures it adopts in this case.

15. On January 11, 1994, the Government requested a reconsideration of the previous report, and the scheduling of a hearing to present new facts and legal arguments. By note of January 12, 1994, the Commission answered that it would consider said request during its 85th Regular Session, and that it would opportunely schedule a hearing to receive the representatives of the Government. On this same date, the Government submitted two documents containing its allegations relative to Report Nº 29/93. On January 14, 1994, the Commission rejected the request for reconsideration and decided to confirm Report Nº 29/93 and submit the case to the Inter-American Court.

III

16. The Court is competent to hear the instant case. Venezuela is a State Party to the Convention since

August 9, 1977, and accepted the Court's contentious jurisdiction on July 24, 1981.

IV

17. In its answer, Venezuela pointed out in relationship to "*the Facts referred to in the Petition* . . . [that] *neither does it contest them nor does it express objections as to the merits, since these very facts are being tried by the competent courts of the Republic (at this time by the Ad Hoc Military Court).*" It added that

> [w]hile the Republic of Venezuela does not either contest or object to this action and the objective responsibility for which it could be liable, due to the abnormal circumstances which surrounded this case internally and at the Inter-American Commission, the moral and political responsibility does not pertain to the Government of the Republic, let alone to the higher authorities of the State of Venezuela.

18. On October 28, 1994, the Secretariat received a copy of the judgment of the Ad Hoc Military Court on the "El Amparo" Case, dated June 12, 1994. In its judgment it concluded that "*the irregularities noted by the Criminal Cassation Section of the Supreme Court in its judgment dated ninth (9) of November, nineteen hundred ninety-three had been corrected and that it had OVERRULED the judgment* . . . [and consequently] *it acquitted the accused.*"

19. By note of January 11, 1995 the Government informed the President that Venezuela "*does not contest the facts referred to in the complaint and accepts the international responsibility of the State,*" and requested the Court to ask the Commission "*to come together to a non-litigious procedure with the object of determining in friendly fashion —under supervision by the Court— the reparations applicable, the preceding in conformity with the provisions of Articles 43 and 48 of the Rules of Procedure of the Court.*" The Inter-American Commission was informed about this note by the Secretariat, and acknowledged receipt of same on January 13, 1995.

V

20. By virtue of the preceding, the Court believes that given the recognition of responsibility by Venezuela, the controversy, as to the facts that originated the instant case, has ceased. Therefore, the case should proceed to the stage of the proceedings for the determination of reparations, court costs and attorneys' fees.

21. Exercising the powers of its contentious jurisdiction, the Court deems it appropriate that the determination of the amount for reparations, court costs and attorneys' fees be made by mutual agreement between the Respondent State and the Commission, taking into account the disposition of the Government and the victims' best interests. Should an agreement not be reached, the Court shall determine the scope of the reparations and the amount of indemnification, court costs and attorneys' fees.

VI

Therefore,

THE COURT

unanimously,

1. Takes note of the recognition of responsibility made by the Republic of Venezuela, and decides that the controversy concerning the facts that originated the instant case has ceased.

2. Decides that the Republic of Venezuela is liable for the payment of damages and to pay a fair indemnification to the surviving victims and the next-of-kin of the dead.

3. Decides that the reparations and the form and amount of the indemnification shall be determined by the Republic of Venezuela and the Inter-American Commission of Human Rights, by mutual agreement, within six months as of the notification of this judgment.

4. Reserves the right to review and approve the agreement, and in the event an agreement is not reached, the Court shall determine the scope of the reparations and the amount of the indemnities, court costs and attorneys' fees, to which effect it retains the case on its docket.

Judge Cançado Trindade transmitted to the Court his concurring opinion, which shall be attached to this judgment.

Done in Spanish and English, the Spanish text being authentic, at the seat of the Court in San José, Costa Rica, this eighteenth day of January, 1995.

Héctor Fix-Zamudio
President

Hernán Salgado-Pesantes

Alejandro Montiel-Argüello

Máximo Pacheco-Gómez

Antônio A. Cançado Trindade

Manuel E. Ventura-Robles
Secretary

Read at the public hearing held at the seat of the Court in San José, Costa Rica, on January 20, 1995.

So ordered,

Héctor Fix-Zamudio
President

Manuel E. Ventura-Robles
Secretary

CONCURRING OPINION OF JUDGE A.A. CANÇADO TRINDADE

I concur with the decision of the Court. I understand that at this stage an express clarification should have been added to the effect that the faculty reserved by the Court, in item 4 of the judgment, also extends to examining and deciding upon the request made by the Inter-American Commission on Human Rights (point 5) as to the incompatibility or otherwise of sections 2 and 3 of Article 54 of the Code of Military Justice of Venezuela with the object and purpose of the American Convention on Human Rights.

A.A. Cançado Trindade

Antônio A. Cançado Trindade
Judge

Ventura R.

Manuel E. Ventura-Robles
Secretary

APPENDIX II

INTER-AMERICAN COURT OF HUMAN RIGHTS

MAQUEDA CASE

RESOLUTION OF JANUARY 17, 1995

In the Maqueda Case,

the Inter-American Court of Human Rights, composed of the following judges(*):

Héctor Fix-Zamudio, President
Hernán Salgado-Pesantes, Vice President
Alejandro Montiel-Argüello, Judge
Máximo Pacheco-Gómez, Judge
Antônio A. Cançado Trindade, Judge;

also present:

Manuel E. Ventura-Robles, Secretary, and
Ana María Reina, Deputy Secretary

delivers the following decision pursuant to Article 43 of the Rules of Procedure of the Inter-American Court of Human Rights (hereinafter "the Rules of Procedure") on the instant case submitted by the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") against the Republic of Argentina (hereinafter "the Government" or "Argentina").

(*) Judge Oliver Jackman abstained from hearing this case due to his previous participation in several stages of the case while it was being examined by the Inter-American Commission on Human Rights.

I

1. This case was submitted to the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court") by the Commission by note of May 25, 1994, which was accompanied by Report Nº 17/94 (Case 11.086) of February 9, 1994.

2. The Commission submitted this case in order for the Court to determine whether there had been a violation, by the Government, of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") "*by virtue of the sentencing of Guillermo José Maqueda, an Argentine citizen, to ten (10) years of imprisonment, in violation of the Convention.*"

The Commission asked the Court to declare that Argentina has, to the detriment of the alleged victim, violated:

> the right to a hearing by an impartial tribunal (Article 8(1)); the right to be presumed innocent (Article 8(2)); and the right to appeal the judgment to a higher court (Article 8(2)(h)), together with the judicial guarantees provided for by Article 25, all of the above in relationship to the generic obligation to respect the rights and freedoms recognized in the Convention and to ensure their free and full exercise pursuant to Article 1(1) thereof. It also asked the Court to declare that the State of Argentina violated Article 2 of the Convention for failure to adopt the necessary internal legal measures to guarantee the right provided for in Article 8(2)(h).

It further asked the Court:

> 2. That it declare that the State of Argentina must order the immediate release of Guillermo Maqueda by means of pardon or commutation of sentence.
>
> 3. That it declare that the State of Argentina must provide adequate reparation and indemnification to Guillermo Maqueda in consideration of the serious damage inflicted on him —both materially and morally— as a consequence of the violation of his rights as protected under the Convention.
>
> 4. That it declare that the State of Argentina is obligated to establish a regular mechanism to ensure the right to appeal in the procedure established by law 23.077, with the purpose of making said rule compatible with the American Convention as establishes on with its Article 2.
>
> 5. That it sentence the Government of Argentina to pay court costs and attorneys' fees in relationship to these proceedings.

3. According to the petition, Guillermo Maqueda was an active member of Movimiento Todos por la Patria (hereinafter "MTP" - All for the Fatherland Movement), "*a political movement of a democratic nature that is legally recognized*" in Argentina. On January 22, 1989 Mr. Maqueda attended a meeting together with other members of the MTP, where one of the leaders

> Mr. Francisco Provenzano, informed them about the possibility of a military uprising at a base in the La Tablada area —not an exceptional occurrence in Argentina in 1989, where there had been several military uprisings as well as rumors of possible uprisings. Motivated by the possibility of such an uprising the participants discussed the organization of several activities to promote and protect democracy and constitutional order. Mr. Maqueda was then informed that a group of persons would take part in a peaceful

> demonstration against the uprising, as had been done on previous occasions. Consistent with his democratic convictions, Mr. Maqueda decided to participate in said act of protest.

4. According to the Commission, when Guillermo Maqueda and other members of the MTP, arrived on the morning of the following day near the La Tablada base, they found a different situation from what they expected: an armed confrontation resulting from the actions of a group of persons who were attempting to take the base, a circumstance that prevented them from carrying out the scheduled peaceful demonstration. A few hours later Mr. Maqueda left the area.

5. The petition further states that "*among the participants in said confrontation were some members of the MTP, mainly leaders of the movement,*" who were arrested and later sentenced for the commission of several offenses.

6. According to the Commission's petition, on May 19, 1989, four months after his participation in the demonstration, Mr. Maqueda was arrested. On June 11, 1990 the San Martin Federal Chamber sentenced him to ten (10) years of imprisonment pursuant to

> Law 23.077, passed on August 9, 1984, known as the Law for the Defence of Democracy —a copy of the law is provided as evidence—. Said law creates a special criminal procedure for cases involving acts of violence whose purpose is to make an attempt against constitutional order and democratic life.

The San Martin Federal Chamber sentenced Guillermo Maqueda as:

> a) an accomplice in the crime of qualified unlawful assembly, and
>
> b) an accessory in the offenses of rebellion, illegal seizure, aggravated robbery, aggravated unlawful imprisonment, consummated and attempted doubly aggravated homicides, and serious and minor damages.

Mr. Maqueda's representatives lodged a special appeal that was rejected by the San Martin Federal Chamber of Appeals on October 25, 1990. In view of such denial, they lodged a complaint appeal for rejection of the special appeal with the Supreme Court of the Nation which was also rejected on March 17, 1992, thereby exhausting all existing procedural possibilities provided for in the internal jurisdiction.

According to the Inter-American Commission, Guillermo Maqueda

> did not have the possibility to lodge a remedy for review of the judgment, since Law 23.077 does not provide for the possibility of any appeal or broad remedy before any higher court whatsoever. Therefore, the only alternative for the accused was to appeal before the Supreme Court by means of a special appeal, which is of an exceptional type and subject to restrictions.

7. On September 15, 1992 the Inter-American Commission received Guillermo Maqueda's complaint against Argentina. It was presented by his parents, Ernesto Maqueda and Licia M. Quiroga de Maqueda, Human Rights Watch/Americas and the Center for Justice and International Law (CEJIL). The petition alleged

> that the sentencing of Mr. Maqueda to ten (10) years of imprisonment for his alleged involvement in the January 23, 1989 attack of the 3rd Motorized Infantry Regiment of La Tablada, in the Province of Buenos Aires, violated his human rights as recognized in the American Convention, particularly in Articles 2, 8 and 25 in relationship to Article 1(1).

8. On February 24, 1994, due to the absence of a friendly settlement between the parties, the Commission delivered Report Nº 17/94 to the Government, which was approved on February 9 of that same year, with its conclusions and recommendations. The Commission resolved that, if upon conclusion of the 60-day term, the Government did not correct the violations "*of Guillermo Maqueda's human rights it would submit the case to the Court for consideration.*" At the request of the Government, the Commission agreed to grant an extension of 20 days to inform about the measures adopted in relationship to the Report.

9. The Court is competent to hear the instant case. Argentina has been a State Party to the American Convention since September 5, 1984, and on that same date it accepted the contentious jurisdiction of the Court referred to in Article 62.

10. In submitting the case to the Inter-American Court, on May 25, 1994, the Commission designated Michael Reisman as its Delegate and Edith Márquez-Rodríguez, Executive Secretary of the Commission, and Meredith Caplan, an attorney of the Secretariat of the Commission, as Assistants. In the same communication, the Commission informed the Court that the petitioners are the parents of Guillermo Maqueda, Ernesto Maqueda and Licia de Maqueda.

11. By means of the Resolution of June 22, 1994, the President of the Court (hereinafter "the President"), Judge Rafael Nieto-Navia delegated the Presidency to Judge Héctor Fix-Zamudio, Vice President of the Court, to hear this case, because he is a "*member and President of the Argentine-Chilean Arbitration Court for the determination of the boundary line between Landmark 62 and Mount Fitz Roy.*"

12. On June 24, 1994 the Secretariat of the Court (hereinafter "the Secretariat"), after the preliminary examination by the President *ad hoc*, notified the Government about the case, and advised it that it was allowed a period of three months to answer the complaint (Article 29(1) of the Rules of Procedure), two weeks to designate its agent and deputy agent (Articles 28(3) and 21(3) of the Rules of Procedure) and 30 days to file preliminary objections (Article 31(1) of the Rules of Procedure).

13. By note of the same date, the Secretariat, following instructions of the President *ad hoc*, advised the Government that, in accordance with Article 18 of the Rules of Procedure and 10(3) of its Statute, it had 30 days to appoint an *ad hoc* Judge.

14. By note of July 8, 1994, the Government designated Orlando Enrique Sella, Ambassador of the Republic of Argentina to the Government of Costa Rica, to represent the Government in this case.

15. On September 21, 1994, Argentina petitioned the Court for an extension of three months to answer the complaint. By note of September 21, 1994, the Secretariat informed the Government of the President *ad hoc*'s decision to grant an extension of 45 days to answer the petition.

16. By note of October 4, 1994, the Commission, pursuant to Article 43 of the Rules of Procedure, notified the Court of its decision to discontinue the action brought in the Maqueda vs. Argentina Case. This decision was made on the basis of an agreement that "*takes into account the interests of the parties and conforms with the spirit and letter of the Convention,*" and whose compliance had been ascertained.

II

17. On November 1, 1994, the Secretariat asked the Commission to send all the documentation related to

the discontinuance of the action, in particular a copy of the agreement between the parties, the remarks of Mr. Guillermo Maqueda and his parents, and the published decree that granted Mr. Maqueda conditional liberty. The Secretariat also informed the Government about the Commission's decision to discontinue the action brought in the case.

18. By note of November 2, 1994, the Commission submitted a copy of the September 20, 1994 agreement between the parties and of Decree Nº 1680/94, published in the Official Bulletin Nº 27.895, Section 1, which granted Mr. Maqueda conditional liberty.

The agreement, which was signed in Washington, D.C. on September 20, 1994 between the Government and the representatives of Guillermo Maqueda, establishes the following:

> 2. To this effect, the State of Argentina commits to issue a decree of commutation of sentence to reduce the time that Guillermo Maqueda was sentenced to spend in prison. The commutation decree shall allow Maqueda to be immediately granted conditional liberty in accordance with Argentine provisions of law.
>
> 3. The State commits to execute and publish the respective decree and to provide for the processing of his release without any further requirement whatsoever neither from the prisoner nor from the petitioners. The State further commits to instruct that this measure be taken and to implement this agreement within ten days as of the date of this agreement.
>
> 4. The representatives of Guillermo Maqueda commit to petition the IACHR [Commission] to discontinue the action brought before the Inter-American Court of Human Rights, once the measures provided for in paragraphs 2 and 3 of the within decree have been complied with and upon the release of the former.
>
> 5. The representatives of Guillermo Maqueda commit to petition the Inter-American Court of Human Rights to approve the homologation of this agreement pursuant to Article 43 of the Rules of Procedure of the Court.
>
> 6. The representatives of Guillermo Maqueda warrant that, if the State of Argentina complies with the obligations to which it commits by virtue of this agreement, their party shall expressly renounce all claims for monetary indemnification for the benefit of Guillermo Maqueda or his parents, as well as for court costs and attorneys' fees relative to the international judicial proceedings currently in progress.
>
> . . .
>
> 8. The commitments hereby made by the petitioners pursuant to paragraphs 4, 5 and 6 are subject to prior compliance by the State of the commitments made in this same agreement.

19. The President of the Inter-American Commission and Delegate for this case, Michael Reisman, expressed on that same day his concurrence with the September 20, 1994 agreement and affirmed the following:

> 1. That he shall address the Inter-American Court of Human Rights with an application for discontinuance of the action brought by the IACHR against the State of Argentina in the Guillermo Maqueda Case, since this agreement takes into account the interests of the parties and is found to be in conformity with the spirit and letter of the American Convention on Human Rights.
>
> 2. That this shall be done once the representatives of Guillermo Maqueda inform him that they have

ascertained compliance with the commitments made as per the above agreement.

. . .

4. That at that time he shall ask the Inter-American Court to approve the homologation of the present agreement and close the proceedings of the Maqueda Case by discontinuance, without a declaration by the Court on the merits of the case and without setting either indemnification or court costs and attorneys' fees, at the next regular meeting.

20. By note of November 8, 1994, the Secretariat, following instructions of the President *ad hoc* and pursuant to the provisions of Article 43 of the Rules of Procedure, requested the opinions of the Government, CEJIL and Human Rights Watch/Americas concerning the discontinuance. The Court made December 8, 1994 as the deadline for the submission of these observations.

21. On December 5, 1994 CEJIL and Human Rights Watch/Americas, representing the parents of Guillermo Maqueda, informed the Court that the parties they represented agreed to the discontinuance formulated by the Commission. They added that Mr. Maqueda "*recovered his freedom after a commutation of the sentence; and that at this time he is at his home on release under conditional liberty.*" They also reported that the sentence of Guillermo Maqueda expires in April 1997.

22. On December 12, 1994 the Government expressed its "*favorable opinion concerning the request of the Commission*" in this case.

III

23. The Court is competent to hear a petition for discontinuance in a case submitted to the Court in accordance with Article 43 of the Rules of Procedure, which states as follows:

Article 43. Discontinuance

1. When the party which has filed the case notifies the Court of its intention not to proceed with it, the Court, after having obtained the opinions of the other parties thereto and the persons referred to in Article 22(2) of these Rules, shall decide whether it is appropriate to approve the discontinuance and, accordingly, to strike the case off its list.

2. When the parties to a case inform the Court that there exists a friendly settlement, arrangement or other fact capable of providing a solution of the matter, the Court may strike the case off its list after having obtained the opinion of the persons referred to in Article 22(2) of these Rules.

3. Notwithstanding the existence of the conditions indicated in the two preceding paragraphs, the Court, mindful of its responsibility to protect human rights, may decide that it should proceed with the consideration of the case.

24. In the terms of the transcribed regulatory precept, this Court must decide whether or not said agreement is consistent with the Convention and, therefore, whether to accept the discontinuance or whether the case should, instead, continue under consideration.

25. From the records on file, it appears, that in compliance with the September 20, 1994 agreement, the

Government issued Decree Nº 1680/94, which reduced his sentence and allowed the conditional release of Mr. Maqueda.

26. This Court, pursuant to the provisions of the above-transcribed paragraph 1 of Article 43 of its Rules of Procedure, has obtained the opinions of the parties in this case, including those of the representatives of the family of the victim. All of them reiterate their conformity with the September 20, 1994 agreement, as well as with the Government's compliance therewith.

27. Taking into account the above and considering that the principal matter of the case is the violation of Mr. Maqueda's right to freedom, and that this right has been restored by means of the agreement between the parties, the Court is of the opinion that the agreement does not violate the letter and spirit of the American Convention. Although, in its complaint, the Commission submitted other rights protected under the Convention, as well as mechanisms and provisions of internal law were cited, they were pleaded in relationship to the right to freedom. Notwithstanding such conditions, the Court, mindful of its responsibility to protect human rights, reserves the power to reopen and proceed with consideration of the case, should at any future time a change occur in the circumstances that gave rise to the agreement.

Therefore,

THE COURT

DECIDES:

1. To admit the discontinuance of the action brought by the Inter-American Commission on Human Rights in the Maqueda vs. the Republic of Argentina Case.

2. To dismiss the Maqueda Case.

3. To reserve the power to reopen and proceed with consideration of the case, should at any future time a change occur in the circumstances that gave rise to the agreement.

4. To transmit this decision to the parties.

Héctor Fix-Zamudio
President

Hernán Salgado-Pesantes

Alejandro Montiel-Argüello

Máximo Pacheco-Gómez

Antônio A. Cançado Trindade

Manuel E. Ventura-Robles
Secretary

APPENDIX III

AGREEMENT ON THE JOINT LIBRARY OF THE COURT AND THE INTER-AMERICAN INSTITUTE OF HUMAN RIGHTS

The **INTER-AMERICAN COURT OF HUMAN RIGHTS**, represented by its President Héctor Fix-Zamudio, and the **INTER-AMERICAN INSTITUTE OF HUMAN RIGHTS**, represented by its President Pedro Nikken and its Executive Director Antônio A. Cançado Trindade,

TAKING INTO ACCOUNT THAT:

At the seat of the Court in San José, Costa Rica, there is a Library specialized in Human Rights, but also contains other materials and has been created by the joint efforts of both parties;

That it is essential to maintain and conserve this Library;

That in addition, both entities have budgets allocated to increasing and strengthening the Library's collection in the future;

AGREE THAT:

The Library is the joint, common and indivisible property of the Inter-American Court of Human Rights and the Inter-American Institute of Human Rights;

The Library collection is located at the seat of the Court in San José, Costa Rica, and shall remain there, unless both parties, by mutual agreement, agree otherwise;

Both parties shall make a special effort to continually provide sufficient material resources to increase the collection and to keep it up-to-date;

Additionally, the Court agrees to pay the Chief Librarian and the Inter-American Institute of Human Rights agrees to pay, as far as possible, the rest of the staff necessary for the Library's effective operation, which does not preclude the parties from appointing other staff members if they deem it necessary;

A joint Court-Institute Committee shall be created, which shall be integrated by two members from each party and shall be responsible to supervise the effective operation of the Library and to resolve situations unforeseen by this agreement.

This agreement shall be effective as of the date of its signing and may be terminated only by mutual agreement.

Signed for the record in San José, Costa Rica on January 17, 1995.

Héctor Fix-Zamudio
President
Inter-American Court of Human Rights

Pedro Nikken
President
Inter-American Institute of Human Rights

Antonio A. Cançado Trindade
Executive Director
Inter-American Institute of Human rights and
Judge of the Inter-American Court of Human Rights

APPENDIX IV

INTER-AMERICAN COURT OF HUMAN RIGHTS

NEIRA ALEGRIA *ET AL.* CASE

JUDGMENT OF JANUARY 19, 1995

In the case of Neira Alegría *et al.*,

The Inter-American Court of Human Rights, composed of the following judges:

Héctor Fix-Zamudio, President
Hernán Salgado-Pesantes, Vice President
Rafael Nieto-Navia, Judge
Alejandro Montiel-Argüello, Judge
Máximo Pacheco-Gómez, Judge

also present:

Manuel E. Ventura-Robles, Secretary and
Ana María Reina, Deputy Secretary

delivers, pursuant to Article 44(1) of the Rules of Procedure of the Inter-American Court of Human Rights in force for matters submitted to it prior to July 31, 1991 (hereinafter "the Rules of Procedure"), the following judgment on the present case.

I

1. On October 10, 1990, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") submitted a case against the State of Peru (hereinafter "the Government," or "Peru"), which originated in petition Nº 10.078.

2. The Commission invoked Articles 51 and 61 of the American Convention on Human Rights (hereinafter "the Convention," or the "American Convention") and Article 50 of the Commission's Rules of Procedure. The Commission submitted this case in order for the Court to determine whether the State involved had violated Articles 1 (Obligation to Respect Rights), 2 (Domestic Legal Effects), 4 (Right to Life), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), and 25 (Right to Judicial Protection) of the Convention, to the detriment of Víctor Neira-Alegría, Edgar Zenteno-Escobar, and William Zenteno-Escobar. The Commission asked that the Court "*decide this case in accordance with the provisions of the Convention; that it determine the responsibility for the violation indicated; and that it grant fair compensation to the next of kin of the victim(s).*" In its final arguments (*infra* para. 57) the Commission added Articles 5 and 27, and deleted Article 2 from its request.

3. According to the denunciation submitted to the Commission, on June 18, 1986, Víctor Neira-Alegría, Edgar Zenteno-Escobar, and William Zenteno-Escobar were being detained at the correctional facility of San Juan Bautista, known as "El Frontón," being accused of allegedly committing the offense of terrorism. The Commission adds that as a consequence of a riot at that correctional facility on the date indicated, the Government, by means of Supreme Decree Nº 006-86 JUS, delegated the control of the prisons to the Joint Command of the Armed Forces and that, as a result of this decision, the San Juan Bautista correctional facility was included in the so-called "Restricted Military Zones." The Commission further indicated that, since the date on which the Armed Forces proceeded to crush the riots, these persons have been missing; that their relatives have not seen or heard about them since; that the possibility of their being alive has not yet been given up; and that, therefore, concern is expressed for their personal safety and well-being.

4. The Commission affirms that, on August 31, 1987, it received the petition for this case, which was dated at the beginning of that month in Lima, Peru. On September 8, 1987, the Commission acknowledged receipt of the petition and requested the Government to furnish the pertinent information with respect thereto. Not having received an answer, it reiterated its request for information on four occasions (January 11 and June 7, 1988, and February 23 and June 9, 1989), advising the Government, as provided for in Article 42 of the Commission's Regulations, of the consequences of its failure to provide the pertinent information. On June 26, 1989, the Government sent a collective answer to several cases under the Commission's consideration and, on July 20 of the same year, the Commission transmitted this information to the petitioner.

5. On September 13, 1989, the petitioner submitted its comments on the Government's answer and informed the Commission that "*judicial proceedings on the events that occurred at the 'San Juan Bautista' Penitentiary (El Frontón) were in progress before the Exclusive Jurisdiction of Military Justice, proceedings to which the petitioner alleges he was denied access.*"

6. In the memorial submitted to the Court, the Commission stated that on September 25, 1989 it held a hearing attended by the representatives of the petitioners and those of the Government where the former referred to

> the enormous disproportion between the seriousness of the riot and the lethal means employed by the military operation to crush it. They affirmed that the repressive zeal materialized in the elimination of prisoners who were no longer resisting or who had already given themselves up. They further insisted that

inmates Neira, Zenteno, and Zenteno continued to be regarded as missing since the Government of Peru refused to provide information as to their whereabouts and fate. For his part, the representative of the Government did not make any comments.

7. On September 29, 1989, the Government informed the Commission that the case was under the consideration of the Exclusive Jurisdiction of Military Justice, for which reason "*the internal jurisdiction of the State*" had not been exhausted, and that "*it would be advisable for the IACHR* [the Commission] *to wait for the conclusion of such proceedings before arriving at a final decision*" on the case.

8. The Commission examined the case during its 77th Regular Session and approved Resolution 43/90 of June 7, 1990, the concluding section of which reads as follows:

1. To declare that the complaint of the present case is admissible.

2. To declare that a friendly solution to the present case is inappropriate.

3. To declare that the Government of Peru has not fulfilled its obligations with respect to human rights and the guarantee imposed by Articles 1 and 2 of the Convention.

4. To declare that the Government of Peru has violated the right to life recognized in Article 4, the right to personal liberty enshrined in Article 7, the judicial guarantees of Article 8 and the right of judicial protection found in Article 25, all from the American Convention on Human Rights, as a consequence of the acts which occurred in the San Juan Bautista Prison, in Lima, on June 18, 1986, that led to the disappearance of Victor Neira-Alegría, Edgar Zenteno-Escobar, and William Zenteno-Escobar.

5. To formulate the following recommendations for the Government of Peru (Convention Article 50 (3) and Article 47 of the Inter-American Commission on Human Rights' Regulations):

a. Peru must fulfill Articles 1 and 2 of the Convention adopting an effective recourse that guarantees the fundamental rights in the cases of forced or involuntary disappearance of individuals;

b. Conduct a thorough, impartial investigation into the facts object of the complaint, so that those responsible may be identified, brought to justice and receive the punishment prescribed for such heinous acts, and determine the situation of the individuals whose disappearance has been denounced;

c. Adopt the necessary measures to prevent similar acts from occurring in the future;

d. Make the necessary reparations for the violations of rights previously indicated and pay fair compensation to the victims' families.

6. To transmit the present report to the Government of Peru so that the latter may make any observations it deems appropriate within 90 days from the date it is sent. Pursuant to Art. 47(6) of the Commission's Regulations, the parties are not authorized to publish the present report.

7. To submit the present case to the Inter-American Court of Human Rights unless the Government of Peru solves the matter within the three months allotted in the previous paragraph.

9. On June 11, 1990, the Commission notified the Government of the Resolution and informed it that the

set time period would commence on that date.

10. On August 14, 1990, the Government requested an extension of 30 days to comply with the recommendations. The Commission granted the requested extension beginning September 11, 1990.

11. On September 24, 1990, the Government informed the Commission, *inter alia*, that the domestic legal remedies had been exhausted as of January 14, 1987. On this date the decision of the Court of Constitutional Guarantees, rejecting the appeal of the *habeas corpus* request (*infra*, para. 40), was published in Peru's Official Journal, "*El Peruano*." The Government concluded that Resolution 43/90 of the Commission should be declared "groundless."

12. The Commission analyzed the Government's note at its 78th Regular Session and confirmed its decision to submit the case to the consideration of the Court.

II

13. The Court is competent to hear the instant case. On July 28, 1978, Peru ratified the Convention, and on January 21, 1981, it accepted the contentious jurisdiction of the Court referred to in Article 62 of the Convention.

III

14. On October 22, 1990, the Secretariat of the Court (hereinafter "the Secretariat"), pursuant to Article 26(1) of the Rules of Procedure, notified the Government of the application.

15. The Government designated Minister Counselor Eduardo Barandiarán as its Agent, and doctor Jorge E. Orihuela-Iberico as Judge *ad hoc*. On January 2, 1991, doctor Sergio Tapia-Tapia was appointed as the Government's new Agent.

16. By Resolution of November 12, 1990, the President of the Court (hereinafter "the President"), in agreement with the Agent of Peru and the Commission's Delegates and in consultation with the Court's Permanent Commission (hereinafter "the Permanent Commission"), set March 29, 1991 as the deadline for the Commission to submit the memorial to which Article 29 of the Rules of Procedure refers, and June 28 of that same year as the deadline for the Government to submit its countermemorial.

17. These documents were received on March 28 and June 27, 1991 respectively.

18. On June 26, 1991, the Agent of Peru interposed preliminary objections alleging "*the lack of the Commission's jurisdiction*" and the "*expiration of the time period permitted for filing the petition.*" On July 31, 1991, the Secretariat received the Commission's written submission containing its observations and conclusions on these preliminary objections.

19. On December 6, 1991, a public hearing was held to hear the position of the parties on the preliminary objections.

20. On December 11, 1991, in a judgment passed by four votes to one, the Court rejected the preliminary objections interposed by the Government.

21. The Agent of Peru, submitted a request for interpretation and appealed for a revision of the judgment rejecting the preliminary objections, both of which were answered by the Commission. On June 30, 1992, a public hearing was held for this request and, on July 1, 1992, the Government renounced its request for a revision remedy.

22. On July 3, 1992, the Court adopted, by five votes against one, the decision to take note of the discontinuance of the Government's revision remedy and to reject the request for interpretation of its December 11, 1991 judgment on the preliminary objections as improper.

23. In its countermemorial of June 27, 1991, the Government denied and completely opposed the facts described by the Commission to the Court. The Government alleged that those facts did not reflect "*the actual situation as verified by the reality of events that occurred at the 'El Frontón' correctional island on the occasion of the armed riot and taking of hostages under the leadership of more than one hundred*" inmates accused of terrorism. The Government then requested a sanction against the Commission for having submitted the case to the Court.

24. By Resolution of August 3, 1991, the President granted the parties time limits for the submission of evidence, as well as for the formulation of comments concerning these communications, period which expired on October 15, 1991.

25. The Government and the Commission submitted documentary evidence, and Peru presented its comments on the evidence submitted by the Commission. Among other things, the Government objected to the testimonial proof as improper and unnecessary and opposed the appearance of several of the witnesses and experts offered by the Commission.

26. On December 11, 1991, the Court formed a special committee to determine the procedure for examination of the evidence and authorized the President to convoke the parties to a private meeting on January 17 and 18, 1992.

27. As a consequence of the preceding and by Resolution of January 18, 1992, the President summoned the parties to a public hearing to be held on June 30, 1992, in order to hear the allegations of the Government and the comments of the Commission concerning the opposition of the Government to the appearance of some of the witnesses offered by the Commission. The President also resolved that, in case the Court deem it pertinent, the testimonies of the Commission's witnesses and experts would be received in a public hearing on July 1, 1992 and that the Commission should submit the resumes and opinions of said experts before March 2, 1992. He further requested the Government to submit a copy of certain documents and to adopt the measures necessary to ensure that the bodies of the inmates who died at "El Frontón" not be moved from the cemeteries where they were buried.

28. On February 12, 1992, the Government asked the Court to modify the President's Resolution. It also requested that the dates for the hearings be maintained to resolve the issue of the disqualification of witnesses. It further requested that the hearing for the delivery of its allegations and the Commission's comments not be made public. The Court denied this request on June 29, 1992, as it felt that no exceptional circumstances, such as those referred to in Article 14 of the Rules of Procedure, were present in this case.

29. The Commission requested a 30-day extension for submitting its experts' resumes and opinions in compliance with the President's resolution. The Government objected.

30. On March 24, 1992, the President partially modified his January 18, 1992, Resolution and resolved that, if found pertinent after the hearing, the Court would opportunely summon the witnesses and experts offered by the Commission to deliver their testimonies. By note of that same date, the President denied the application for extension to which the preceding paragraph refers "*in view of the fact that the Commission has had the opportunity and the time necessary to submit said information by the deadline set, and that, by their very nature, judicial deadlines must be met except for exceptional causes which are not found in this case.*"

31. On April 9, 1992, the Commission applied for reconsideration against the preceding decision and submitted the resumes and expert opinions of Enrique Bernardo, Guillermo Tamayo, Robert H. Kirschner and Clyde C. Snow. By note of April 30, 1992, the Government requested that the documents be returned to the Commission as their submission was improper and would avoid compliance with the March 24 decision.

32. By Resolution of July 1, 1992, the Court confirmed the President's decision not to grant the 30-day extension requested by the Commission; instructed that the resumes and expert opinions submitted be maintained in the case file to be examined in due time; and authorized the President to resolve, subject to prior consultation with the Permanent Commission, whether to admit the statements of the experts offered by the Commission.

33. By note of July 3, 1992, the Government requested the annulment of the preceding decision, which request the President rejected for being notoriously improper.

34. During the 21º Regular Session of the General Assembly of the Organization of American States (hereinafter "the OAS"), the State Parties in the Convention elected Dr. Alejandro Montiel-Argüello, Dr. Máximo Pacheco-Gómez, and Dr. Hernán Salgado-Pesantes as new judges of the Court and reelected Judge Héctor Fix-Zamudio. On June 29, 1992, the Court, with its new membership having been designated as of January 1, 1992, and in consideration of Judge *ad hoc* Jorge E. Orihuela-Iberico's request for an interpretation of Article 54(3) of the Convention in relationship to this case, decided "*to proceed with the consideration of the Neira-Alegría et al. Case, except as it relates to the motions interposed by the Government's Agent against the December 11, 1991 judgment, which shall be decided by the Court with the membership it had at the time said judgment was passed.*" Judge Nieto added a dissenting opinion, and Judges Montiel and Orihuela added their respective individual opinions.

35. On June 30, 1992, the Court, pursuant to the provisions of Article 37 of the Rules of Procedure, decided to reject the objections or disqualification arguments raised against the testimonial evidence offered by the Commission, and authorized the President to determine, subject to prior consultation with the Permanent Commission, the dates for the public hearings. The President scheduled the hearings to start on July 6, 1993 in order to receive the declarations of the witnesses and experts proposed by the Commission and hear the arguments of the parties on the merits of the case.

36. By note of September 22, 1992, the Government reported the following in connection with the President's request of January 18 of that year

> The cemeteries mentioned in said resolution have an official and permanent status and generally remain subject to control measures under the direction of their respective administrations. For this reason, the bodies buried therein may not be moved, except in conformity with the rules governing these matters and at the request of the interested party.

37. Between July 6 and 10, 1993, the Court held public hearings on the merits of the case, and heard the concluding arguments of the parties.

Appearing before the Court:

a) For the Government of Peru:

Sergio Tapia-Tapia, Agent
Hernán Ponce-Monge, Advisor
José Ernesto Ráez-González, Advisor (*)

b) For the Inter-American Commission on Human Rights:

Oscar Luján Fappiano, Delegate
Domingo Acevedo, Attorney of the Secretariat
José Miguel Vivanco, Advisor
Juan Méndez, Advisor
Carlos Chipoco, Advisor

c) Witnesses and experts presented by the Commission:

Sonia Goldenberg, witness
Pilar Coll, witness
Ricardo Chumbes-Paz, witness
José Burneo, witness
Rolando Ames, witness
César Delgado, witness
José Ráez-González, witness
Augusto Yamada-Yamada, witness
Juan H. Kruger, witness
Robert H. Kirschner, expert
Clyde C. Snow, expert
Guillermo Tamayo, expert
Enrique Bernardo, expert

d) Regardless of the notice served by the Court, the following witnesses offered by the Commission did not appear at these hearings:

Aquilina M. Tapia de Neira
José Rojas-Mar
Agustín Mantilla-Campos
César Elejalde-Estenssoro
Enrique Zileri

(*) Mr. Ráez-González was presented as a witness by the Commission, after which he was accredited also as Government advisor for the hearing held on July 9, 1993

Juan de Dios Jiménez-Morán
César San Martín-Castro

Notwithstanding the fact that the Secretariat had opportunely convoked the Judge *ad hoc*, he did not appear at these hearings. Judge Máximo Pacheco-Gómez excused himself from participating in the XXVIII Regular Session and, consequently, was not present at these hearings.

38. The Court granted the parties a term ending September 10, 1993 by which to submit their written conclusions concerning the evidence presented in this case. The Commission and the Government submitted their conclusions in due time.

39. Notwithstanding the fact that the Judge *ad hoc* had been convoked, he did not attend the sessions held by the Court concerning this judgment and, therefore, does not sign the judgment.

IV

40. According to the documents delivered to the Court on July 16, 1986, Irene Neira-Alegría and Julio Zenteno-Camahualí interposed an action for *habeas corpus* in favor of the three persons to whom this case refers. The Instructional Judge of the Twenty-First Court of Lima took a statement from the President of the National Correctional Council; the latter submitted a list showing the three persons cited to have been under custody in the San Juan Bautista Prison, charged with the offense of terrorism, on the date that the riot was crushed. On July 17, 1986, the Judge declared that the action was estopped on the basis that the Government, by Supreme Decree 012-86-IN of June 2 of that year, had decreed a state of emergency in the provinces of Lima and El Callao and that Supreme Decree 006-86 JUS was published on the 20th of the same month declaring the San Juan Bautista Prison a Restricted Military Zone. The Judge's decision was confirmed on August 1, 1986 by the Eleventh Correctional Court of Lima. On the 25th of that same month, the Supreme Court of Justice, Criminal Section, declared that it found no grounds for annulment in the latter decision and, on December 5, the Constitutional Guarantees Court ruled that "*the Supreme Court's decision that had been appealed stood inalterable.*" This latter decision was published in the "El Peruano" Official Journal (*supra*, para. 11).

41. The Second Permanent Instructional Court of the Navy initiated proceedings to determine the possible criminal responsibility of members of the Navy who had crushed the riot, because during that action, in addition to the inmates killed, three members of the Marine Infantry were wounded by gun fire and one of the hostages who belonged to the Republican Guard also died.

The Instructional Judge arrived at the following conclusions: 34 inmates had surrendered; 97 had died, and adding to that number the skeletal remains of at least fourteen additional persons resulted in a total of 111 dead inmates; the removal of debris from the prison was accomplished with great difficulty between June 20, 1986 and March 31, 1987; only four of the 97 bodies (excluding the remains of at least fourteen additional persons) were identified (a figure that contrasts with that established by the fingerprint analysis which indicated that seven persons were identified). In this respect the following was stated:

> 21. The identification task carried out by Investigations Police personnel became more difficult because of the state of putrefaction, saponification and mummification of most of the corpses and skeletal remains found during the removal of debris; thus, because of their very nature, the remains cannot be identified.

> Nor has it been possible to compare the fingerprint samples taken by DIP-PIP and DIRCOTE with those on the identification cards that are in the files of INPE, since, in spite of several requests by the court, the latter have not been sent.
>
> 22. The tooth prints taken by Navy Medical personnel from those corpses from which it was still possible to do so, were not compared since such a method of identification of inmates was not used, neither at the INPE, nor at DIP, Lima, Callao, or DIRCOTE.

It would be appropriate to point out that, in many of the autopsy reports, crushing and multiple trauma are cited among the causes of death. The Navy Court pointed also out that it had not been possible to establish the total number of inmates who were at the correctional facility on the day that the riot started, since the criminal identification cards had not been delivered to the Court. On July 6, 1987, the case was dismissed, and it was determined that there was no responsibility on the part of the accused, a decision that was confirmed on the 16th of the same month and year by the Permanent War Council of the Navy.

42. The proceedings were reopened by decision of the Supreme Council of Military Justice in order to carry out procedures that remained to be completed, none of which refers to identification of the deceased. On October 5, 1987, the Second Permanent Instructional Court of the Navy ratified its July 6, 1987 decision to dismiss the case, which was confirmed by the Permanent War Council of the Navy on the 7th of the same month of October.

Again, on December 23, 1987, the Supreme Council of Military Justice decided to refer the case back to the instructional stage and, for that purpose, to activate the jurisdiction of its War Section. These proceedings ended on July 20, 1989 with the decision that those who participated in the crushing of the riot were not liable.

43. The Congress of Peru appointed an investigative commission to examine the events that occurred at the San Juan Bautista and two other correctional institutions. The Commission was formally installed on August 7, 1987 and, in December of that same year, submitted a majority and a minority report to Congress.

In Conclusion 14, the majority report reads as follows:

> At 03:00 hours the Navy of Peru takes charge of the operations.
>
> Its action is in response to the conviction that the inmates are armed and equipped with fortifications and tunnels, as was later corroborated by the subsequent investigation. Also, the inmates had not been subdued by the Republican Guard and they caused the death of and injuries to Navy and Police officers.
>
> The disproportion of the war potential employed is nevertheless inferred from the results of the action. The final demolition, after the surrender which occurred at 14:30 hours on the nineteenth, would not have a logical explanation and would, consequently, be unjustified.
>
> . . .
>
> Amnesty International states it has compiled versions from survivors and has disseminated them in a document published in several languages, stating that alleged executions of surrendered rioters had occurred at El Frontón.
>
> One of the survivors of the riots informally reported the same to a third person who, upon being summoned by the Investigative Committee to ratify his version, refused to do so.
>
> The Military Jurisdiction should investigate these reports in depth.

In the statement of the facts contained in the minority report of the investigative commission of Congress the following is stated:

> 15(D) Attention is called to the lack of interest for rescuing possible survivors after the demolition . . . 15(E) The subsequent appearance of a survivor on June 20 and four survivors on June 21 indicates that it would have been possible to rescue more inmates, had there been an interest in doing so . . . 16. The removal of debris in search of corpses took the Navy an excessively and inexplicably long period of time . . .

In the chapter entitled "Previous Matters" which presents the conclusions of the same minority report, the following is established:

> 3. It has been shown that the action of the judicial and Public Ministry authorities was illegally impaired and limited . . . 4. It has been shown that the government, in failing to comply with its obligation to protect human life, gave orders which resulted in an unjustifiable number of deaths . . . a. The option adopted, to crush the riots by means of military force in the shortest and most critical time, meant placing the life of the hostages and inmates in serious and unnecessary danger . . . b. The military force used was disproportionate in relationship to the actual danger present, and no precautionary measures were put into effect to reduce the human cost of crushing the riot . . . 5. . . . At the El Frontón Correctional Island, the initial version concerning the operation has not satisfactorily explained either the goal of the operation or the fate of the survivors, which gives rise to the possibility that executions outside the judicial domain, similar to those at the Lurigancho correctional facility, may have taken place. Even if such executions did not take place, the fact alone of the demolition of the Blue Pavilion, whether intentional or not, constitutes a crime against life (2).

Note (2) which is quoted at the end of the preceding paragraph reads as follows:

> (2) The technical report we are attaching hereto points to the existence of evidence that at least one of the columns which supported the structure of the Pavilion was blasted with dynamite from the outside, causing the final collapse. Our evaluation has revealed, likewise, serious inconsistencies in the official explanation as to the manner in which the inmates, who were allegedly enclosed in tunnels, lost their lives by the collapse of the Pavilion.

V

44. During the public hearings held on this case, the Government abstained from presenting evidence and the Commission introduced the witnesses and experts whose statements are summarized below.

45. Witness Sonia Goldenberg stated that, as a journalist, she had interviewed Jesús Mejía-Huerta who informed her that after the bombing of the correctional facility some 70 inmates were still inside; that they were summoned in groups and that there were executions; that he had eight or ten bullet wounds and was thrown into a ditch with others who were wounded. Later, the Blue Pavilion was blown with dynamite. She also stated that she interviewed Juan Tulich-Morales who informed her that he knew that the leaders arrested were taken to the naval base of San Lorenzo and were later shot.

46. Witness Pilar Coll stated that, in August 1987, she was in an office authorized by the investigative commission of Congress to take the testimonies of the relatives of those detained in the correctional facilities and of some of the survivors; that she interviewed Jesús Mejía-Huerta who told her in greater detail what he had already stated to the previous witness. The witness also stated that some relatives of the prisoners knew that some of the survivors had disappeared.

47. Expert Guillermo Tamayo-Pinto Bazurco, a civil engineer, stated that in 1987 the Projects and Construction Center, of which he is Chairman, was contracted by the Congressional Commission that was investigating the events at the correctional institutions; that he visited the Correctional Island of El Frontón; that the Blue Pavilion had been demolished and that the total demolition had been caused by plastic explosives placed at the foot of the columns; that he had seen the traces of the shock wave outside the building; that there were twenty meters of tunnels but that they did not affect the solidity of the structure and that there was no indication that there had been explosions in them.

48. Expert Enrique Bernardo-Cangahuala, a civil engineer, stated that he had been hired some years before by the Senate Commission to make an assessment, from the civil engineering point of view, of the problem at the San Juan Bautista Correctional Facility; that they prepared a report after visiting the site and gathering background information; that the Association of Engineers endorsed the report; that they found tunnels but that those tunnels did not go through to openings on the coastline; that they found evidence of explosives on the Pavilion columns; that with the work of ten workers the debris could have been removed in one month; that, had the purpose of using explosives been to enter the Pavilion, the explosives would have been placed on the walls, thus, the objective was to demolish the building; that there is no evidence that an explosion would have taken place inside the building; that a plastic explosive could not provoke an explosion comparable to that of dynamite; and that it had been possible for the people to take shelter inside the tunnels, but not for them to get out.

49. Witness Ricardo Aurelio Chumbes-Paz stated that he is a lawyer and that at the time of the events he was Instructional Judge of El Callao and is currently a Criminal Judge; that on June 18, 1986, he heard on the radio about certain riots at the El Frontón Correctional Facility; that, at approximately 1:00 pm, the President of the Supreme Court commissioned him to observe the events without decision-making powers in order to report on them later; that the Naval authorities denied him the means to travel to the correctional island; that, at approximately 3:00 or 4:00 pm, a *habeas corpus* petition interposed by the lawyers of the inmates at the correctional institution was filed with his office; that, at approximately 9:00 pm, a boat was made available to him that took him to the island; that he interviewed the Warden of the prison who informed him that the island was under Navy control; that he also interviewed the Vice Minister of the Interior who informed him that the Government, through the Cabinet, had authorized the Armed Forces to crush the riots; that immediately thereafter there was a power outage and explosions; that he approached a railing located some 50 meters from the prison and yelled, urging delegates of the inmates to come out but did not obtain any answer; that he was denied contact with the Commander in charge of the military operation; that at dawn, as he was boarding a boat to leave, he heard explosions; that on the third day he learned through the media of the deaths resulting from the crushing of the riot; that he tried to visit the prison again but was stopped, having been told that it was a Restricted Military Zone; that in other cases of uprisings the riots had been crushed without having to use lethal means; that the inmates of the "El Frontón" Prison could not have escaped; that the guarantees or, in the specific case of "El Frontón", *habeas corpus* remedy, were ineffective in protecting the lives, the physical safety and the basic rights of the persons mentioned in these measures; that when corpses are examined before they are taken away, fingerprints, tooth prints and sometimes toe prints are taken; and that, when a prisoner enters the prison, fingerprints and photographs are taken.

50. Witness José Antonio Burneo-Labrín, an attorney and professor of human rights at San Marcos University, stated that in 1986 he was Director of the Juridical Department of the Social Action Episcopal Commission of the Catholic Church; that some two or three weeks after the events at the prisons, Ms. Alegría, the mother of one of the victims, and the father of the two Zenteno boys came to that office requesting assistance in obtaining information on the fate of their children; that he filed a *habeas corpus* writ with the Twenty-First Instructional Court of Lima on July 16, 1986; that the Chairman of the Joint Command of the Armed Forces and the Commandant General of the Navy stated that the information had to be requested

from the correctional authorities or the Special Judge of the Navy who was examining the bodies; that the President of the National Correctional Council delivered to the Judge a list of the prisoners who were at "El Frontón" on the day of the events, which showed 152 inmates, Víctor Raúl Neira-Alegría and the Zenteno brothers being among them, and stated that 27 safe and unharmed prisoners and seven wounded ones had been placed under his custody; that the judge decided not to proceed with the *habeas corpus* motion; that an appeal was made against this decision which, by two votes to one, was dismissed by the Correctional Court of Lima; that on August 25, 1986, he lodged an appeal for annulment with the Supreme Court, and that the Criminal Section of that Court decided that there was no nullity; that the CEAS lodged an appeal for annulment with the Constitutional Guarantees Court and that four of its members voted in favor of the appeal but that one vote was still necessary, since five favorable votes are required; and that, in this manner, the national jurisdiction was exhausted and the family was advised to address the Inter-American Commission.

51. Witness César Delgado-Barreto, an attorney, stated that he had been elected Senator in 1985; that he was a member of the Senate Human Rights Justice Commission; that after the events at the prisons, at the request of the President of the Republic, the Congress named a bicameral and multi-party commission of 13 members, including the witness, which held meetings for four months; that at the "El Frontón" riot the Republican Guard entered into action first, the Marine Infantry following it; that three rockets were launched first, after which plastic explosives were used; that, in his opinion, the means employed were disproportionate, since there was no need to have used explosives; that the commission was assisted by a group of engineers who prepared a report on the demolition; that he does not know of any investigation which would have determined the whereabouts of Neira-Alegría and the Zentenos; that the majority and minority reports of the commission coincide as to the facts and differ because of the commission's political make-up concerning the liability of the ministers who approved the participation of the Joint Command in the crushing action at the prisons; and that one of the survivors informed a third person that there were executions of rioters after they had surrendered, but that, after having been summoned by the Commission to ratify his version, he refused to do so.

52. Witness Rolando Ames-Cobián, a graduate in Political Science, stated that in 1987, while he was a Senator, he was named President of the Congressional Commission created to investigate the events at the three prisons where riots had occurred; that the Commission conducted the inquiry as rigorously as possible; that the majority and minority reports coincide as to the facts, the difference being in the amount of responsibility attributed to the highest echelons of Government in the process of repression at the prisons; that the Government expressed that it did not deem the rebellion at the three prisons to be a problem related to the police, but rather "*like the great confrontation between the Government and Sendero Luminoso . . . since the public announcements and the declarations of the President of the Republic are clear in so defining the state of affairs, Sendero Luminoso vs. the Government;*" that this led to the crushing of the riots in the shortest possible time through the Joint Command of the Armed Forces; that the two-thirds of the Blue Pavilion still standing were demolished by dynamite charges placed on the outside columns, which produced an absolutely unnecessary number of deaths of the persons that were not actively resisting; that no interest was expressed in looking for the wounded or for persons in the tunnels; that access to the prison was not allowed until one year later; that Neira-Alegría and the Zenteno brothers were not among the surrendered prisoners but were on the list that the National Correctional Council gave to the Commission; that the survivors of the riots refused to testify before the Commission; that Congress approved the majority report of the investigative Commission; that the final explosion that demolished the prison occurred not while an intense attack was in progress but instead when the attack ended and that it did not occur as a result of a dynamite explosion but rather by the blasting of the columns that sustained the building; that, in addition to the 28 inmates who surrendered on the actual day of the events, one day later there appeared one or two more, and three days later another one or two; that the investigative Commission requested information about the investigation being carried out by the Supreme Council of Military Justice, but that the Navy Section did not provide any information and even

refused to provide the names of the officers who were in charge of the operation; that the Commission did not obtain any evidence that the inmates of the prison had dynamite; that the commission attempted to obtain information as to why instruments such as tear or nerve gas were not used, and it was told that there was no time to apply such methods because of the urgency to crush the riot that same night; and that the rioters did not have any possibility to escape.

53. Witness José Ráez-González, a surgeon, stated that at the request of the Navy he asked the Forensic Medicine Institute to appoint two experts to make studies on the remains of bodies from "El Frontón" and, that in this capacity, he traveled to the island from February to April 1987 and examined more or less 90 corpses; that the purpose of the forensic doctor is to determine the cause of death and help with identification; that the corpses had gone beyond the entire primary putrefaction stage, some were mummified, and others had lost all soft parts and only fragments were left; that in many cases it was not possible to determine the cause of death since only bone remains were available and, that in other cases, it was determined that death occurred because of multiple fractures; that in some cases a description was made of pieces of clothing, size, sex, age, and dental remains; that it is not the responsibility of the doctor to contact the relatives of the victims to try to identify the corpses; that identification is the responsibility of the Investigations Department; that he was able to take fingerprints from some of the corpses; that most of the deaths occurred by crushing; that once the expert examination was concluded, he delivered the records, summaries and comments to the Navy judge and signed the death certificates; that many factors make it impossible to take fingerprints from a corpse; and that he does not remember seeing burns on the corpses.

54. Witness Augusto Yamada-Yamada, M.D., Head Physician of the Pathological Anatomy Department of the Navy Hospital, an officer of the Navy with the rank of Commander of Navy Health, stated that on June 19 and 20, 1986 he started to conduct autopsies at "El Frontón"; that members of the police took fingerprints, while an odontologist took the tooth prints; that he prepared the autopsy records and the death certificates; that he was under the orders of the Judge of the Navy; that of the 38 autopsies, he certified that 17 indicated firearm wounds 21 indicated crushing as the cause of death; that in some cases the bullet wounds were multiple and had not been inflicted at short distance; that identification was being handled by the Investigations Police; that on four death certificates, the names of the dead to be written on them were provided by the Judge; that he did not find shrapnel in the corpses; that the bodies he examined were more or less complete, except for three which did not have their heads and that he performed the autopsies on June 19 and 20, several in July, and five on January 22, 1989.

55. Witness Juan Kruger-Párraga, an anatomical-pathologist M.D., stated that, up to 1989, he was head of the Pathology Department of the Naval Medical Center with the rank of Captain; that the purpose of the autopsy, among others, is to determine the cause of death, because in Peru identification of the bodies is the responsibility of the Investigations Police; that the identification is not a part of the doctor's mission; that he was summoned to perform autopsies at the "El Frontón" Island, and the first time that he was there was on July 5, 1986, and the last on January 22, 1987; that he performed 23 autopsies and on all of the records he indicated that "*some were in, or the majority were in, a state of putrefaction*" and many showed multiple fractures by crushing; that none of the autopsy records that he signed identifies the person; that odontologists participated in the autopsies taking tooth prints in those cases where dental pieces were found, and that these prints were given to the Judge of the Navy; that some of the bodies were in civilian clothes but that he did not specify this in the record; that he did not find traces of firearm wounds in the bodies; that, because of the condition of the bodies, he was not able to determine whether any among them had died on the 18th or the 19th; that each autopsy took two or more hours; that in few of the corpses did he find signs of burns.

56. Expert Robert H. Kirschner, a forensic doctor and pathologist, stated that he is Assistant and Deputy Medical Examiner to the main Medical Examiner of Cook County, Illinois, in Chicago and surrounding areas;

that in his professional practice he has performed more than seven thousand autopsies and described some of his experiences. It was his opinion that, in the case of the prison in Peru, the authorities must have had, as is customary, fingerprints of the inmates and that it would have been easy to compare them to those of the corpses, the same as with tooth prints, tattoos, and old scars; that, to this effect, the assistance of the family is very important; that on June 20 it would have been very easy, having the necessary information, to identify all the corpses; that it is very important to photograph and make diagrams of the site of a disaster before removing the bodies, even to determine the cause of death; that the autopsies were performed professionally but that mistakes were made by those in charge of the identifications; that, even now, many identifications could be made, even without an exhumation, especially with the relatives cooperation; that identification is impossible in only a few cases; that an internal explosion would leave perceptible traces on the body.

57. Expert Dr. Clyde C. Snow, a forensic doctor and anthropologist, stated that since 1984 he has been called many times outside the United States of America to investigate cases of disappearances or mass executions in Argentina, Bolivia, Chile, Guatemala, El Salvador, Iraq, Kurdistan, and the former Yugoslavia; that many of those cases were more difficult than the "El Frontón" case because, in this case, a list of the inmates was available, and the correctional records should have contained physical descriptions, fingerprints, dental proof, etc.; that to a certain extent mummification makes identification easier, particularly because of fingerprints and marks on the skin; that statistically it is not probable that one doctor would have found 17 bodies among 96 with bullet wounds while the other two doctors found none; that, in a building much larger than the Blue Pavilion, the removal and identification of the bodies was done in two or three weeks; that if he had been summoned to identify the bodies at "El Frontón", he would have first gathered all the data about the victims and then would have photographed each body at the place where it had been found; that even seven months after the incident it would have been possible to identify more than 90 per cent of the bodies, and that even now this would be possible by gathering all the data on fingerprints and tooth prints and, in some cases by exhuming the bodies.

VI

58. In the concluding arguments of September 10, 1993, the Commission prepared its analysis of the evidence and requested:

> 1. By virtue of the *de facto* and *de jure* reasons previously pointed out, the Commission asks the Honorable Court to pass judgment in the instant case, declaring:
>
> a. That Víctor Neira-Alegría, Edgar Zenteno-Escobar, and William Zenteno-Escobar were disappeared between June 18 and 19, 1986, by agents of the Peruvian State during a military operation controlled and directed by the Navy of Peru at the correctional establishment of El Frontón.
>
> b. That, as a consequence thereof, the Peruvian State has violated, to the detriment of the victims, the right to life, the right to humane treatment, the right to personal liberty and the right to judicial protection recognized in Articles 4, 5, 7, and 25 of the American Convention on Human Rights. That the Peruvian State has likewise violated the deadlines established for cases of suspension of guarantees, as provided for in Article 27 of the Convention. All of the preceding stands in relationship to the failure to comply with the obligation to respect and assure the rights recognized in Article 1(1) of the Convention, to which Peru is a party.
>
> 2. That in consequence, the Court order the Peruvian State to:
>
> a. Carry out an exhaustive investigation of the events that occurred on June 18 and 19, 1986

at the correctional establishment of El Frontón, in order to identify those responsible for the violations of human rights committed to the detriment of Víctor Neira-Alegría, Edgar Zenteno-Escobar, and William Zenteno-Escobar; punish the perpetrators; and inform the victims' next of kin of the whereabouts of those who have disappeared.

b. Pay pecuniary compensation to the victims' next of kin for the damages inflicted upon them.

c. Take charge of the payment of court costs and attorneys' fees, including professional fees of the Commission's legal consultants who have participated in the handling of these cases, in accordance with the provisions of Article 45, paragraph 1, of the Rules of Procedure of the Court, and in conformity with the statement of account the parties must submit to the Honorable Court for approval. In this respect the Commission requests that the Court, at the applicable procedural stage, open a special proceeding to itemize the expenditures that the processing of the instant case has warranted . . .

59. In the final argument of September 10, 1993, the Government prepared its analysis of the evidence and concluded:

4.1. The complaint has not been duly proven with respect to the allegation that the Peruvian State violated the commitments pledged to under the American Convention on Human Rights, particularly Articles 1, 2, 4, 7, 8, and 25, on the occasion of the crushing of the riots led by inmates charged with the crime of terrorism at the "El Frontón" correctional island on June 18 and 19, 1986 and the following days.

4.2. The Government of Peru has complied with its obligations to respect the rights and liberties recognized in the American Convention on Human Rights, and, consequently, the allegation of the complaint which indicates failure to comply with Article 1 of said inter-American legal instrument must be declared groundless. To the extent that the violation of the precepts specified in the complaint are not ascertained, it follows that there has not been failure to comply with Article 1 of the American Convention, in light of the interpretation of the Inter-American Court contained in the judgments of July 29, 1988 (paras. 161 to 167) and January 20, 1989 (paras. 170 to 176).

4.3. The Government of Peru has complied with the duty of adopting domestic legal provisions. The evidence submitted in the instant case does not verify a failure to observe the precept contained in Article 2 of the American Convention since it has been demonstrated that a regulatory order was in force prior to the events in question, as well as the fact that it displayed its legal consequences through authorities that were pre-determined by the Constitution and the Law . . .

4.4. In the instant case, the abundant evidence submitted does not prove that the Peruvian State violated Article 7 of the American Convention, given the fact that the alleged victims were deprived of their freedom by decisions of ordinary justice . . .

4.5. In the case under consideration, there is no proof that the Peruvian State was involved with the violation of Article 8 of the American Convention . . .

4.6. In the course of the proceedings, it has not been proven that the Government of Peru would be responsible for having violated Article 25 of the American Convention . . .

VII

60. In the terms of Article 5(2) of the Convention, every person deprived of her or his liberty has the right to live in detention conditions compatible with her or his personal dignity, and the State must guarantee to

that person the right to life and to humane treatment. Consequently, since the State is the institution responsible for detention establishments, it is the guarantor of these rights of the prisoners.

61. In the instant case, Peru had the right and the duty to subdue the uprising of the San Juan Bautista Prison, even more so given the fact that it did not occur suddenly. Rather, the uprising appears to have been prepared in advance, given that the prisoners had made weapons of different types, dug tunnels, and practically taken control of the Blue Pavilion. It must also be kept in mind that, during the initial phase of the crushing of the riot by the Republican Guard, the prisoners captured one corporal and two guards as hostages, wounded another four guards, and took possession of three rifles and an automatic pistol with which they caused deaths among the forces that entered to crush the riot.

62. The majority's Peruvian Congressional Commission investigative report states that the "*disproportion of the war potential employed is nevertheless inferred from the results of the action. The final demolition, after the surrender which occurred at 14:30 hours on the nineteenth, would not have a logical explanation and would, consequently, be unjustified*" Also, the minority report stated as follows:

> It has been shown that the government, in failing to comply with its obligation to protect human life, gave orders which resulted in an unjustifiable number of deaths . . . The military force used was disproportionate in relationship to the actual danger present, and no precautionary measures were put into effect to reduce the human cost of crushing the riot (*supra* para. 43).

63. The Court considered it unnecessary to analyze whether the functionaries and authorities who took part in the crushing of the riot acted consistently with their functions and in accordance with domestic law, since the responsibility for the actions of Government functionaries is attributable to the State, independently of whether the functionary

> contravened provisions of internal law or overstepped the limits of his authority: under international law a State is responsible for the acts of its agents undertaken in their official capacity and for their omissions, even when those agents act outside the sphere of their authority or violate internal law (*Velásquez Rodríguez Case*, Judgment of July 29, 1988. Series C No. 4, para. 170; *Godínez Cruz Case*, Judgment of January 20, 1989. Series C No. 5, para. 179).

64. Of the 97 bodies on which autopsies were performed, only seven were identified. It has not been shown that all procedures necessary to obtain a larger number of identifications were carried out, nor is there proof that the assistance of the relatives of the victims was requested for that purpose. It should be noted that there is a discrepancy in the number of prisoners in the Blue Pavilion before the riot and the number of rioters who surrendered plus the number of dead. According to the proceedings in the military jurisdiction, there were 111 dead (bone remains of fourteen persons and 97 bodies) and 34 survivors, which adds up to a total of 145 persons, while the non-official list delivered by the President of the National Correctional Council includes 152 inmates before the riot. The removal of debris took place between June 23, 1986 and March 31, 1987, that is, over a period of nine months.

VIII

65. The Court feels that it is not up to the Inter-American Commission to determine the whereabouts of the three persons to whom these proceedings refer, but instead, because of the circumstances at the time, the prisons and then the investigations were under the exclusive control of the Government, the burden of proof

therefore corresponds to the defendant State. This evidence was or should have been at the disposal of the Government had it acted with the diligence required. In previous cases, the Court has said:

> [i]n contrast to domestic criminal law, in proceedings to determine human rights violations the State cannot rely on the defense that the complainant has failed to present evidence when it cannot be obtained without the State's cooperation.
>
> The State controls the means to verify acts occurring within its territory. Although the Commission has investigatory powers, it cannot exercise them within a State's jurisdiction unless it has the cooperation of that State. *(Velásquez Rodríguez Case, supra* 63, paras. 135-136; *Godínez Cruz Case, supra* 63, paras. 141-142*)*.

66. The Court deems it proven that Víctor Neira-Alegría, Edgar Zenteno-Escobar and William Zenteno-Escobar were being held in the Blue Pavilion of the San Juan Bautista Prison on June 18, 1986, the date on which the crushing of the uprising started. This fact is certified by the list submitted by the President of the National Correctional Council to the Instructional Judge of the Twenty-First Court of Lima, where a *habeas corpus* writ was under consideration, and by the list submitted by the Head of Identifications of the San Juan Bautista Prison to the Second Permanent Instructional Court of the Navy. This fact has not been contested by the Government.

67. The Court considers it proven that the three cited persons were not among the rioters who surrendered and that their bodies were not identified. The preceding was certified by the September 20, 1990 note sent by the Minister of Foreign Affairs of Peru to the Commission, which was transmitted by its Alternate Ambassador to the OAS. This note is binding on the Peruvian State (cfr. *Legal Status of Eastern Greenland,* Judgment, 1933, P.C.I.J., Series A/B, No. 53, page 71) and reads as follows:

> The allegedly missing persons, Víctor Neira-Alegría, Edgar Zenteno-Escobar, and William Zenteno-Escobar, are not among the rioters who surrendered in the events of the San Juan Bautista Prison from June 18 to 19, 1986, nor are their bodies, according to the records, among the few that could be identified.
>
> On the other hand, as a result of these incidents, 92 death certificates were issued corresponding to non-identified bodies, three of which undoubtedly correspond to those three persons whom the Commission regards as missing.

68. In the instant case, an escape of the inmates and actions by third parties other than State authorities not alleged by the Peruvian State are excluded.

69. The Court considers it proven that the Pavilion was demolished by the forces of the Peruvian Navy, as may be concluded from the reports submitted by the experts in the hearing (*supra*, paras. 47 and 48), from the deposition made on July 16, 1986 by the President of the National Correctional Council before the Instructional Judge of the Twenty-First Court of Lima, and from the fact that many of the dead, according to the autopsies, had been crushed to death. The majority and minority reports of the Congress (*supra* para. 43) are consistent in regards to the disproportionate use of force. These reports are official and are regarded by this Court to be sufficient proof of that fact.

70. Also to be taken into consideration is the congressional minority commission report, which affirmed without objection by the Government, that there was lack of interest in rescuing the surviving rioters after the demolition, since a few days later four inmates appeared alive and more could have been alive (*supra* para. 43).

71. The Court likewise considers it proven that the identification of the bodies was not undertaken with

the required diligence, since only a few of those bodies recovered during the days immediately following the end of the conflict were identified. Of the rest, which were recovered over a span of nine months, certainly a long period, this was not done either although, according to the statement of the experts (*supra* paras. 56 and 57), identification could have been possible by applying certain techniques. This conduct on the part of the Government constitutes a serious act of negligence.

72. Based on the preceding, the Court concludes that Víctor Neira-Alegría, Edgar Zenteno-Escobar and William Zenteno-Escobar lost their lives due to the effects of the crushing of the uprising by the forces of the Government and as a consequence of the disproportionate use of force.

IX

73. The Court must now determine whether the actions and omissions attributable to the State constitute violations of the American Convention. It must be pointed out that the Commission, in its complaint, indicates the violation of Articles 1, 2, 4, 7, 8, and 25, but that, in its closing arguments, it omits Article 2 and adds Articles 5 and 27.

74. Article 4(1) of the Convention states that "[*n*]*o one shall be arbitrarily deprived of his life*." The expression "arbitrarily" excludes, as is obvious, the legal proceedings applicable in those countries that still maintain the death penalty. But, in the present case, the analysis that must be made has to do with the right of the State to use force, even if this implies depriving people of their lives to maintain law and order, an issue that currently is not under discussion. There is an abundance of reflections in philosophy and history as to how the death of individuals in these circumstances generates no responsibility whatsoever against the State or its officials. Although it appears from arguments previously expressed in this judgment that those detained in the Blue Pavilion of the San Juan Bautista Prison were highly dangerous and, in fact armed, it is the opinion of this Court, those do not constitute sufficient reasons to justify the amount of force used in this and other prisons where riots had occurred. The incident was understood as a political confrontation between the Government and the real or alleged terrorists of Sendero Luminoso (*supra* para.52), a confrontation which probably led to the demolition of the Pavilion and all of its consequences; among them the death of inmates who would have eventually surrendered, the clear negligence in the search for survivors and, later, in the recovery of the bodies.

75. As this Court has stated in previous cases,

> [w]ithout question, the State has the right and duty to guarantee its security. It is also indisputable that all societies suffer some deficiencies in their legal orders. However, regardless of the seriousness of certain actions and the culpability of the perpetrators of certain crimes, the power of the State is not unlimited, nor may the State resort to any means to attain its ends. The State is subject to law and morality. Disrespect for human dignity cannot serve as the basis for any State action. *(Velásquez Rodríguez Case, supra* 63, para. 154; *Godínez Cruz Case, supra* 63, para. 162.)

76. Given the circumstances that surrounded the crushing of the riot at the San Juan Bautista Prison; the fact that eight years after the riot occurred there is still no knowledge of the whereabouts of the three persons to whom this case refers, as was acknowledged by the Minister of Foreign Affairs stating that the victims were not among the survivors and that "*three of the* [non-identified bodies] *undoubtedly correspond to those three persons;*" and the disproportionate use of force; it may be reasonably concluded that they were arbitrarily

deprived of their lives by the Peruvian forces in violation of Article 4(1) of the Convention.

77. This Court likewise considers that the Government also violated the provisions of Articles 7(6) and 27(2) of the American Convention through the application of Supreme Decrees 012-IN and 006-86 JUS of June 2 and 6, 1986, which declared the state of emergency in the Provinces of Lima and El Callao and applied the status of Restricted Military Zone in three correctional facilities, including the San Juan Bautista Prison. In effect, while such decrees did not expressly suspend the *habeas corpus* remedy or action recognized in Article 7(6) of the Convention, in reality, compliance with both decrees resulted in the ineffectiveness of said instrument of protection, thereby resulting in its suspension to the detriment of the alleged victims. *Habeas corpus* was the ideal procedure by which the judicial authority could investigate and acquire knowledge as to the whereabouts of the three persons to which this case refers.

78. In the *habeas corpus* writ filed on June 16, 1986 with the Twenty-First Instructional Judge of Lima, in favor of Víctor Neira-Alegría and Edgar and William Zenteno-Escobar against the President of the Joint Command of the Armed Forces and the Commandant General of the Navy, Irene Neira-Alegría and Julio Zenteno-Camahualí stated that their next of kin had not been found on the occasion of the crushing of the uprising at the San Juan Bautista Prison where they were being held and had not since appeared, possibly because they had been abducted. The petitioners requested that, in the event that the detainees had died, the Judge demand that the military authorities indicate where the bodies could be found and deliver the respective death certificates.

79. The *habeas corpus* application was declared inadmissible by the Judge in his decision of July 17, 1986, on the grounds that the petitioners did not prove that the prisoners had been abducted, the incidents that occurred at the three prisons (including the San Juan Bautista Prison) were subject to investigation by the military courts and the Office of the Attorney General of the Nation, and that such occurrences were outside the scope of the summary *habeas corpus* procedure.

80. In accordance with arguments previously pointed out (*supra* para. 40), on August 1 of that year, the Eleventh Correctional Court of Lima confirmed the original judgment based on the essential argument that the exclusive military tribunal was exercising jurisdiction with respect to the San Juan Bautista Prison, making it impossible for the regular jurisdictional bodies to intervene. On the 25th of the same month of August, the Criminal Section of the Supreme Court declared that, "*in consideration of its grounds*," the application for annulment made against the appeal decree judgment was inadmissible. Finally, on December 5, 1986, the Constitutional Guarantees Court, to which the petitioners had appealed, declared, that the judgment of the Supreme Court "*stood inalterable*," since the minimum number of five votes in favor, had not been obtained as required by Peruvian law.

81. This Court considers it useful to stress that the judgment of the Constitutional Guarantees Court stood upon a voting where four justices were in favor of admitting the appeal filed, and two were in favor of denying the annulment. In virtue of this, while it is true that the minimum number of five votes in favor was not obtained, the singular vote of the four justices represents the majority opinion of the Court. The pertinent section of the opinion was affirmed when it said: "*That, while it is true that such a situation does not constitute a legal definition for kidnapping, it leads to the conclusion that the judge should have exhausted the investigation concerning the lives and whereabouts of the persons in whose favor the [habeas corpus] action is being brought.*" Thus, in the opinion of said justices, the appeal against the judgment of the Supreme Court was justiciable. Had the appeal been admitted, the intervention of military justice would not have impaired the *habeas corpus* proceeding.

82. The Court has interpreted articles 7(6) and 27(2) of the Convention in advisory opinions OC-8 and OC-

9 of January 30 and October 6, 1987 respectively. In the former opinion, the Court maintained that

> writs of *habeas corpus* and of "amparo" are among those judicial remedies that are essential for the protection of various rights whose derogation is prohibited by Article 27(2) and that they serve, moreover, to preserve legality in a democratic society. This Court also deemed that [i]n order for *habeas corpus* to achieve its purpose, which is to obtain a judicial determination of the lawfulness of a detention, it is necessary that the detained person be brought before a competent judge or tribunal with jurisdiction over him. Here *habeas corpus* performs a vital role in ensuring that a person's life and physical integrity are respected, in preventing his disappearance or the keeping of his whereabouts secret and in protecting him against torture or other cruel, inhumane, or degrading punishment or treatment. (*Habeas Corpus in Emergency Situations*, (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights), Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, paras. 42 and 35.)

83. In Advisory Opinion OC-9, this Court added

> that the judicial guarantees essential for the protection of the human rights not subject to derogation, according to Article 27(2) of the Convention, are those to which the Convention expressly refers in Articles 7(6) and 25(1), considered within the framework and the principles of Article 8, and also those necessary to the preservation of the Rule of Law, even during the state of exception that results from the suspension of guarantees. (*Judicial Guarantees in States of Emergency*, (Arts. 27(2), 25 and 8 American Convention on Human Rights), Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, para. 38.)

84. These interpretive criteria are applicable to this case in that the control and jurisdiction of the armed forces over the San Juan Bautista Prison translated into an implicit suspension of the *habeas corpus* action, by virtue of the application of the Supreme Decrees that imposed the state of emergency and the Restricted Military Zone status.

85. In accordance with Article 1(1) of the Convention, "[t]*he States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms,*" thus, as a consequence, this provision is a general one, and its violation is always related to the violation of a provision that establishes a specific human right. As the Court already expressed in a previous case, Article 1

> specifies the obligation assumed by the States Parties in relation to each of the rights protected. Each claim alleging that one of those rights has been infringed necessarily implies that Article 1(1) of the Convention has also been violated. (*Velásquez Rodríguez Case*, *supra* 63, para. 162; *Godínez Cruz Case*, *supra* 63, para. 171.)

86. This Court considers that in this case the Government has not violated Article 5 of the Convention. While the deprivation of a person's life could also be understood as an injury to his or her personal integrity, this is not the meaning of the cited provision of the Convention. In essence, Article 5 refers to the rule that nobody should be subjected to torture or to cruel, inhuman, or degrading punishment or treatment, and that all persons deprived of their liberty must be treated with respect for the inherent dignity of the human person. It has not been demonstrated that the three persons to whom this matter refers had been subjected to cruel treatment or that the Peruvian authorities had damaged their dignity during the time that they were being detained at the San Juan Bautista Prison. Nor is there proof that said persons would have been deprived of the judicial guarantees to which Article 8 of the Convention refers during the proceedings brought against them.

87. The Court must express its position concerning the court costs and attorneys' fees of these proceed-

ings. In this respect, it would be appropriate to insist that

> the Commission cannot demand that expenses incurred as a result of its own internal work structure be reimbursed through the assessment of costs. The operation of the human rights organs of the American System is funded by the Member States by means of their annual contributions. (*Aloeboetoe et al. Case, Reparations (Article 63(1) American Convention on Human Rights)*, Judgment of September 10, 1993. Series C No. 15, para. 114.)

88. However, the Court must sentence Peru to the pay the expenditures that the victims' next of kin may have incurred during these proceedings, which determination shall be left to the Government and the Commission, the Court reserving the right to determine them should the parties not reach an agreement.

89. Article 63(1) of the Convention states as follows:

> 1. If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.

In the current circumstances it is clear that the Court may not rule that the victims be guaranteed the enjoyment of the rights of which they were deprived. It is then only appropriate to determine the reparation of the consequences of the violation and the payment of fair compensation.

90. The Court lacks the elements of judgment that would enable it to determine the extent of the compensation, as such information was neither submitted by the parties nor discussed during the proceedings. Therefore, the Court shall limit itself to the passing of an *in genere* judgment, leaving its determination in the hands of the parties. Should the parties not reach an agreement, the final decision shall be made by the Court.

X

91. Therefore,

THE COURT,

unanimously

1. Declares that Peru has violated the right to life recognized in Article 4(1) of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Víctor Neira-Alegría, Edgar Zenteno-Escobar and William Zenteno-Escobar.

2. Declares that Peru has, to the detriment of the three persons cited, violated the right to *habeas corpus* established in Article 7(6), in relation to the prohibition established in Article 27(2) of the American Convention on Human Rights.

3. Decides that Peru is obliged to pay fair compensation to the next of kin of the victims on the occasion

of these proceedings and to reimburse the expenditures that they have incurred in their petitions before the national authorities.

4. Decides that the form and extent of the compensation and the reimbursement of the expenditures shall be determined by Peru and the Commission, by mutual agreement, within a term of six months as of the date of notification of this judgment.

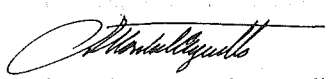
5. Reserves the power to review and approve the agreement and, should there be no agreement, to determine the extent of the compensation and expenditures, to which effect the Court does not close this case.

Done in Spanish and in English, the Spanish text being authentic, at the seat of the Court in San José, Costa Rica, on January 19, 1995.

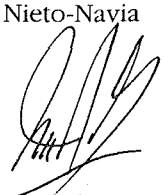
Héctor Fix-Zamudio
President

Hernán Salgado-Pesantes

Rafael Nieto-Navia



Alejandro Montiel-Argüello



Máximo Pacheco-Gómez

Manuel E. Ventura-Robles

Read at a public session at the Seat of the Court in San José, Costa Rica, on January 20, 1995.

So Ordered

Héctor Fix-Zamudio
President

Manuel E. Ventura-Robles
Secretary

APPENDIX V

INTER-AMERICAN COURT OF HUMAN RIGHTS

GENIE LACAYO CASE

PRELIMINARY OBJECTIONS

JUDGMENT OF JANUARY 27, 1995

In the Genie Lacayo Case,

The Inter-American Court of Human Rights, composed of the following judges:

Héctor Fix-Zamudio, President
Hernán Salgado-Pesantes, Vice President
Rafael Nieto-Navia, Judge
Alejandro Montiel-Argüello, Judge
Máximo Pacheco-Gómez, Judge;

also present:

Manuel E. Ventura-Robles, Secretary, and
Ana María Reina, Deputy Secretary

pursuant to article 31 of the Rules of Procedure (hereinafter "the Rules of Procedure") of the Inter-American Court of Human Rights (hereinafter "the Court"), delivers the following judgment on the preliminary objections interposed by the Government of Nicaragua (hereinafter the "Government" or "Nicaragua") in its submissions and oral arguments at the public hearing.

I

1. The instant case was submitted to the Court by the Inter-American Commission on Human Rights (hereinafter the "Commission" or the "Inter-American Commission") on January 6, 1994, against Nicaragua "*for the events that occurred as of July 23, 1991, the date on which the denial of justice --originating in the action of State agents-- first occurred with the death of Jean Paul Genie-Lacayo, in the city of Managua, Nicaragua, on October 28, 1990,*" which gave rise to Petition N° 10.792.

2. As the "**PURPOSE OF THE APPLICATION**" the Inter-American Commission asks the Court the following:

> 1. That it declare that the Government of the Republic of Nicaragua has violated Articles: 8, right to a fair trial; 25, right to judicial protection; and 24, right to equal protection, of the Convention, in relation to Article 1(1) thereof, which establishes the obligation to respect and ensure such rights. These rights were violated as a result of the Judicial Branch's reluctance to prosecute and punish those responsible, and to order the payment of reparations for the damages caused. In like manner, that it also declare that the Government of the Republic of Nicaragua has violated Article 2 of the Convention by not having adopted domestic laws intended to ensure such rights and prevent the occurrence of similar incidents in the future.
>
> 2. That, on the basis of the principle of pacta sunt servanda it declare that the Government of Nicaragua has violated Article 51(2) of the American Convention by not carrying out the recommendations made by the Commission.
>
> 3. That it require the Government of Nicaragua to identify and punish, on the basis of investigations made, those responsible, thereby preventing the consummation of acts of grave impunity that damage the foundations of the legal order.
>
> 4. That it declare that the enforceability of Decrees 591 and 600, known as "Law on the Organization of the Military Judge Advocate and Military Criminal Procedure," and "Provisional Military Criminal Law," which govern military criminal jurisdiction, are incompatible with the object and purpose of the American Convention on Human Rights and that they must be adjusted to the latter in conformity with the commitments acquired pursuant to Article 2 thereof.
>
> 5. That it declare that the Government of Nicaragua must provide, in accordance with Article 63(1) of the Convention, to repair and compensate the next of kin of the victims for the acts committed by State agents as described in this application.
>
> 6. That the State of Nicaragua be sentenced to pay court costs and attorneys' fees in relationship to this action.

3. In submitting the case to the Court, the Commission invoked Articles 50 and 51 of the American Convention on Human Rights (hereinafter the "Convention" or the "American Convention") and 26 and subsequent articles of the Rules of Procedure. It designated Michael Reisman, First Vice President, as delegate, and Edith Márquez-Rodríguez, Executive Secretary, and Milton Castillo, an attorney of the Secretariat, as attorneys. It also designated Robert K. Goldman as Adviser, and José Miguel Vivanco as assistant, accredited "*as the attorney representing the victim.*"

4. By note of January 21, 1994, the Court Secretariat (hereinafter the "Secretariat"), after the President of

the Court (hereinafter the "President") concluded his preliminary study, notified the Government of Nicaragua of the case. The Court informed the Government that it had three months to file a written answer to the application (Art. 29(1) of the Rules of Procedure) and 30 days following notification of the application to file preliminary objections (Art. 31(1) of the Rules of Procedure). On February 3, 1994, the Government informed the Court of its designation of Ambassador José Antonio Tijerino-Medrano as agent. It also named Marco Gerardo Monroy-Cabra as Adviser and Carlos José Hernández-López and Víctor Manuel Ordóñez as Assistants.

5. On February 7, 1994, the President, at the request of the Government, granted the latter an extension of 90 days to answer the complaint and an additional term of 30 days to file preliminary objections.

6. On March 21, 1994, Nicaragua interposed the following preliminary objections:

> **First.** Lack of jurisdiction of the Inter-American Court of Human Rights.
>
> **Second.** Lack of the admissibility requirements as provided for in Article 46 of the American Convention on Human Rights.
>
> **Third.** Procedural errors by the Inter-American Commission on Human Rights in the handling of the case and in the complaint submitted to the Inter-American Court of Human Rights.
>
> **Fourth.** Undue accumulation of petitions in the complaint submitted by the Inter-American Commission on Human Rights.

The following requests were added:

> **First.** Dismiss the complaint submitted by the Inter-American Commission on Human Rights concerning the Jean Paul Genie-Lacayo Case, on the basis of the objections proposed in this submission, and abstain from admitting these proceedings.
>
> **Second.** Order, if the Court deems it appropriate, the holding of a public hearing to provide further verbal support to the proposed objections.
>
> **Third.** Sentence the Inter-American Commission on Human Rights to the payment of court costs and attorneys' fees.

7. That same day the Secretariat transmitted the Government's submission to the Commission, indicating that the Commission had thirty days after receipt of the writings to reply. The Commission's observations were received at the Secretariat on April 24, 1994, and transmitted, together with the Government's submission, to the persons mentioned in Article 28(1) of the Rules of Procedure.

8. On May 23, 1994, the Government submitted its answer to the complaint. Both documents were also transmitted by the Secretariat to the persons referred to in Article 28(1) of the Rules of Procedure.

9. By Order of June 22, 1994, the President ordered that a public hearing be convoked on "*the preliminary objections submitted by the Government and the observations on those objections submitted by the Inter-American Commission.*" Additionally, the President, at the request of the Government, asked the Commission to submit a copy of the pertinent part "*of the minutes of those sessions where the case of the youth Jean Paul Genie-Lacayo had been discussed and resolved, as well as those of the sessions where the reconsideration requested by the Government of Nicaragua had been discussed and the decision was made to submit this case*

to the Inter-American Court of Human Rights." On July 20, the Commission sent copies of the requested documents.

10. The public hearing took place at the seat of the Court on November 18, 1994.

Appearing before the Court:

For the Government of Nicaragua:

José Antonio Tijerino-Medrano, Agent,
Marco Gerardo Monroy-Cabra, Adviser,
Carlos José Hernández-López, Attorney General,
Víctor Manuel Ordóñez, Assistant Attorney General.

For the Inter-American Commission on Human Rights:

Michael Reisman, Delegate,
Milton Castillo, Adviser,
Robert K. Goldman, Assistant,
José Miguel Vivanco, Assistant,
Oscar Herdocia, Assistant.

II

11. According to the complaint submitted to the Commission on February 15, 1991, at approximately 8:35 in the evening of October 28, 1990, the youth Jean Paul Genie-Lacayo, age 16, resident of the city of Managua, was traveling by car to his home in the Las Colinas subdivision. After having stopped at a restaurant, he took the road to Masaya and between kilometers 7 and 8 he came upon a convoy of vehicles transporting military personnel who, in response to his attempts to pass them, fired their weapons at him. The victim did not die immediately but was abandoned on the highway and died from hypovolemic shock as a consequence of his bleeding. According to investigations, this young man's automobile was machine-gunned with weapons from two or more vehicles and 51 cartridge shells of AK-47 ammunition were found at the site of the events. According to the ballistics report, the automobile had 19 bullet impacts, all made while the vehicle was moving and only three shots taken at a short distance after it had already stopped.

12. According to the Commission, a deputy commandant of the Nicaraguan National Police, Mauricio Aguilar-Somarriba, who, according to his parents was in charge of the investigation of Genie-Lacayo's death, was killed. The Government denied that this officer had been in charge of the investigation and sent the Court a case file stating that the author of this deed had been sentenced to three years in prison.

13. The Commission maintains in its complaint that agents of the Government, acting in their capacity as public officers, carried out actions that resulted in a denial of justice. It is appropriate to mention that these actions include the disappearance of evidence, the contempt of military witnesses in refusing to appear and depose before the Seventh Judge of the Criminal District of Managua, the failure to process internal proceedings within a reasonable deadline and the application of rules contrary to the purposes and objectives of the

Convention (such as Decrees 591 and 600 relative to the Law on the Organization of the Military Judge Advocate and Military Criminal Procedure and the Provisional Military Criminal Law). These actions prevented an impartial investigation that would punish those responsible and compensate the next of kin of the victim. The Commission adds that the events on which the complaint is based began on July 23, 1991, the date on which the Office of the Attorney General of Justice, then the only public criminal action authority, submitted the complaint to the Judicial Branch.

14. By note of February 27, 1991, the Commission transmitted the complaint to the Government and requested that it send the information it considered appropriate and that would make it possible to assess whether the domestic legal measures had been exhausted.

15. On March 13, 1991, the Government informed the Inter-American Commission that with respect to Petition Nº 10.792, a Special Investigative Committee of the National Assembly for the Genie Lacayo Case had applied for technical advice from the Government of Venezuela.

16. On May 29, 1991, the Government sent the Commission a document which included a copy of a note signed on the 23rd of the same month and year by the Vice Minister of the Interior, Dr. José Bernard Pallais-Arana. That note accompanied a report which "*contains fundamental aspects on the case under consideration, detailing the action taken by the police, the juridical framework, and the submission of the proceedings to the Office of the Attorney General of Justice.*" The note further states "*that it must be taken into consideration that the remedy of appearing before that Honorable jurisdiction* [the Commission] *can take place only after the legal measures within the country have been exhausted.*"

17. On March 10, 1993, the Commission issued Report Nº 2/93, whose concluding section reads as follows:

VI. CONCLUSIONS

6.1 The Government of Nicaragua is responsible for the violation of the right to life, right to humane treatment, right to a fair trial, right to equal protection and right to judicial protection of Jean Paul Genie-Lacayo (Articles 4, 5, 8(1), 24 and 25 of the Convention) for events that occurred on October 28, 1990, in the city of Managua.

6.2 The Government of Nicaragua has not complied with the obligations to respect human rights and freedoms as guaranteed by Article 1 of the American Convention on Human Rights, to which Nicaragua is a State Party.

6.3 The Government of Nicaragua has not complied with the duty to adopt internal legal measures as established in Article 2 of the American Convention on Human Rights, to which Nicaragua is a State Party.

6.4 Because of the nature of events, this case is not susceptible to a friendly settlement as described in Article 48(1)(f) of the American Convention on Human Rights.

VII. RECOMMENDATIONS

7.1 It recommends that the Government of Nicaragua punish the material authors, as well as their accomplices and accessories, for the crime of homicide to the detriment of Jean Paul Genie-Lacayo.

7.2 It recommends that the Government of Nicaragua pay fair compensatory damages to the direct relatives of the victim.

7.3 It recommends that the Government of Nicaragua accept the jurisdiction of the Inter-American Court of Human Rights in the specific case on which this report is based.

7.4 It requests that the Government of Nicaragua inform the Inter-American Commission on Human Rights within three months of the measures it adopts, in accordance with the recommendations in paragraphs 7.1, 7.2, and 7.3 concerning the instant case.

7.5 If after three months the case has not been resolved by the Government of Nicaragua, the Commission shall state its opinion and conclusions on the matter submitted for its consideration and it shall make a decision regarding the publication of this report, pursuant to Article 51(1) of the American Convention on Human Rights. Also, the present report shall be transmitted to the Government of Nicaragua and to the petitioners, who are not authorized to make it public.

18. On May 21, 1993, the Government requested that the Commission reconsider Report Nº 2/93. In its request, among other things, the Government pointed out that "*in the case under consideration, the internal measures have not been exhausted.*" In the same document it reiterated this concept by expressing "*that precisely because of the fact that the internal measures have not been exhausted and a decision on an appeal is pending . . . we also do not know . . . to which judicial procedure this matter has to be referred.*" This petition was dismissed by the Commission during its 84th Session where the Report of March 10, 1993 was confirmed and a decision was made, in conformity with Articles 50 and 51 of the Convention, to submit the case to the consideration of the Court. In the pertinent section of the Commission's Nº 5 Minutes of October 7, 1993, it is stated that "*the Inter-American Commission decided to confirm Report Nº 2/93 relative to the Case of Jean Paul Genie-Lacayo and to submit it to the Inter-American Court of Human Rights.*"

III

19. The competency of the Court to hear the instant case shall be dealt with when the first preliminary objection interposed by the Government, the "*lack of jurisdiction of the Inter-American Court of Human Rights,*" is examined.

IV

20. The Court will now consider the preliminary objections submitted by the Government (*supra* para. 6).

21. The first objection is the "*lack of jurisdiction of the Inter-American Court of Human Rights,*" which the Government bases on the Nicaraguan acceptance of the Court's jurisdiction on February 12, 1991 "[s]*ubject to the reservation that this recognition of competence applies only to cases arising solely out of events subsequent to, and out of acts which began to be committed after, the date of deposit of this declaration with the Secretary General of the Organization of American States* [hereinafter "the OAS"]." This objection states that the events referred to in the application occurred on October 28, 1990, a date that precedes the acceptance of jurisdiction, thus, in accordance with the provisions of Articles 61(1) and 61(2) of the Convention, the Court would not have jurisdiction. The Government accepted "*for this case the jurisdiction of the Inter-American Court of Human Rights only and exclusively under the precise terms of the complaint submitted by the Inter-American*

Commission on Human Rights in its subtitle 'Purpose of the Application'," but maintained "*the objection of lack of jurisdiction as to events having occurred before February 12, 1991, other than those to which this specific acceptance statement refers.*"

22. The Inter-American Commission requested that this preliminary objection be rejected since

> the death of Jean Paul Genie occurred on October 28, 1990; however, the purpose of the application is not limited to the violation of the right to life, which took place before the date of acceptance of the mandatory jurisdiction of the Court by Nicaragua, but rather to the subsequent events which have generated the international responsibility of the State for the violation of the rights to judicial protection and guarantees, equal protection and the duty to adopt domestic legal measures in relationship to the obligation to respect and ensure (Art. 1(1)) the full enjoyment of the rights recognized in Articles 2, 8, 24, and 25 of the American Convention on Human Rights.
>
> The Commission feels that the unjustified delay in the administration of justice, the obstruction of the judicial proceedings by agents who acted under the cover of a public function and the application of norms incompatible with the object and purpose of the American Convention occurred after February 12, 1991: they originated on the day in which the judicial proceedings started, that is, July 23, 1991. Consequently, the Commission feels that the Court is competent to examine the matter of lack of diligence in the judicial investigation and the punishment of those responsible.

In this same respect, according to the Commission, Nicaragua's reservation to its acceptance of the Court's jurisdiction does not affect the Court's capacity to hear the instant case.

23. The Court understands that Nicaragua's acceptance of jurisdiction as formulated expressly for this case is independent of the declaration of a general nature that it submitted on February 12, 1991, the date of deposit of its declaration before the Secretary General of the OAS. Under the terms of Article 62, States may declare that they accept the jurisdiction of the Court "*on all matters . . . or for specific cases . . . concerning the interpretation and application of the provisions of this Convention.*"

24. Nicaragua has made both declarations subject to conditions, in one case excluding occurrences prior to, or occurrences brought under consideration prior to February 12, 1991, and in the other case with the limitation that jurisdiction applies "*only and exclusively under the precise terms*" that appear in "*the subtitle 'Purpose of the Application'*," of the Commission (*supra* para. 2).

25. The Court does not feel it necessary to state its position at this time concerning the effect of the existence of two acts of acceptance of jurisdiction. In principle, in the Commission's "*Purpose of the Application*" there appear no demands relative to the violation of the victim's right to life or to humane treatment, events which occurred prior to Nicaragua's acceptance of jurisdiction. Consequently, the Court shall limit itself to decide, in due time, on these matters --and in any event it could not exceed the scope of this matter without the risk of adopting an *ultra petita* decision--. In adopting this position, the Court shall not be found to lack jurisdiction, since Nicaragua has expressly accepted that the Court has jurisdiction over such a matter.

26. Therefore, the Court holds that this preliminary objection is inadmissible and declares itself competent to hear the present case.

27. The second objection interposed by the Government is the failure of the Commission to comply with the requirements of admissibility as provided for in Article 46 of the Convention. According to the Government, the Commission should not have admitted the application when it was submitted on February 15, 1991, for lack of compliance with the requirement of prior exhaustion of domestic remedies to which

Article 46(1) of the Convention refers, since at that time the criminal proceedings brought in response to the death of the youth Genie-Lacayo were in progress. In support of its objection, Nicaragua refers to the judicial proceedings before the State's military criminal authorities and their multiple procedures. It affirms that the objections are not interposed with respect to the exhaustion of remedies referred to in Article 46(2)(a); that the injured person has not been prevented from exhausting the remedies and that there has not been an unjustified delay in the administration of justice.

28. The Commission asks that this objection be dismissed since the party that invokes non-exhaustion of domestic remedies has the obligation to specifically identify these remedies before the Commission and Nicaragua has not done so. It adds that the internal remedies are fully exhausted since the regular criminal prosecution concluded on December 20, 1993 with the Supreme Court's judgment. The Commission also alleges that Nicaragua's military criminal jurisdiction is not independent, that the enforceability and application of Decrees 591 and 600 is incompatible with the object and purpose of the Convention, and that the delay in the criminal investigation of the death of Jean Paul Genie-Lacayo cannot be justified by excessive workloads of the Judicial Branch, as has been done in this case.

29. In the instant case, the Commission's petition refers to Nicaragua's violation of Articles 8 (Right to a Fair Trial), 25 (Right to Judicial Protection), and 24 (Right to Equal Treatment) of the Convention, "*as a result of the Judicial Branch's reluctance to prosecute and punish those responsible and to order the payment of reparations for the damages caused*" by the death of Genie-Lacayo. The Court feels that the articles invoked by the Commission refer to the administration of justice and are closely related, as is logical, to the "*internal remedies*" whose non-exhaustion Nicaragua alleges.

30. The file naturally contains arguments by both parties on this matter and copies of the judicial proceedings have been added. All these documents show that the subject of non-exhaustion of internal remedies is related to the merits since it has to do with the judicial remedies available in Nicaragua as well as their applicability and effectiveness. On another occasion, this Court stated as follows:

> In such cases, given the interplay between the problem of domestic remedies and the very violation of human rights, the question of their prior exhaustion must be taken up with the merits of the case. (*Velásquez Rodríguez Case, Preliminary Objections*, Judgment of June 26, 1987. Series C No. 1, para. 94; *Fairén Garbi and Solís Corrales Case, Preliminary Objections*, Judgment of June 26, 1987. Series C No. 2, para. 93, and *Godínez Cruz Case, Preliminary Objections*, Judgment of June 26, 1987. Series C No. 3, para. 96.)

31. Under such circumstances and because of the stated reasons, the Court shall join this objection to the merits.

32. The third objection has been stated by Nicaragua in generic terms as "*procedural errors by the Commission in the handling of the case and in the complaint.*" The Government mentions four "errors" in its objection, which the Court shall analyze separately below.

33. In the first point of this objection the Government alleges that the Commission "*did not refuse to admit the application or communication in spite of the fact that there was full proof that the criminal investigation and prosecution were proceeding normally in accordance with the legislation in force in Nicaragua.*"

34. The Commission affirms that its practice has been to consider the admissibility of an application together with the merits of the complaint and that, in the instant case, its decision with respect to admissibility falls within the legal boundaries allowed it by the Convention and its Rules of Procedures. The Commission felt

that the information it received from the petitioner was sufficient at the time to establish its competency.

35. In pointing out this "error," the Government does not refer to any article applicable to the circumstance that it mentions; nor does it support its objection in any other way. If the allegation of the Government refers to the exhaustion of remedies, the Court has already previously decided to join that objection to the merits. If instead, it refers to the admissibility, whether because an express declaration was not made or because a declaration was made implicitly together with the merits, the Court reiterates what it has already expressed on another occasion by stating that

> the Commission's failure to make an express declaration on the question of admissibility of the instant case is not a valid basis for concluding that such failure barred proper consideration by the Commission, and subsequently, by the Court (Arts. 46-51 and 61(2) of the Convention). (*Velásquez Rodríguez Case, Preliminary Objections, supra* 30, para. 41; *Fairén Garbi and Solís Corrales Case, Preliminary Objections, supra* 30, para. 46, and *Godínez Cruz Case, Preliminary Objections, supra* 30, para. 44.)

36. It is true that if "*the admission of a petition does not require an express and formal act, such an act is necessary if it is found to be inadmissible.*" (*Velásquez Rodríguez Case, Preliminary Objections, supra* 30, para. 40; *Fairén Garbi and Solís Corrales Case, Preliminary Objections, supra* 30, para. 45, and *Godínez Cruz Case, Preliminary Objections, supra* 30, para. 43.) The Convention not only determines what requirements a petition or communication must meet in order to be admitted by the Commission (Art. 46) but also determines cases of inadmissibility (Art. 47). The Government's arguments seem to indicate that it understands this principle, since it states "*there was full proof that the criminal investigation and prosecution were proceeding normally,*" and the petition before the Commission was "manifestly groundless" or totally inapplicable under the terms of Article 47(c) ("*The Commission shall consider inadmissible any petition or communication submitted under Articles 44 or 45 if: . . . c) the statements of the petitioner or of the state indicate that the petition or communication is manifestly groundless or obviously out of order*"). Nevertheless, the subjects of the investigation and the criminal proceedings are part of the merits, whereby it becomes evident that, for the Commission, it was neither "obvious" nor "manifest" that there were arguments to declare the case inadmissible. The terms of Article 47(c) exclude any conclusion based on appearance and demand a "*clear, manifest certainty so perceptible that nobody may rationally place it in doubt*" (Royal Spanish Academy, Dictionary of the Spanish Language), which is not the case here.

37. On the second point of the third preliminary objection, the Government maintains that the Commission, in determining that "[b]*ecause of the very nature of the events, this case* [was] *not susceptible to a friendly settlement,*" restricted the scope of this rule of the Convention (Art. 48(1)(f)) which does not distinguish between matters which are susceptible to a friendly settlement and those which are not. Based on the Court's decision in the judgment on the preliminary objections in the Caballero Delgado and Santana Case (*Caballero Delgado and Santana Case, Preliminary Objections,* Judgment of January 21, 1994. Series C No. 17), the Government alleges that the Commission did not duly support its denial of a friendly settlement.

38. The Commission answered, among other arguments, that the reconciliation mechanism is not mandatory and is applied by it discretionarily, not arbitrarily, on the basis of the needs and characteristics of the case. The Commission added that Nicaragua did not intend to request a friendly settlement procedure since it always denied being responsible for the events that occurred in the instant case. Furthermore, "*simply by reading Article 45 of the Rules of Procedure of the Commission it is understandable that both the Government and the petitioner may at all times ask the Commission to initiate a reconciliation procedure.*"

39. In the jurisprudential development of this subject matter (*Caballero Delgado and Santana Case, Preliminary Objections, supra* 37), which is subsequent to the date of the Commission's Report to which the

Government refers, this Court has said that the Commission does not have arbitrary powers in this respect, but that it may, exceptionally and on the basis of essential arguments, circumvent the reconciliation procedure. In this case the Commission invoked only the "nature" of the matter. However, the avoidance of the friendly settlement procedure does not harm the Government, since the latter may apply for it at any time. It is evident that, in order to reach a friendly settlement, the resolute intervention of the parties involved, namely the Government and the victims, whose disposition to reach a friendly settlement is of the essence, is indispensable. While it is true that the Commission should have played an active role, it was within the Government's possibilities to apply for a friendly settlement and it did not do so. It then may not rightfully object to the Commission's decision. The Court deems such reasoning by the Government groundless.

40. The third point made by the Government as part of this objection is that the Commission did not correctly apply Article 51 of the Convention in the way this norm has been interpreted by this Court. (*Certain Attributes of the Inter-American Commission on Human Rights (Arts. 41, 42, 44, 46, 47, 50 and 51 of the American Convention on Human Rights)*, Advisory Opinion OC 13/93 of July 16, 1993. Series A No. 13.) The Government feels that the Commission was wrong in considering, in the purpose of the application, that the Court should declare, on the basis of the principle of *pacta sunt servanda*, that the Government had violated Article 51(2) of the Convention for failure to comply with the recommendations formulated by the Commission. In the Government's opinion, "*this request is not applicable and causes the application to be inappropriate*" since Article 51 of the Convention is not applicable if the case is submitted to the Court.

41. The Commission affirms that it did not incorrectly apply the provisions of Articles 50 and 51 of the Convention since, while it does mention such precepts in the complaint, it never prepared the second report, which is prepared only when the case is not submitted to the Court.

42. According to the pertinent section of the Nº 5 Minutes of the Commission of October 7, 1993, "*the Inter-American Commission decided to confirm Report Nº 2/93 relative to the Jean Paul Genie-Lacayo Case and submit it to the Inter-American Court of Human Rights*" (underlining by the Court). The Court finds, therefore, that the report to which Article 51 of the Convention refers does not exist.

43. The complaint does, nonetheless, contain a request to the Court "[t]*hat, on the basis of the principle of pacta sunt servanda it declare that the Government of Nicaragua has violated article 51(2) of the American Convention by failing to comply with the Commission's recommendations*." The Court finds it inappropriate to state its position at this time, since whether or not governments violate either the *pacta sunt servanda* principle or the Convention by failing to comply with the "recommendations" of the Commission is not a preliminary issue. The Court shall have to resolve this request on the merits. To establish whether or not this request is founded is not appropriate at this stage.

44. The fourth point alleged by the Government in this preliminary objection is that there is an

> inconsistency between the conclusion foreseen in section 6(1) of Report 2/93 of March 10, 1993, which refers to the violation of Jean Paul Genie-Lacayo's right to life as provided for in Article 4 of the Convention and the actual complaint which fails to request that the Court state its position on the alleged violation of Article 4 of the Convention.

45. In its reply, the Commission states that "*the complaint of the Commission refers strictly to the violation of rights relative to judicial guarantees and protection as provided for in Articles 8 and 25 of the Convention and Article 2 of the same, all related to Article 1(1)*" and that "*consequently, there exists . . . no 'inconsistency'*."

46. The Court observes that in Conclusion 6(1) of Report Nº 2/93 of March 10, 1993, it is indeed stated that

the Government is responsible for violating Article 4 (Right to Life) of the Convention, together with Articles 8 (Right to a Fair Trial), 24 (Right to Equal Protection) and 25 (Right to Judicial Protection). In the application, reference is made only to the latter three Articles, and Article 4 is omitted. Report Nº 2/93 of the Commission is the report to which Article 50 of the Convention refers. Such Reports fall under the attributes of the Commission in its function "*to promote the observance and protection of human rights*" pursuant to Article 41 of the Convention (cfr. *Certain Attributes of the Commission, supra* 40, para. 23) which obviously includes all recognized rights and must be protected, even if the States have not accepted the jurisdiction of the Court. The purpose of the Report is to urge the State involved to adopt the recommendations that it suggests. When the Commission made the decision to submit the case to the Court, it did so precisely because, in its opinion, such recommendations had not been adopted. The Commission omitted the violation of Article 4 because it was aware that the events related to this precept, by virtue of the date on which they occurred, lied beyond the jurisdiction of the Court. In the opinion of the Court, this can neither be regarded as an inconsistency nor be accepted as a preliminary objection.

47. The Government bases its fourth objection on the allegation that the Commission's request to declare the legal effect of Decrees 591 and 600 incompatible with the object and purpose of the Convention, constitutes a request for an advisory opinion pursuant to Article 64(2). It adds that this request could only be made by the Government and fails to comply with the requirements established by the Rules of Procedure and cannot be joined to a contentious case.

48. The Commission has alleged that it is competent and has the obligation to ensure respect for the Convention; that Nicaragua is obliged to adjust its legislation to the Convention and that Article 64(2) of the Convention is not the only means to examine the compatibility of the legislation with the Convention.

49. On a prior occasion this Court has stated that "[a] *State may violate . . . the Convention, in many ways . . . Likewise, it may adopt provisions which do not conform to its obligations under the Convention,*" and that, in respect of its function to promote the observance and protection of human rights, the Commission has the "*power to rule, as in the case of any other act, that a norm or internal law violates the Convention . . .*" (*Certain Attributes of the Inter-American Commission on Human Rights, supra* 40, paras. 26 and 37.) However, in the instant case, the abstract compatibility, such as the Commission has formulated it in the "*Purpose of the Application,*" between the decrees mentioned and the Convention, is something that pertains to the Court's advisory (Art. 64(2)), and not its contentious (Art. 62(3)) jurisdiction.

50. The purpose of the Court's contentious jurisdiction is not to review national legislations in their abstract conception. Contentious jurisdiction is intended to resolve specific cases where it may be alleged that an act of a State carried out against certain individuals is contrary to the Convention. In considering the merits of the case, the Court shall have to examine whether or not the conduct of the Government conformed to the Convention, since, as it has already stated:

> the Court would have to weigh and decide whether the action attributed to the state constitutes a violation of the rights and freedoms protected under the Convention, regardless of whether or not such action is consistent with the state's domestic law . . . (*International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Arts. 1 and 2, American Convention on Human Rights)*, Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14, para. 48.)

51. In accordance with the preceding, this objection presented by the Government is admissible only with respect to the Commission's request on the abstract compatibility of Decrees 591 and 600 and the Convention. As far as the other aspects of the application are concerned, the jurisdiction of the Court remains unalterable due to the fact that this matter is independent of the Commission's remaining requests. However, this Court

reserves the power to examine in the merits of the case the effects of the application of the cited decrees in relationship to the human rights recognized by the Convention and involved in this case.

V

52. In regards to the court costs and attorney's fees which the Government requests the Commission to be liable, the Court does not find it appropriate to order such costs.

VI

53. Therefore,

THE COURT,

unanimously

1. Declares that it is competent to hear the instant case, except regarding the abstract compatibility of Decrees 591 and 600 of Nicaragua with the Inter-American Convention on Human Rights.

2. Rejects the preliminary objections interposed by the Government of Nicaragua, except for the objection relative to the non-exhaustion of internal jurisdictional remedies, which shall be resolved together with the merits of the case.

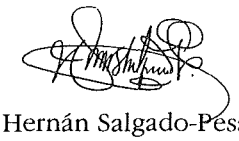
3. Considers that the objections of the Government of Nicaragua posed in opposition to the statements in the Inter-American Commission on Human Rights' complaint concerning the mandatory nature of its recommendations, are not preliminary objections but rather essential questions on the merits that shall be resolved in due time.

4. Does not consider it appropriate to award court costs and attorneys' fees.

5. Resolves to continue hearing the present case.

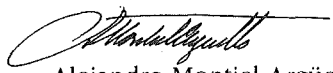
Done in Spanish and English, the Spanish text being authentic. Read in a public hearing at the seat of the Court in San José, Costa Rica, on January 27, 1995.

Héctor Fix-Zamudio
President



Hernán Salgado-Pesantes

Rafael Nieto-Navia



Alejandro Montiel-Argüello

Máximo Pacheco-Gómez

Manuel E. Ventura-Robles
Secretary

So ordered,

Héctor Fix-Zamudio
President

Manuel E. Ventura-Robles
Secretary

APPENDIX VI

ORDER OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS

EL AMPARO CASE

MAY 17, 1995

HAVING SEEN:

1. The Judgment of the Inter-American Court of Human Rights of January 18, 1995, on the instant case.

2. The brief of the Inter-American Commission on Human Rights of April 18, 1995.

CONSIDERING:

1. That Article 67 of the American Convention on Human Rights establishes:

> The judgment of the Court shall be final and not subject to appeal. In case of disagreement as to the meaning or scope of the judgment, the Court shall interpret it at the request of any of the parties, provided the request is made within ninety days from notification of the judgment.

2. That, in the April 18 brief, the Inter-American Commission requests:

> A. To expressly declare that, due to the nature of its decision of January 18, 1995, the parties may interpose an application for interpretation on the "El Amparo" Judgment after the ninety day period established by Article 67 of the American Convention on Human Rights.
>
> B. That the ninety day period established to interpose an application for interpretation on the aforementioned judgment shall not start to run from the date of notification of said judgment, but —should this be the case— from the moment when the parties fail to reach an agreement.
>
> C. In the event that the Honorable Court not accept the above paragraphs A and B, and therefore consider inadmissible the Government of Venezuela's interpretation on the effective periods to interpose such application, the Inter-American Commission on Human Rights then requests that the Court consider the application for interpretation of the judgment of the "El Amparo" Case submitted, pursuant to Article 67 of the American Convention and Article 50 of the Rules of Procedure of the Court.

3. That resolutory part 3 of the January 18, 1995 Judgment, "[d]*ecides that the reparations and the form and amount of the indemnification shall be determined by the Republic of Venezuela and the Inter-American Commission on Human Rights, by mutual agreement, within six months as of the notification of this judgment."*

4. That pursuant to resolutory part 4 of said Judgment, the Court "[r]*eserves the right to review and approve the agreement, and in the event an agreement is not reached, the Court shall determine the scope of the reparations and the amount of the indemnities, court costs and attorneys' fees, to which effect it retains the case on its docket.*"

5. That the period granted by the Court to the parties to determine by mutual agreement "*the reparations and the form and amount of the indemnification*" has not yet expired.

NOW, THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS

in conformity with Article 45(2) of the Rules of Procedure,

unanimously,

DECIDES:

1. Not to render, at the moment, a decision concerning the requests of the Inter-American Commission on Human Rights.

2. Upon expiration of the six-month deadline, if the Republic of Venezuela and the Inter-American Commission on Human Rights have reached an agreement, the Court shall exercise its authority to review and approve it if the Court deems it appropriate; and if no agreement has been reached between the parties, the Court shall determine the scope of the reparations and the amount of the indemnification and the court costs and attorneys' fees and other matters of the case.

Héctor Fix-Zamudio
President

Hernán Salgado-Pesantes

Alejandro Montiel-Argüello

Máximo Pacheco-Gómez

Antônio A. Cançado-Trindade

Manuel E. Ventura-Robles
Secretary

APPENDIX VII

INTER-AMERICAN COURT OF HUMAN RIGHTS

GENIE LACAYO CASE

ORDER OF MAY 18, 1995
(ART. 54(3) AMERICAN CONVENTION ON HUMAN RIGHTS)

The Inter-American Court of Human Rights, composed of the following judges:

Héctor Fix-Zamudio, President
Hernán Salgado-Pesantes, Vice President
Alejandro Montiel-Argüello, Judge
Máximo Pacheco-Gómez, Judge
Oliver Jackman, Judge
Alirio Abreu-Burelli, Judge
Antônio A. Cançado Trindade, Judge

also present,

Manuel E. Ventura-Robles, Secretary and
Ana María Reina, Deputy Secretary

delivers the following decision, pursuant to Article 45(2) of the Rules of Procedure of the Inter-American Court of Human Rights (hereinafter "the Rules of Procedure"), concerning its composition in the Genie Lacayo Case.

I

1. In a letter dated February 23, 1995 (REF.: CDH-S/080), sent to the President of the Court, Judge Cançado Trindade stated:

> as the phase of preliminary objections of the Genie Lacayo Case is concluded, and before beginning the phase of examination of the merits of the case, may I, as a duty of conscience, formally request the Inter-American Court of Human Rights, as currently composed, . . . to adopt a resolution on the prior question of its composition to hear the merits of the case.

He added that his formal request:

is motivated by the high respect that I have for the Court as an Institution, by the necessity that I find of a clear and correct interpretation of the norms that govern its functioning as an organ of protection of human rights (including as an additional guarantee for the parties), and by the determination to preserve the integrity of my mandate as Judge.

II

2. The Court concludes that it has jurisdiction, as currently composed, to decide on its composition in the Genie Lacayo Case, as it is always one single Court regardless of the judges who serve on it.

3. On June 29, 1992 the Court issued an Order concerning its composition in the Neira Alegría *et al.* Case, a case in which the preliminary objections interposed by the Government of Peru were found to be without merit. That Order established that the Court, with its composition as of that time, would continue to hear the case, thus excluding the judges whose terms had expired. The Order did not refer to the consideration of motions filed against the judgment, which were to continue to be heard by the judges who rendered that judgment.

4. The Court's Order, which was based on the necessity of reconciling the texts of Article 54(3) of the Convention, in the four official languages, with Articles 31 through 33 of the Vienna Convention on the Law of Treaties, stated in relevant part:

> The Court finds that the only solution that would satisfy both extremes and be compatible with the stated "object and purpose" is to refer to the moment at which it takes up the merits of the case. The phrase "take up the merits" shall not, however, be interpreted in a restrictive sense, since it is only very rarely that a specific moment can be singled out as the time when the Court "decides" to take up the merits of a case or, what is more likely, the time when it decides not to proceed or to suspend the proceedings.

5. The Order quoted above was issued in a case in which the preliminary objections had been declared to be without merit. However, in the present case, the Court decided in its Judgment of January 27, 1995, to join the preliminary objection of non-exhaustion of domestic remedies to the merits. Moreover, in the June 29, 1992 Neira Alegría *et al.* Case Order, an issue similar to that raised in the present case was examined and affirmed in paragraph 28, which reads:

> Oral proceedings on the merits would without doubt serve as an indication —though not the only one— that the case has been admitted. It can happen, for example, that in analyzing the preliminary objections the Court might have to address the merits in whole or in part, even when it does so in order to decide, as it has in the past, that it will join one or more of the former to the latter.

6. The reasoning cited above is applicable to the Genie Lacayo Case, since in Genie Lacayo a preliminary objection has been joined to the merits. The result of this joinder is that the judges that decided on the preliminary objections took up the merits of the case. Therefore, they are the judges that should resolve the merits.

7. Moreover, this Court decided in its Agreement of November 18, 1994 (Minutes Number 3), with its composition as of that date, to continue hearing the Genie Lacayo Case, both as to preliminary objections and the merits should a preliminary objection be joined to the merits, such as has subsequently taken place.

For that reason, this Court considers that there is not sufficient reason to modify the agreement.

IIII

Now, Therefore

THE COURT

DECIDES

unanimously

1. That it has jurisdiction, as currently composed, to decide on its composition for the continuation of the Genie Lacayo Case.

by six votes to one

2. To continue hearing the merits of the Genie Lacayo Case with the composition of the Court that delivered the judgment on the preliminary objections.

Judge Cançado Trindade filed a dissenting opinion.

Judges Jackman and Abreu Burelli filed concurring opinions.

Done in Spanish and English, the Spanish text being authentic, on this eighteenth day of May, 1995.

Héctor Fix-Zamudio
President

Hernán Salgado-Pesantes

Alejandro Montiel-Argüello

Máxime Pacheco-Gómez

Oliver Jackman

Alirio Abreu-Burelli

Antônio A. Cançado Trindade

Manuel E. Ventura-Robles
Secretary

DISSENTING OPINION OF JUDGE A.A. CANÇADO TRINDADE

1. I regret that I cannot join in the decision of the majority of the Court as to resolutory point 2 of the present Order. I will set forth the grounds for my position on each of the central points of the subject matter of this Resolution, namely: a) the jurisdiction and procedure of the Court for the determination of its composition; b) the scope of preliminary objections and their relationship to the merits; and c) the problem of the joinder of a preliminary objection of admissibility to the merits.

I. The Jurisdiction and Procedure of the Court for the Determination of Its Composition.

2. The Inter-American Court of Human Rights is one single Court, irrespective of the Judges who serve on it. As such, it has jurisdiction, as currently composed, to decide on its composition in the present case. This point was clarified in the present Resolution (resolutory point 1), issued in response to my formal request (transcribed in paragraph 1) to the effect that it took such a decision, as the Court has just done. May I at first recall the background that led to the present Resolution, so as to disclose its significance and clarify the reasons for my request.

3. The Court had decided, in the course of its XXX Regular Session (from 16 November to 11 December 1994), that, with its composition as of that time, it would continue hearing the **Genie Lacayo** case, both as to "*preliminary objections and the merits, should a preliminary objection be joined to the merits*" (Minutes No. 3, of 18 November 1994, page 2, followed by Minutes No. 12, of 1 December 1994, page 2). That decision of 18 November 1994, which the Court refers to as an "agreement" *(acuerdo)* in paragraph 7 of the present Resolution, was based on a simple working assumption, in that it preceded the Judgment on Preliminary Objections in the **Genie Lacayo** case, prejudging this latter, which was not rendered by the Court (with its previous composition) until more than two months later, on 27 January 1995, during the Court's XVI Special Session, when the new composition of the Court was already sworn in. That judgment, in fact, joined one of the preliminary objections to the merits.

4. Shortly before that judgment was rendered, in the course of the debates of the XXXI Regular Session of the Court (already with its new composition), I raised the question of the Court's composition in the present case (Minutes No. 3, of 16 January 1995, page 2). In my understanding, the determination of the composition of the Court should have been the object of a Resolution preceded by a thorough and in depth discussion of the matter. As no decision was reached on the question at that time, at the conclusion of the phase of preliminary objections I took the initiative of making a formal written request that the Court proceed to consider the matter and adopt a Resolution, as it has, in fact, now done.

5. In reality, there continued to be an abysmal distance between the situation created by the "agreement" *(acuerdo)* of 18 November 1994, and the provisions of Article 54(3) of the American Convention on Human Rights and Article 5(3) of the Statute of the Inter-American Court of Human Rights, according to which, Judges whose terms have expired, would only in exceptional circumstances continue serving with respect to cases which they have already begun to hear and that are still "pending" ("en estado de sentencia"/ "em fase de sentença"/"en instance").[1] In my understanding, an in depth examination of this issue was required for three reasons. Firstly, the precedents of **Neira Alegría** and **Gangaram Panday**[2] as to this question were not adequate to the present case, and that required a well reasoned decision of the Court that would serve as prece-

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1) The extent of the terminological variations in the four languages was considered in the Resolution of the Court of 29 June 1992 in the **Neira Alegría** case.

2) In these cases, the point being examined was raised at the same stage of the proceedings, namely, after the conclusion of the phase of preliminary objections and before having entered into consideration of the merits. Cf. Resolutions of the Court of 29 June 1992 in the **Neira Alegría** case and of 7 July 1992 in the **Gangaram Panday** case.

dent for similar cases which might arise subsequent to the present Resolution in the **Genie Lacayo** case Secondly, an in depth examination of the question could put an end to the uncertainties that have surrounded the Court's own practice on the matter, which, for example, permeate the reasoning, on the one hand, and the conclusion, on the other, of its Resolution of 29 June 1992 in the **Neira Alegría** case. Thirdly, in my view, the adoption of a formal Resolution, preceded by a full debate on the matter, was required, because of the need for transparency of the proceedings, which is applicable even more forcefully to the organs of international protection of human rights. This matter could not continue to be the object of only a simple internal deliberation (contained in the private Minutes) of the Court, as the parties have the right to know the criteria that have guided the Court in deciding on its composition. An adequate interpretation of the norms that govern the functioning of the Court is required, as an additional guarantee for the parties.

6. With the present Resolution, the Court has remedied the situation that was of great concern to me; nevertheless, the object of my formal request has been only partially fulfilled, as to the adoption of this Resolution, but not as to an in depth analysis of the matter and the juridical foundations of the Resolution. Although the Court correctly decided (resolutory point 1) that it has jurisdiction, with its present composition, to decide on its composition in the **Genie Lacayo** case, it has regrettably lost a unique opportunity to undertake a more profound study of the subject and to establish clear criteria to guide subsequent decisions on the matter. The central point to be examined in the present case, which the Court has refrained from considering, is distinct from the one dealt with in this Resolution. For the purpose of determining the composition of the Court in the **Genie Lacayo** case, this Resolution should have concentrated on clarifying the difficult issues of the scope of preliminary objections, of the distinct types of these latter, and of their relationship to the merits. I thus fear that uncertainties will unfortunately continue to mark the practice of the Court on this point, until the Court definitely decides to revise the *criterium* -in my view inadequate- followed to date on the matter.

II. Preliminary Objections: Scope and Relationship to the Merits.

7. International judicial practice indicates, in cases such as this, that the *criterium* for determining the composition of a court is that of whether a Judge has previously participated in the hearings. The Court's Judgment of 27 January 1995 on Preliminary Objections in the present **Genie Lacayo** case makes it clear that the public hearing which took place dealt specifically with preliminary objections (paragraph 9). Such objections were examined but not the merits. The Court itself expressly referred, in its recent Resolutions of 17 May 1995 in the **Paniagua Morales, Castillo Paez** and **Loayza Tamayo** cases, to "*two distinct procedural phases; that of preliminary objections and the merits*", and warned that "*the non-suspension of the proceedings on the merits does not affect the distinct and separate nature of the phase of preliminary objections*" (*consideranda* 1 and 2 of those Resolutions).

8. This is so by virtue of a general principle of procedure: in fact, the main juridical systems know the general principle of law *reus in excipiendo fit actor*, whereby the party that raises a preliminary objection is allowed to appear in the position of claimant during that phase of the procedure. Thus, in the proceedings on preliminary objections, the positions of the parties are reversed, distinctly from what occurs as to the merits. Even though this juridical technique has evolved in both international (arbitral and judicial) as well as domestic procedure (that is, in the domestic juridical systems, going back to Roman law), it seems to me that the time has come to evaluate the consequences of its undifferentiated application in the context of the international protection of human rights, given its specificity.

9. In the present **Genie Lacayo** case, by joining one of the preliminary objections to the merits, the Court made it clear that it would pass on to an entirely new phase, not yet initiated, for hearing the merits; with that joinder, it determined even more clearly that it would proceed to a new phase. It is disclosed, without doubt, from its Judgment of 27 January 1995 on Preliminary Objections, that the Court did not begin to address the

merits. Thus, in considering one of the points raised by the Government of Nicaragua (concerning Article 51(2) of the American Convention), the Court held it "*inappropriate to state its position at this time, since...[this] is not a preliminary issue. The Court shall have to resolve this request on the merits. To establish whether or not this request is founded* ***is not appropriate at this stage***" (paragraph 43, emphasis added). Moreover, the Court reserved the faculty "*to examine in the merits of the case*" the effects of the application of Decrees 591 and 600 on the human rights protected by the American Convention and which are at issue in the case (paragraph 51). In resolutory point 3 of the Judgment, the Court considered that the objections of the Government of Nicaragua to the points raised in the application of the Inter-American Commission on Human Rights, concerning the obligatory nature of the recommendations of the Commission, "*are not preliminary objections but rather* ***essential questions on the merits that shall be resolved in due time***" (emphasis added), that is, when the Court actually passes on to the examination of the merits.

10. The Judges who participate in the oral hearings in the phase of preliminary objections continue to serve with regard to cases that they have begun to hear, until a judgment has been rendered in that preliminary phase, even though their term has expired **during that phase**; changes in the composition of the Court in subsequent phases in no way affect its identity as a single judicial organ. Rather, to the contrary, by avoiding prolonged periods of parallel compositions[3] the unity of the Court is reinforced. In the present case, it is clear from the Court's own Judgment on Preliminary Objections that the Court did not enter into the merits of the case: in this phase, as the Court expressly indicated, it limited itself to an examination of points relating to preliminary objections, leaving for the subsequent phase any and all other points pertaining to the merits. In refraining from entering into the merits, the Court pondered that, in that phase, it could not deal with questions pertaining to the merits: the Court's decision was, in fact, specifically on preliminary objections. Any argument or assertion to the contrary requires demonstration.

III. The Problem of the Joinder of a Preliminary Objection of Admissibility to the Merits.

11. In the present Resolution, the Court finds that the joinder of a preliminary objection to the merits is determinative in order to maintain the "agreement" (*acuerdo*) of 18 November 1994, that is, its former composition to hear the merits of the **Genie Lacayo** case (paragraphs 6-7). In its Judgment on Preliminary Objections of 27 January 1995, the Court rejected the preliminary objections interposed by the Government of Nicaragua, except one, that of non-exhaustion of domestic remedies, which the Court decided "*will be resolved together with the merits of the case*" (resolutory point 2 of the Judgment, and cf. paragraph 31).

12. In my understanding, within the context of the international protection of human rights, this preliminary objection is of **pure admissibility**, which, in a system such as that of the American Convention on Human Rights,[4] should be resolved definitively by the Inter-American Commission of Human Rights. The question, in fact, had already been examined by the Commission, which had decided that the case disclosed "*two of the three exceptions*" to the rule of exhaustion of local remedies,[5] quoting also the case-law of the Inter-American Court itself on the matter.[6] And, as the Court itself recalled in its Judgment of 27 January 1995 on the Preliminary Objections in the present case, the Commission had dismissed the request of the Government of Nicaragua to reconsider the objection of non-exhaustion of local remedies (paragraph 18).

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3) In the specific cases of **interpretation of a judgment** there can be no doubt that the Court is composed of the Judges who considered the merits (and the reparations and compensation), as the Inter-American Court already correctly clarified in the **Velásquez Rodríguez** and **Godínez Cruz** cases (Judgments of 17 August 1990).

4) And until now also of the European Convention of Human Rights, at least until the day when Protocol n. 11 (of 1994) to the European Convention enters into force.

5) Inter-American Commission of Human Rights, **Report n. 2/93**, of 1993, paragraphs 5(5), 5(17), and 5(29).

6) Ibid. at paras. 5(31) and 5(32).

13. The Court's decision to join this **preliminary** objection to the merits (resolutory point 2 of that Judgment), nevertheless, now reopens this question of pure admissibility, and in two instances, namely, in the phase of preliminary objections, and in the subsequent phase of the merits. Such a decision of joinder, given its exceptional character, should always be based on solid juridical grounds. The reassuring *jurisprudence constante* of this Court, which coincides with that of other organs of international protection of human rights, is widely known; according to it, human rights treaties are not multilateral treaties of the traditional type, concluded in light of the exchange of reciprocal interests and benefits of the Parties, but rather treaties that are inspired by superior values, for the common good, having as object and purpose the protection of the fundamental rights of human beings, including *vis-à-vis* their own State.

14. In my view, it militates against the ultimate purpose and the specificity of the international law of human rights, to permit the conditions of admissibility of communications or petitions on alleged violations of human rights to be reopened and reexamined twice or three times in the same case. The reopening and reconsideration by the Court, twice, of a question of pure admissibility which had been previously examined and decided by the Commission brings about a division of the proceedings into a sort of "watertight compartments."[7] The present context of protection requires the application of clear and precise rules of law, and an agile, transparent and efficacious procedure, as a guarantee for the parties, and not a mechanical and ritualistic procedure, lacking adequate criteria.

15. I am aware that my position on this point, which I had already stated and elaborated in my Concurring Opinion in the **Gangaram Panday** case (Judgment of 4 December 1991, on Preliminary Objections), continues to be a solitary position in the heart of the Inter-American Court of Human Rights,[8] *vox clamantis in deserto*, but I defend it today with the same conviction with which I have been upholding it in my personal capacity for almost two decades:[9] I am deeply convinced that it is the position which best complies with the ultimate purpose of a system of protection such as that of the American Convention on Human Rights, and I dare to nourish the hope that the future evolution of the system will prove me right.

16. It is not sufficient that the current Rules of Procedure of the Court provide that the presentation of preliminary objections does not cause the suspension of the proceedings on the merits, unless the Court expressly so decides (Article 31(4)). It is necessary to go further. Firstly, there is room for giving greater precision to the meaning and extent of this provision, and the Court has taken a first step in this direction with the Resolutions of 17 May 1995 in the **Paniagua Morales**, **Castillo Páez** and **Loayza Tamayo** cases, above mentioned; the next step to that effect would be a reform of the pertinent provisions of its Rules of Procedure.

17. Secondly, there should be greater reflection on the scope of preliminary objections in the present context of protection. Preliminary objections should be given careful treatment in the interest of a good administration of justice and as a guarantee to the parties. On the basis of this treatment is the requirement not to prejudge the merits. But it is somewhat distinct to attribute to preliminary objections of admissibility a dimension that they do not have, as the experience accumulated in the present domain of protection reveals that such objections are interposed often as obstructions or dilatory obstacles to delay the proceedings. Furthermore, I do not see how can one take advantage of the joinder of a preliminary objection of admissibility to the merits, lacking *data venia* a solid juridical foundation, to pretend that such decision may have a bearing on the determination of the composition itself of the Court to enter into the examination of the merits of a case. I consider that position to be unfounded.

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7) To invoke an expression utilized by the Court in its Resolution of 29 June 1992 in the **Neira Alegría** case.

8) As is also a minority position in the heart of the European Court of Human Rights.

9) Cf., e.g., 10 **Revue des droits de l'homme/Human Rights Journal** - Paris (1977) pp. 141-185, esp. pp. 142-153.

IV. Conclusions.

Having expressed the grounds for my position, I conclude that:

1. The Court, as currently composed, has jurisdiction to decide on its composition in the present **Genie Lacayo** case;

2. The present Resolution, by means of its resolutory point 1, recognizes that the imperative of transparency of the proceedings encompasses also the procedure for the determination of the composition of the Court for the consideration of a case, as an additional guarantee for the parties;

3. The "agreement" *(acuerdo)* of 18 November 1994, besides being *ultra vires,* maintains an inadequate *criterium,* that should have been modified by the Court in the present Resolution so as to guide better its subsequent practice on this point;

4. The Judgment of the Court of 27 January 1995 on Preliminary Objections in the **Genie Lacayo** case reveals that the Court did not enter into the merits of the case. And the Court itself has expressly recognized, in its more recent case-law, the distinct and separate nature of the phase of preliminary objections, by virtue of a general principle of procedure;

5. The reopening and reconsideration of questions of pure admissibility in distinct phases of the procedure militates against the ultimate purpose and the specificity of the international law of human rights, rendering the procedure, instead of agile and efficacious, simply ritualistic;

6. The joinder of a preliminary objection of admissibility to the merits, a measure of exceptional character, should thereby be based on solid juridical grounds, and has no incidence on the determination of the composition of the Court to enter into the merits of a case;

7. The Court, with its present composition, has jurisdiction to enter into the merits of the present **Genie Lacayo** case.

Antônio Augusto Cançado Trindade
Judge

Manuel E. Ventura Robles
Secretary

CONCURRING OPINION OF JUDGE JACKMAN

I have joined the majority in this Order because I am satisfied that it represents the most appropriate solution in the present case.

I am of opinion, however, that, despite the difficulties of interpretation surrounding Article 54(3) of the American Convention on Human Rights, because of variations in the Spanish, English, French, and Portuguese texts, it would be in keeping with the spirit of the Article and the purposes of the Convention if the Court were able to draw a clear line between the procedural rights and the fundamental rights of the parties to a case insofar as the continuity of membership of the sitting Court is concerned. Such a distinction might properly be eventually reflected in the Rules of Procedure of the Court.

Oliver Jackman
Judge

Manuel E. Ventura-Robles
Secretary

CONCURRING OPINION OF JUDGE ABREU BURELLI

I share in the decision of the majority, but only as to procedure, without compromising my opinion on the merits of the case, since I consider that the criterion that supports the Order should be examined.

Alirio Abreu-Burelli
Judge

Manuel E. Ventura-Robles
Secretary

APPENDIX VIII

ORDER OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS OF MAY 18, 1995

PROVISIONAL MEASURES REQUESTED BY THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

COLOTENANGO CASE

HAVING SEEN:

1. The resolutory part of the Inter-American Court of Human Rights' Decision of December 1, 1994, which establishes:

> 1. To extend the provisional measures adopted pursuant to the Decision of June 22, 1994, on the Colotenango Case for a term of six months from today, and to expand them to include Mrs. Francisca Sales-Martín.
>
> 2. To require the Government of Guatemala to use all the means at its disposal to enforce the arrest warrant issued against the 13 patrol members charged as suspects in the case before the Second Trial Court of Huehuetenango involving the criminal acts which took place on August 3, 1993, in Colotenango.
>
> 3. To request the Government of Guatemala to inform the Court every 90 days regarding the measures it has adopted to comply with this order.
>
> 4. To request the Commission to inform the Court of any fact or circumstance that it deems important to the implementation of such measures.
>
> 5. To instruct the Secretariat of the Court to transmit the information it receives from the Government of Guatemala to the Inter-American Commission on Human Rights in order that the latter may submit its observations to the Court within the following 30 days. Likewise, to transmit to the Government of Guatemala any reports it receives from the Commission in order to have the Government's observations within a similar period.
>
> 6. To request the Government and the Commission to urge the beneficiaries of the measures referred to in points 1 and 2 of the Court's decision of June 22, 1994, to cooperate with the Government in order to enable the latter to more efficiently adopt the relevant security measures.

7. Upon expiration of the extended deadline and unless the Court receives credible information that the circumstances of extreme gravity and urgency continue to prevail, the measures ordered by the Court shall cease to be in effect.

2. The reports of the Government of Guatemala received by the Court on March 2 and May 5 of 1995 respectively, as well as the extension of the latter of May 15, 1995, which inform the Court on the measures adopted in compliance with resolutory part 3 of the Court's Decision of December 1, 1994.

3. The Inter-American Commission on Human Rights' written observations on the aforementioned reports, received by the Court on March 31 and May 18 of 1995 in conformity with resolutory part 4 of the Court's Decision of December 1 of the previous year.

CONSIDERING:

1. That the extended deadline of the provisional measures established in resolutory part 7 of the Court's of December 1, 1994 Decision, expires on June 1, 1995.

2. That to date, the Government has adopted provisions to comply with the requests made by the Inter-American Court; however, no "*credible information*" has been presented demonstrating that the circumstances of extreme gravity and urgency have ceased, especially with regard to compliance with the "*arrest warrant issued against the 13 patrol members charged as suspects in the case before the Second Trial Court of Huehuetenango involving the criminal acts which took place on August 3, 1993, in Colotenango.*" That although the efforts made by the Government in adopting provisional measures show willingness to comply with the requests, they have not been fully implemented.

3. That the information sent by the Commission and the Government to the Court is contradictory on some points, specifically in relation to the arrested patrol members.

4. That according to the document submitted by the Commission today, there exists information revealing continuing acts of intimidation and threats against the persons for which the provisional measures were adopted and for some of these people the right to movement and residence are still restricted. Therefore, there is a continued concern for the prevention of human rights violation by the Court.

5. That, if upon expiration of the extended deadline granted to the Government by the Court in its Decision of December 1, 1994, no credible information has been received on the effective results of the provisional measures that were adopted, making it necessary to extend the requested measures in order to protect the right to life and integrity of the persons for which such measures were requested.

NOW, THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

based on Article 63(2) of the American Convention on Human Rights and exercising the authority conferred on it by Articles 24 and 45 of the Rules of Procedure,

DECIDES:

1. To extend until February 1, 1996, the provisional measures ordered pursuant to the Court's decision of June 22, 1994, and expanded pursuant to the decision of December 1, 1994, on the Colotenango Case.

2. To request that the Government of Guatemala submit credible information to the Court every 45 days as of the date of this Order, regarding the effective results of the measures adopted in the course of said term.

3. To request that the Inter-American Commission on Human Rights inform the Court of any fact or circumstance that it deems important to the execution of such measures.

4. To instruct the Secretariat of the Court to transmit the information it receives from the Government of Guatemala to the Inter-American Commission on Human Rights in order that the latter may submit its observations to the Court within the following 30 days. Likewise, to transmit to the Government of Guatemala any reports it receives from the Commission in order to obtain the Government's observations within a similar period.

Héctor Fix-Zamudio
President

Hernán Salgado-Pesantes

Alejandro Montiel-Argüello

Máximo Pacheco-Gómez

Oliver Jackman

Alirio Abreu-Burelli

Antônio A. Cançado-Trindade

Manuel E. Ventura-Robles
Secretary

APPENDIX IX

ORDER OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS OF SEPTEMBER 21, 1995

REPARATIONS

EL AMPARO CASE

HAVING SEEN:

1. The Judgment of January 18, 1995, delivered on the instant case by the Inter-American Court of Human Rights.

2. The Inter-American Commission on Human Rights' (hereinafter "the Commission" or the "Inter-American Commission") April 18, 1995 brief, requesting the Court either to render a decision regarding the possibility of extending the 90-day deadline established in Article 67 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") for filing the request for interpretation of the judgment in this matter, or to consider such petition immediately interposed.

3. The Court's Order of May 17, 1995, resolving in the first place, not to render a decision on the Commission's requests. Second, it decided that, in the event that an agreement is reached between the Government of Venezuela (hereinafter "the Government" or "Venezuela") and the Inter-American Commission after the six-month period granted by the aforementioned judgment has expired, the Court would use its powers to examine the agreement, and —if appropriate— to approve it. In the event that no agreement is reached, "*the Court shall determine the scope of the reparations and the amount of the indemnification, court costs and attorney's fees and other matters of the case.*"

4. The Goverment's note of July 7, 1995, to the President of the Court, requesting to *"consider the possibility and admissibility of extending the six-month period set forth in the Judgment.*"

5. The Inter-American Commission's brief of July 18, 1995, which states that *"it would not have any inconvenience in extending, for no more than three months, the period initially established by the Court.*"

6. The notes of July 28, 1995, from the President of the Court to the Inter-American Commission and the Government, stating that he is not empowered to modify the deadline set by the Court's Judgment, and that

such request will be transmitted to the full Court during its next session. In these notes, he added that "*there is no hindrance for the parties to continue with their conversations.*"

7. The Government's letter of September 12, 1995, to the President of the Court, which reports having received from the Inter-American Commission a "*brief containing the victims' compensation and reparation requests,*" and that, once analyzed, the parties will hold a meeting scheduled for October of this year "*to discuss and conclude the matter.*"

CONSIDERING THAT:

1. The Court is not empowered to modify the period established in Article 67 of the American Convention. In addition, the Commission requests to consider the request for interpretation of the corresponding judgment interposed, in the event that such extension is not granted. The Court considers that the this request does not comply fully with the requirements provided for in Article 50(1) of the Rules of Procedure of the Court, which require that "[a]*pplications for an interpretation pursuant to Article 67 of the Convention shall be filed with the Secretariat in ten copies and shall state with precision the issues relating to the meaning or scope of the judgment on which the interpretation is requested.*"

2. That pursuant to resolutory part 3 of the January 18, 1995 Judgment, the period granted to Venezuela and the Inter-American Commission to reach an agreement expired on July 18, 1995. To date, the Court has not been notified of such an agreement.

3. In keeping with resolutory part 4 of said Judgment, in the event that the parties fail to reach an agreement, "*the Court shall determine the scope of the reparations and the amount of indemnities, court costs and attorneys' fees, to which effect it retains the case on its docket.*"

4. That pursuant to Article 67 of the American Convention, the judgments of this Court are final and not subject to appeal. Therefore, this Court must proceed with the reparations and compensation phase. The foregoing does not hinder the Government and the Commission from continuing —during this new procedural stage— with the conversations already initiated with the objective of reaching an agreement. In any case, such an agreement shall be considered by the Court, in view of its responsibility to protect human rights.

NOW, THEREFORE

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of the authority conferred on it by Articles 63(1) of the American Convention and Article 45 of the Rules of Procedure,

DECIDES:

1. To refuse the requests for interpretation of judgment submitted by the Inter-American Commission on Human Rights on April 18, 1995.

2. To declare inadmissible the requests of the Government of Venezuela and the Inter-American Commission on Human Rights to extend the period set by the Judgment of January 18, 1995.

3. To initiate the reparations and compensation procedures, and therefore:

a. Grant the Inter-American Commission on Human Rights until November 3, 1995, to submit a brief and the evidence at its disposal to determine the reparations and compensation in the instant case.

b. Grant the Government of the Republic of Venezuela until January 2, 1996, to submit its observations on the Inter-American Commission on Human Rights' brief referred to in the previous paragraph.

Héctor Fix-Zamudio
President

Hernán Salgado-Pesantes

Alejandro Montiel-Argüello

Máximo Pacheco-Gómez

Alirio Abreu-Burelli

Antônio A. Cançado Trindade

Manuel E. Ventura-Robles
Secretary

APPENDIX X

ORDER OF THE PRESIDENT
OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS
OF JUNE 4, 1995

PROVISIONAL MEASURES REQUESTED BY THE
INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
IN THE MATTER OF THE REPUBLIC OF GUATEMALA

CARPIO NICOLLE CASE

HAVING SEEN:

1. The Inter-American Commission on Human Rights' (hereinafter "the Commission" or "the Inter-American Commission") June 1, 1995 brief, received at the Secretariat of the Court that same day, which requested that the Inter-American Court of Human Rights (hereinafter "the Court") grant provisional measures regarding the Jorge Carpio Nicolle Case (No. 11.333), which is currently before the Commission. The request was based on Articles 63(2) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"), 24 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure") and 76 of the Regulations of the Commission, and is related to the situation described in its brief which constitutes "*a prima facie case of urgent and grave danger to the lives and physical integrity of the witnesses*" Marta Elena Arrivillaga de Carpio, Karen Fischer de Carpio, Mario López-Arrivillaga and Angel Isidro Girón-Girón as well as Lic. Abraham Méndez-García, "*Prosecutor of the process in the investigation of the death of Lic. Jorge Carpio-Nicolle.*"

2. That on March 21, 1995, the Center for Justice and International Law (CEJIL - Centro por la Justicia y el Derecho Internacional) filed a petition before the Commission with regard to the Jorge Carpio Nicolle Case No. 11.333, which, since July 12, 1994, is being heard by Commission. This petition contains a request for provisional measures pursuant to Articles 63(2) of the Convention and 76 of the Regulations of the Commission and Article 23 (*sic*) of the Rules of Procedure, and is based on the facts and information provided by the Commission in its June 1, 1995 communication.

3. That according to the Commission's brief, Mr. Jorge Carpio-Nicolle, ex-presidential candidate of the National Center Union (UCN - Unión del Centro Nacional) and journalist, was murdered together with three other political leaders of that party on July 3, 1993, while they were traveling for work reasons in several departments of Guatemala, after having been intercepted by "*a group of approximately 15 to 30 armed Civil Self-Defense Patrolmen,*" in the place known as "Molino del Tesoro," in the Municipality of Chichicastenango, El Quiché.

4. That the witnesses, Marta Elena Arrivillaga de Carpio (widow of Jorge Carpio); Karen Fischer de Carpio (daughter-in-law of Jorge Carpio); Mario López-Arrivillaga (nephew of Marta de Carpio and former

Congressman of the UCN Party), and Angel Isidro Girón-Girón, "*to the murders mentioned in the foregoing point*" were subjected to acts of harassment, intimidation, and threats against their lives and physical integrity.

5. That on October 24, 1994, the Inter-American Commission, "*acting pursuant to Article 29 of its Rules of Procedure*" requested that "*given the seriousness of the denunciation*", the Government of the Republic of Guatemala (hereinafter "Guatemala" or "the Government") adopt the following precautionary measures on behalf of the aforementioned witnesses:

> a) Adopt provisional measures to guarantee the right to life and personal integrity of the aforementioned persons.
>
> b) Inform the military authorities of the Military Zone —to which the Voluntary Civil Defense Committees of San Pedro Jocopilas answer— in order for the authorities to inform the Committees of the situation and instruct them to control any activity carried out by its members that may threaten or attack the protected persons.
>
> c) Since the measures are destined to guarantee the tranquility of the protected persons, that the Government make a serious and effective investigation into the threats and to punish those responsible, and
>
> d) Guarantee the free appearance of the witnesses at the criminal trial and the normal development of the process, and to tighten the precautions to avoid reprisals arising from their testimonies.

6. That on December 7, 1994, the Government replied to the Commission that it was inadmissible to request such precautionary measures since, according to the Political Constitution of Guatemala, "[i]*t is the responsibility of the State to guarantee its citizens the life, liberty, justice, security, peace, and integral development of the individual and that Guatemala had an internal legal system that controlled the means to accomplish this*" and that with respect to concrete measures requested, it informed:

> a. that only Mrs. Fischer and Mr. Arrivillaga had fulfilled the obligation of denouncing the threats; b. that Mrs. Fischer's denunciation has been attended to by the judicial authorities; c. that the National Police investigated the harassment to Mr. Arrivillaga; d. that Mr. Girón denied having received death threats before the competent authorities; e. that since November 10, 1994, the Headquarters of the National Police had established a permanent personal security service with three patrol units and the corresponding crew for Lic. Marta Arrivillaga de Carpio, Mrs. Karen Fischer de Carpio, and the offices of "El Gráfico" newspaper; f. that with respect to Mr. Arrivillaga, the necessary contacts were being made to provide him with the security that he had before and which had been withdrawn on October 13, 1994.

7. That during its visit *in loco* to Guatemala in December of 1994, the Commission "*learned of the continuous threats received by Prosecutor Abraham Méndez*" and requested from the Government "*protection for the Prosecutor in the Jorge Carpio Nicolle Case in view of the threats and intimidating acts against him.*"

8. That according to the document submitted by the Commission on May 31, 1995, it received additional information from the petitioners stating the following:

> The situation of serious danger faced by the witness, next of kin, and even authorities that investigate the case has not decreased. We have great fear that the threats and assaults may intensify in the near future, given the current development of the case. On April 19, 1995, the Tenth Court of Appeals decided

> in favor of an appeal interposed by the private prosecutor. In regards to the events, this means that the action will probably be reopened for more evidence. Considering that the facts denounced in the previous writings occurred while testimony was open, next of kin, witnesses and attorneys fear that the threats and harassment may increase with the reopening of the case for testimony.

The Special Prosecutor in the Carpio Case has received new threats. Recently, five men traveling in a light blue car arrived at the offices of the Public Ministry, entered the building disregarding the security of the place, and scoured all the offices of the premises asking for Attorney Abraham Méndez. Finally, they left without having found the Prosecutor. The men identified themselves as members of the Presidential Staff.

CONSIDERING:

1. That Guatemala is a State Party to the American Convention since May 25, 1978, and that it accepted the contentious jurisdiction of the Court, as set out in Article 62 of the Convention, on March 9, 1987.

2. That Article 63(2) of the Convention provides that, in case of extreme gravity and urgency, and when necessary to avoid irreparable damages to persons, the Court may, at the request of the Commission, adopt such provisional measures as it deems pertinent in matters not yet submitted to its consideration.

3. That Article 1(1) of the American Convention establishes the obligation of the State Parties to respect the rights and freedoms recognized in that treaty and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms.

4. That Guatemala is therefore under the obligation to adopt all necessary measures to protect the life and integrity of those persons whose rights might be threatened.

5. As the Commission has stated in its request for provisional measures, the situation reported to the Court constitutes "*a prima facie case of urgent and grave danger to the lives and physical integrity of the witnesses and prosecuting Attorney investigating the death*" of Jorge Carpio-Nicolle and others, and therefore considers that "[t]*he development of the events reveals the existence of a deliberate purpose to obstruct the legal process.*"

6. In its request the Commission considers that:

> the internal adopted measures have been shown to be inefficient to protect the safety of the protected persons. This has been demonstrated by the continuous attacks and denounced threats and the incapacity of the authorities to investigate and punish the perpetrators of these threats, even though the victims have provided concrete documentation in this regard.

NOW, THEREFORE:

THE PRESIDENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

based on Article 63(2) of the American Convention on Human Rights and exercising the authority conferred on it by Article 24(4) of its Rules of Procedure, in prior consultation with the Permanent Commission of the Court,

DECIDES:

1. To request that the Government of the Republic of Guatemala adopt without delay all necessary measures to effectively ensure the protection of the lives and personal integrity of the following persons: MARTA ELENA ARRIVILLAGA DE CARPIO, KAREN FISCHER DE CARPIO, MARIO LOPEZ-ARRIVILLAGA, ANGEL ISIDRO GIRON-GIRON, and ABRAHAM MENDEZ-GARCIA, and to investigate the threats and harassment of the persons named and to punish those responsible.

2. To request that the Government of the Republic of Guatemala adopt all necessary measures so that witnesses to the Carpio Case can testify, and so that the prosecutor in the case, Abraham Méndez-García, can fulfill his duties without pressure or reprisals.

3. To request that the Government of the Republic of Guatemala inform the military authorities of the Military Zone to which the Civil Defense Committees of San Pedro Jocopilas answer, to instruct these Committees to refrain from taking any actions that would put the lives or personal integrity of the individuals named at risk.

4. To request that the Government of the Republic of Guatemala submit a report to the President of the Court every thirty days from the date of this Order, on the measures taken pursuant to this Order, so as to bring the information to the attention of the Court.

5. To instruct the Secretariat of the Court to transmit the reports presented by the Government of the Republic of Guatemala to the Inter-American Commission on Human Rights without delay, which shall then present its observations not later than fifteen days after receipt of the pertinent information.

6. To submit this Order for the Court's consideration and pertinent effects during its next regular session and, if it deems it appropriate, to hold a public hearing on this matter during that same period.

Héctor Fix-Zamudio
President

Manuel E. Ventura-Robles
Secretary

Montrouis, Haiti, 4 June 1995

APPENDIX XI

ORDER OF THE PRESIDENT OF
THE INTER-AMERICAN COURT OF HUMAN RIGHTS
OF JULY 26, 1995

EXPANSION OF PROVISIONAL MEASURES REQUESTED BY THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS IN THE MATTER OF THE REPUBLIC OF GUATEMALA

CARPIO NICOLLE CASE

HAVING SEEN:

1. The Order of the President of the Inter-American Court of Human Rights (hereinafter "the President") of June 4, 1995 in which he decided:

> 1. To request that the Government of the Republic of Guatemala adopt without delay all necessary measures to effectively ensure the protection of the lives and personal integrity of the following persons: MARTA ELENA ARRIVILLAGA DE CARPIO, KAREN FISCHER DE CARPIO, MARIO LOPEZ-ARRIVILLAGA, ANGEL ISIDRO GIRON-GIRON, and ABRAHAM MENDEZ-GARCIA, and to investigate the threats and harassment of the persons named and to punish those responsible.
>
> 2. To request that the Government of the Republic of Guatemala adopt all necessary measures so that witnesses to the Carpio Case can testify, and so that the prosecutor in the case, Abraham Méndez-García, can fulfill his duties without pressure or reprisals.
>
> 3. To request that the Government of the Republic of Guatemala inform the military authorities of the Military Zone to which the Civil Defense Committees of San Pedro Jocopilas answer, to instruct these Committees to refrain from taking any actions that would put the lives or personal integrity of the individuals named at risk.
>
> 4. To request that the Government of the Republic of Guatemala submit a report to the President of the Court every thirty days from the date of this Order, on the measures taken pursuant to this Order, so as to bring the information to the attention of the Court.
>
> 5. To instruct the Secretariat of the Court to transmit the reports presented by the Government of the

Republic of Guatemala to the Inter-American Commission on Human Rights without delay, which shall then present its observations not later than fifteen days after receipt of the pertinent information.

6. To submit this Order for the Court's consideration and pertinent effects during its next regular session and, if it deems it appropriate, to hold a public hearing on this matter during that same period.

2. The Order of the President of June 30, 1995 in which he summoned the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission") and the Government of the Republic of Guatemala (hereinafter "the Government") to a public hearing on this matter, which will take place on September 16, 1995 at 10 am.

3. The note of July 20, 1995 from the Inter-American Commission in which it requests that the Inter-American Court of Human Rights (hereinafter "the Court") expand the urgent measures and require that the Government protect the life and personal integrity of Mrs. Lorraine Maric Fischer-Pivaral. As grounds for its request, the Inter-American Commission asserts that on July 7, 1995 at approximately 21 hours, Mrs. Fischer-Pivaral was in front of the house of her sister, Karen Fischer de Carpio, widow of Jorge Carpio-Nicolle. There, "*three heavily armed men, who were waiting in the cul-de-sac in front of her sister Karen's house, held her up, forced her to get out of the car, snatched away her cellular telephone, and insulted her for approximately ten minutes. Finally, they stole her car keys and fled while Lorraine took shelter behind Karen's armored car.*" With the purpose of confirming the intimidating nature of these acts, the Inter-American Commission demonstrated that the motive of robbery in this case can be discarded, since the vehicle was not damaged and no objects of economic value were taken from Mrs. Lorraine Fischer-Pivaral. The Commission in its note requests, moreover, that the Court adopt "*whatever measures are necessary to investigate this outrage and sanction those responsible.*"

CONSIDERING:

1. That the Government has not complied with the duty set forth in resolutory part 4 of the June 4, 1995 Order of the President;

2. That the request of the Inter-American Commission puts forward new facts that affect Mrs. Lorraine Maric Fischer-Pivaral, who is not included on the list of persons protected by the urgent measures issued by the President on June 4, 1995;

3. That there is a direct family relationship between Mrs. Lorraine Maric Fischer-Pivaral and Mrs. Karen Fischer de Carpio that bears on the facts which gave rise to the request of the Inter-American Commission for provisional measures in the Carpio Nicolle Case and that leads to the conclusion that the acts of intimidation of which Mrs. Fischer-Pivaral was a victim could put her life and physical integrity in grave danger.

4. That the facts described by the Inter-American Commission are credible to the Court and demonstrate in this situation the *prima facie* characteristics of gravity and urgency that justify the Court's adoption of the provisional measures it deems pertinent to avoid grave and irreparable damages to the person on whose behalf they are requested;

5. That in accordance with Article 1(1) of the American Convention on Human Rights, the Government in its capacity as State Party is obligated to respect the rights and freedoms recognized in the Convention and to ensure their free and full exercise to all persons subject to their jurisdiction.

NOW, THEREFORE:

THE PRESIDENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS

pursuant to Article 63(2) of the American Convention on Human Rights and exercising the authority conferred on him by Article 24(4) of the Rules of Procedure of the Court, and in previous consultation with the Permanent Commission of the Court,

DECIDES:

1. To request that the Government of the Republic of Guatemala expand the urgent measures set forth in the Order of the President of June 4, 1995, to include Mrs. Lorraine Maric Fischer-Pivaral and to request that the Government investigate and punish those responsible for the events denounced by the Inter-American Commission on Human Rights.

2. To request that the Republic of Guatemala comply with the submission of the first report, as ordered in resolutory part 4 of the June 4, 1995 Order of the President, and include Mrs. Lorraine Maric Fischer-Pivaral in subsequent reports which must be submitted within the time-limits set in said Order.

Héctor Fix Zamudio
President

Ana María Reina
Deputy Secretary

APPENDIX XII

ORDER OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS OF SEPTEMBER 19, 1995

PROVISIONAL MEASURES REQUESTED BY THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS IN THE MATTER OF THE REPUBLIC OF GUATEMALA

CARPIO NICOLLE CASE

The Inter-American Court of Human Rights, composed of the following judges:

Héctor Fix-Zamudio, President
Hernán Salgado-Pesantes, Vice President
Alejandro Montiel-Argüello, Judge
Máximo Pacheco-Gómez, Judge
Oliver Jackman, Judge
Alirio Abreu-Burelli, Judge
Antônio A. Cançado Trindade, Judge;

also present:

Manuel E. Ventura-Robles, Secretary, and
Ana María Reina, Deputy Secretary

delivers the following Order:

1. On June 1, 1995 the Inter-American Commission on Human Rights (hereinafter "the Commission" or the "Inter-American Commission") submitted to the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court") a resolution adopted that same day concerning the Jorge Carpio Nicolle Case (No. 11.333), which was being heard by the Commission. In that resolution the Commission requested that the Court order the provisional measures necessary to protect the life and physical integrity of five persons, family members of Mr. Carpio-Nicolle and officials, who through their work, have had some relation with the investigation of his death.

2. By means of the authority conferred by Article 24(4) of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"), the President of the Court (hereinafter "the President") issued an Order of June 4, 1995 in which he decided:

> 1. To request that the Government of the Republic of Guatemala adopt without delay all necessary measures to effectively ensure the protection of the lives and personal integrity of the following persons: MARTA ELENA ARRIVILLAGA DE CARPIO, KAREN FISCHER DE CARPIO, MARIO LOPEZ ARRIVILLAGA, ANGEL ISIDRO GIRON GIRON, and ABRAHAM MENDEZ GARCIA, and to investigate the threats and harassment of the persons named and to punish those responsible.
>
> 2. To request that the Government of the Republic of Guatemala adopt all necessary measures so that witnesses to the Carpio Case can testify, and so that the prosecutor in the case, Abraham Méndez-García, can fulfill his duties without pressure or reprisals.
>
> 3. To request that the Government of the Republic of Guatemala inform the military authorities of the Military Zone to which the Civil Defense Committees of San Pedro Jocopilas answer, to instruct these Committees to refrain from taking any actions that would put the lives or personal integrity of the individuals named at risk.
>
> 4. To request that the Government of the Republic of Guatemala submit a report to the President of the Court every thirty days from the date of this Order, on the measures taken pursuant to this Order, so as to bring the information to the attention of the Court.
>
> 5. To instruct the Secretariat of the Court to transmit the reports presented by the Government of the Republic of Guatemala to the Inter-American Commission on Human Rights without delay, which shall then present its observations not later than fifteen days after receipt of the pertinent information.
>
> 6. To submit this Order for the Court's consideration and pertinent effects during its next regular session and, if it deems it appropriate, to hold a public hearing on this matter during that same period.

3. On June 30, 1995, the President decided to summon the Government of the Republic of Guatemala (hereinafter "the Government" or "Guatemala") and the Inter-American Commission to appear at a public hearing on September 16, 1995 so that the Court could hear the parties' respective viewpoints, before making a decision on the Commission's request.

4. On July 20, 1995, the Commission submitted to the Inter-American Court a request for expansion of the measures, ordered by the President on June 4 of this same year, to include Mrs. Lorraine Maric Fischer-Pivaral, sister of Mrs. Karen Fischer de Carpio. On July 26, 1995 the President issued an Order in which he decided:

> 1. To request that the Government of the Republic of Guatemala expand the urgent measures set forth in the Order of the President of June 4, 1995, to include Mrs. Lorraine Maric Fischer-Pivaral and to request that the Government investigate and punish those responsible for the events denounced by the Inter-American Commission on Human Rights.
>
> 2. To request that the Republic of Guatemala comply with the submission of the first report, as ordered in resolutory part 4 of the June 4, 1995 Order of the President, and include Mrs. Lorraine Maric Fischer-Pivaral in subsequent reports which must be submitted within the time-limits set in said Order.

5. On August 1, 1995, Guatemala submitted to the Inter-American Court a copy of its first report dated June 27, 1995, in which it enumerated the precautionary measures taken in response to the Inter-American

Commission's request dated October 24, 1994 regarding the family members and other persons connected to the Carpio Nicolle Case. In that report it affirmed that on November 23, 1994 the Headquarters of the National Police ordered that the necessary security measures be provided to said persons. These measures were extended, at the request of the Commission, to the Prosecutor of the Justice Department, Mr. Abraham Méndez-García, who is in charge of the investigation in the case of Mr. Carpio-Nicolle's death. That same day, the Court transmitted the report to the Commission so that it could make any comments it considered relevant.

6. On August 3, 1995, the Government sent the Court a copy of its second report dated July 31, 1995 in which the Government informed the Court that a meeting had taken place on July 7 of this year, which was attended by Marta Elena Arrivillaga de Carpio, Karen Fischer de Carpio, Mario López-Arrivillaga and Abraham Méndez-García. At that meeting, the Minister of the Interior presented those named with several proposals for their protection. They accepted the Government's proposal to provide persons for their individual protection, on the condition that each person to be protected designate his or her own security agents and that the Government assume the cost. These conditions were accepted by the Deputy Minister of the Interior. Despite their refusal to continue receiving protection from agents of the National Police, the Deputy Minister of the Interior ordered that patrols be maintained in the neighborhood of the offices of the newspaper "El Gráfico" and at the residence of Mrs. Marta Elena Arrivillaga de Carpio, widow of Carpio-Nicolle. The Government also announced that Mr. Mario López-Arrivillaga, nephew of Marta Elena Arrivillaga de Carpio and former member of parliament of the UCN party, has a National Police security agent at his service and that Mrs. Marta Elena Arrivillaga de Carpio has two security agents from the National Police since before the instatement of the present provisional measures. As to Mr. Angel Isidro Girón-Girón, the report stated that he works with the Treasury Police in the Department of Totonicapan, but the Report did not specify on the measures that had been taken by the Government for his security.

7. In this second report the Government also revealed that on July 14, 1995 in compliance with the President's request, it had asked the Minister of National Defense to "*circulate precise orders to the authorities of Military Zone Number 20, based in Santa Cruz del Quiché, El Quiché, to instruct the Voluntary Civil Defense Committees of San Pedro Jocopilas to refrain from taking any actions that would put at risk the life or personal integrity of any one of the persons*" for whom provisional measures had been adopted.

8. On September 1, 1995 the Government sent the Court a copy of the third report in which it stated that the provisional measures taken on behalf of Marta Elena Arrivillaga de Carpio, Karen Fischer de Carpio, Mario López-Arrivillaga, Angel Isidro Girón-Girón and Abraham Méndez-García continued in force and that those individuals had forwarded the names of the persons they wanted assigned to guard their personal safety. Subsequently the Minister of the Interior proceeded to contract the guards who had been designated. According to this report, Mrs. Marta Elena Arrivillaga de Carpio and Mrs. Karen Fisher de Carpio each have four persons assigned to their security and Mr. Abraham Méndez has been assigned two persons. Mr. Mario López-Arrivillaga refused the allocation of additional persons for his security. The Ministry of the Interior was awaiting the list of names of the persons who would be responsible for the security of Mrs. Lorraine Maric Fischer-Pivaral. In relation to the incident which befell Mrs. Fischer-Pivaral on July 7, 1995, giving rise to the expansion of provisional measures, the Government announced that the State Attorney General had initiated an investigation to which he assigned Prosecutor Alfonso Palacios. This report did not specify the security measures that the State had afforded to Mr. Angel Isidro Girón-Girón.

9. The public hearing took place on September 16, 1995 at the seat of the Court. There appeared:

for the Government of Guatemala:

Vicente Arranz-Sanz, President of COPREDEH

Angel Comte-Cojulún, Director General of the National Police

Dennis Alonzo-Mazariegos, Executive Director of COPREDEH

Cruz Munguía-Sosa, General Regional Coordinator of COPREDEH

for the Inter-American Commission of Human Rights:

Claudio Grossman, delegate,

David J. Padilla, attorney,

Denise Gilman, attorney,

Ariel Dulitzky, assistant,

Marcela Matamoros, assistant

10. On September 16, 1995, during the public hearing, the Commission presented to the Court a document dated February 8, 1995 from Prosecutor Abraham Méndez-García addressed to the Central Regional Director of the United Nations Verification Commission for Guatemala -MINUGUA- in which he reported that he had "*been the object of surveillance, harassment, intimidation, and assault*" as a result of his procedural role in the investigation of the Carpio Nicolle Case, and that he had informed the proper authorities of these facts. In view of the submission of this document, the Government requested that the Court grant it a period of time to make observations, which was granted.

Moreover, during the hearing the Government promised to make an appointment with Mr. Angel Isidro Girón-Girón to verify the necessity of adopting provisional measures to protect his life and personal integrity.

WHEREAS:

1. That Guatemala is a Party to the American Convention on Human Rights in which Article 1(1) sets forth the obligation of the State Parties to respect the rights and freedoms recognized in that treaty and to ensure their free and full exercise to all persons subject to its jurisdiction, and that on March 9, 1987 Guatemala accepted the compulsory jurisdiction of this Court pursuant to Article 62 of the Convention,

2. That Article 63(2) of the Convention provides that:

> In cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent in matters it has under consideration. With respect to a case not yet submitted to the Court, it may act at the request of the Commission.

3. That Guatemala is obligated in every case to preserve the life and integrity of those persons whose rights could be threatened,

4. That the Court considers that the measures taken by the President on June 4 and July 26 of the present year are necessary and should be ratified,

5. That the Government of Guatemala, through its representative, explicitly and repeatedly expressed during the hearing its willingness to maintain and ensure the effectiveness of the provisional measures ordered by the Court in this case.

NOW, THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS

exercising the authority conferred on it by Article 63(2) of the American Convention on Human Rights and Article 24 of its Rules,

DECIDES:

1. To confirm and to adopt as its own the urgent measures taken by the President in the Orders of June 4 and July 26, 1995.

2. That these provisional measures will be in force for six months as of notification of this Order.

3. To require the Government of the Republic of Guatemala to continue providing monthly information on the provisional measures taken.

4. To require the Inter-American Commission on Human Rights to present to the Court its observations on the information submitted by the Government no later than fifteen days after its receipt.

5. That the President of the Court will order additional pertinent measures, if necessary, depending on the facts put forth by the Commission at the September 16, 1995 hearing.

Done in Spanish and English, the Spanish text being authentic, on this nineteenth day of September, 1995.

Héctor Fix-Zamudio
President

Hernán Salgado-Pesantes

Alejandro Montiel-Argüello

Maximo Pacheco-Gómez

Oliver Jackman

Alirio Abreu-Burelli

Antônio A. Cançado Trindade

Manuel E. Ventura-Robles
Secretary

APPENDIX XIII

ORDER OF THE PRESIDENT OF INTER-AMERICAN COURT OF HUMAN RIGHTS OF AUGUST 16, 1995

PROVISIONAL MEASURES REQUESTED BY THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS IN THE MATTER OF THE REPUBLIC OF GUATEMALA

BLAKE CASE

WHEREAS:

1. The brief and its annexes, dated August 3, 1995, received that same day at the Secretariat of the Inter-American Court of Human Rights (hereinafter "the Secretariat"), submitted an application by the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") to the Inter-American Court of Human Rights (hereinafter "the Court"), by virtue of Articles 50 and 51 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and 26 and following of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"), against the Republic of Guatemala "*for the violation of the rights to personal liberty, life, and freedom of expression as well as for the denial of justice to the detriment of Nicholas Chapman Blake.*" Said application is currently in the preliminary review stage as provided for by Article 27 of the Rules of Procedure.

2. The brief of August 11, 1995, received at the Secretariat that same day, submits a request by the Inter-American Commission to the Court, by virtue of Articles 63(2) of the Convention and 24 of the Rules of Procedure, for provisional measures in the Blake Case with respect to the situation which was described as "*a case of extreme urgency*" and with the object of avoiding irreparable injury to Mr. Justo Victoriano Martínez-Morales, a witness in the case, and his immediate family: Floridalma Rosalina López-Molina (wife), Víctor Hansel Morales-López (son), Edgar Ibal Martínez-López (son), and Sylvia Patricia Martínez-López (daughter).

3. The request for provisional measures is based on the following facts:

   a. According to said request, Mr. Justo Martínez is "*a key witness in the [Blake] Case*" as a consequence of the investigations he undertook relating to the circumstances that led to the kidnapping and disappearance of Mr. Blake in the village of Las Majadas and its environs. As a result of these investigations, Mr. Martínez established that "*years later the Guatemalan Army had ordered that the remains of Mr. Blake* [and those of Mr. Griffith Davis] *be burned and hidden and had warned the villagers of El Llano that they should not reveal what had taken place.*" The information obtained by Mr. Martínez was

later confirmed by proof offered, among others, by the Commander of the Civil Self-Defense Patrol, Mr. Felipe Alva.

b. Mr. Martínez had received, on prior occasions, death threats "*from members of the civil patrols of El Llano and its environs*" for having informed the United States Embassy officials in Guatemala of the way in which, according to him, Mr. Blake had been assassinated and for having given information concerning the members of the patrol who had participated in his kidnapping and assassination. As a result of these threats, and thanks to the help of the U.S. Embassy, Mr. Martínez was transferred to a school in Huehuetenango a year and a half later.

c. Following the hearing held at the seat of the Commission on February 14, 1995, Mr. Martínez was again the object of reiterated telephone threats stating that there would be attempts on his life and the lives of his relatives. In the last few months, the life of Mr. Martínez has run a "*much greater risk given that the prosecutor who is handling the case has called him to testify.*"

d. On May 3, 1995, motivated by the notification of Report 5/95, the Commission requested that the Government of Guatemala adopt those precautionary measures necessary to safeguard the life, liberty, and integrity of Mr. Martínez. The Commission requested that, within a thirty day period, the Government inform it of the measures that had been adopted in fulfillment of the request and the results of those measures. Nevertheless, as of the date of the presentation of this request, the Commission has not received any response from Guatemala.

CONSIDERING:

1. That Guatemala is a State Party to the American Convention on Human Rights as of May 25, 1978 and, on March 9, 1987, accepted the compulsory jurisdiction of this Court in accordance with Article 62 of the Convention;

2. That Article 63(2) of the Convention provides that, in cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court may adopt such provisional measures as it deems pertinent in matters under its consideration;

3. That Article 1(1) of the American Convention indicates the duty of States Parties to respect the rights and freedoms recognized in this Treaty and to guarantee the free and full exercise of those rights to any person under their jurisdiction;

4. That under the present circumstances, the affirmations and proof offered by the Commission merit the credibility necessary to *prima facie* classify this situation as one of extreme urgency which justifies the taking of urgent measures in order to avoid irreparable injury to those persons in whose favor the request was made.

NOW, THEREFORE:

THE PRESIDENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS

taking into account Article 63(2) of the American Convention on Human Rights and using the authority conferred on him by Article 24(4) of the Rules of Procedure, and having previously consulted with the Permanent Commission of the Court,

DECIDES:

1. To request that the Government of the Republic of Guatemala adopt without delay any measures necessary to effectively ensure the protection and personal safety of: JUSTO VICTORIANO MARTINEZ-MORALES, FLORIDALMA ROSALINA LOPEZ-MOLINA, VICTOR HANSEL MORALES-LOPEZ, EDGAR IBAL MARTINEZ-LOPEZ, and SYLVIA PATRICIA MARTINEZ-LOPEZ.

2. To request that the Government of the Republic of Guatemala adopt any measures necessary so that the aforementioned persons may continue residing in their place of domicile and be guaranteed that no agents of the Guatemalan State nor other persons acting under the authority of the State shall persecute or threaten them.

3. That the Government of the Republic of Guatemala present to the President of the Court by September 5, 1995, at the latest, a report on the measures adopted so that the Court may be informed of these during its next regular session which will take place September 11 to 22, 1995.

Héctor Fix-Zamudio
President

Manuel E. Ventura-Robles
Secretary

APPENDIX XIV

ORDER OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS OF SEPTEMBER 22, 1995

PROVISIONAL MEASURES REQUESTED BY THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS IN THE MATTER OF THE REPUBLIC OF GUATEMALA

BLAKE CASE

The Inter-American Court of Human Rights, composed as follows:

Héctor Fix-Zamudio, President
Hernán Salgado-Pesantes, Vice President
Alejandro Montiel-Argüello, Judge
Máximo Pacheco-Gómez, Judge
Oliver Jackman, Judge
Alirio Abreu-Burelli, Judge
Antônio A. Cançado Trindade, Judge;

also present:

Manuel E. Ventura-Robles, Secretary, and
Ana María Reina, Deputy Secretary

issues the following order:

1. On August 11, 1995, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") presented the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court") a request for provisional measures relative to the Blake Case, presently before the Court. In its brief, the Commission requested that the Court take whatever provisional measures it might deem necessary on behalf of Mr. Justo Victoriano Martínez-Morales, who is considered to be a key witness in the Blake Case, as well as on behalf of four members of his family.

2. The President of the Court (hereinafter "the President"), using the powers conferred on him by Article 24(4) of the Rules of Procedure of the Court, issued an order on August 16, 1995 directing that:

1. To request that the Government of the Republic of Guatemala adopt without delay any measures

necessary to effectively ensure the protection and personal safety of: JUSTO VICTORIANO MARTINEZ-MORALES, FLORIDALMA ROSALINA LOPEZ-MOLINA, VICTOR HANSEL MORALES-LOPEZ, EDGAR IBAL MARTINEZ-LOPEZ, and SYLVIA PATRICIA MARTINEZ-LOPEZ.

2. To request that the Government of the Republic of Guatemala adopt any measures necessary so that the aforementioned persons may continue residing in their place of domicile and be guaranteed that no agents of the Guatemalan State nor other persons acting under the authority of the State shall persecute or threaten them.

3. That the Government of the Republic of Guatemala present to the President of the Court by September 5, 1995, at the latest, a report on the measures adopted so that the Court may be informed of these during its next regular session which will take place September 11 to 22, 1995.

3. On September 6, 1995, the Government of the Republic of Guatemala (hereinafter "the Government") presented the Inter-American Court with the requested report, dated the 4th of the same month. In this report, the Government stated that it adopted precautionary measures on behalf of Mr. Justo Martínez on June 2, 1995 and communicated these to the Commission and later reported them again on August 29 and that no *"case of extreme urgency"* exists while the Government *"has complied within the indicated time limit . . . agreeing to all measures necessary to safeguard the life and physical integrity of Mr. Justo Martínez and his family."* Also, the mentioned report states that Mr. Martínez denied having received threats or attacks against his person or his family and would not agree to any measure for personal safety. For this reason, the National Police of Huehuetenango offered to guard his residence with a night patrol after 8:00 pm, to which he agreed.

4. On September 21, 1995, the Inter-American Commission sent the Court its observations on the report presented by the Government dated September 4 of this same year. The Commission reiterated that a situation of extreme urgency exists, that Mr. Justo Martínez had been the object of *"death threats for having informed officials from the U.S. Embassy in Guatemala about the way in which, as best he could determine, Mr. Blake had been assassinated and about the members of the patrols that participated in his kidnapping and death."* The Commission pointed out that these threats, which extend to Mr. Martínez's relatives, *"are part of a systematic practice . . . of the security forces of Guatemala against witnesses in cases of serious human rights abuses and violations."*

CONSIDERING:

1. That Guatemala is a State Party to the American Convention on Human Rights whose Article 1(1) indicates the duty of States Parties to respect the rights and freedoms recognized in this Treaty and to guarantee the free and full exercise of those rights to any person under their jurisdiction;

2. That On March 9, 1987, Guatemala recognized the jurisdiction of this Court, in accordance with Article 62 of the American Convention on Human Rights;

3. That the Government has declared to the Court that it has "*offered all measures necessary to safeguard the life and physical integrity of Mr. Justo Martínez and his family*;"

4. That the Commission requests that this Tribunal approve provisional measures in this present case, given that "*the reasons that motivated the request made by the Commission on August 11, 1995 continue to exist*;"

5. That the case as known as the Blake Case is presently before the Court, and it is the duty of this Court to avoid irreparable harm to persons, which is understood to include guarding the complete security of wit-

nesses and their relatives and determining whether the measures adopted by the Government have been sufficient.

NOW, THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS

using the authority conferred on it by Articles 63(2) of the American Convention on Human Rights and 24 of the Rules of Procedure of the Court,

DECIDES:

1. To ratify the August 16, 1995 Order of the President and request that the Government of the Republic of Guatemala maintain provisional measures on behalf of: Justo Victoriano Martínez-Morales, Floridalma Rosalina López-Molina, Víctor Hansel Morales-López, Edgar Ibal Martínez-López, and Sylvia Patricia Martínez-López.

2. To require that the Government of the Republic of Guatemala inform the Court every three months of the provisional measures that have been taken.

3. To require that the Inter-American Commission on Human Rights transmit to the Court its observations on the reports of the Government of the Republic of Guatemala within the month following notification of said reports.

Done in Spanish and English, the Spanish text being authentic, at the seat of the Court in San José, Costa Rica, on September 22, 1995.

Héctor Fix-Zamudio
President

Hernán Salgado-Pesantes

Alejandro Montiel-Argüello

Máximo Pacheco-Gómez

Oliver Jackman

Alirio Abreu-Burelli

Antônio A. Cançado Trindade

Manuel E. Ventura-Robles
Secretary

APPENDIX XV

ORDER OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS OF SEPTEMBER 11, 1995

PANIAGUA MORALES *ET AL.* CASE

HAVING SEEN:

1. The August 29, 1995 brief from the Government of Guatemala (hereinafter "Government" or "Guatemala"), notifying the Inter-American Court of Human Rights (hereinafter "Court" or "Inter-American Court") that Judge *ad hoc* Edgar Enrique Larraondo-Salguero was to be replaced by Mr. Alfonso Novales-Aguirre. Included with this brief was a copy of the *curriculum vitae* of Mr. Novales-Aguirre.

2. The August 31, 1995 letter in which the Secretary of the Court, on instructions from the President of the Court, Judge Héctor Fix-Zamudio, informed the Government that replacement of the Judge *ad hoc* would be included as the first item on the agenda of the Thirty-Second Regular Session, so it could be decided by the full Court.

3. The August 22, 1995 note from the Ambassador of Guatemala in Costa Rica, Mr. Julio Gándara-Valenzuela, remitting a list of persons who will represent the Government in the public hearing on preliminary objections, to take place on September 16, 1995. This list includes the name of Mr. Alfonso Novales-Aguirre as assistant to the Government.

4. That the Judge *ad hoc* whose replacement is being requested was sworn in by the Court during its Thirty-First Regular Session and at that time began hearing the case.

CONSIDERING:

1. That an *ad hoc* judge is similar in nature to other judges on the Inter-American Court, in that he does not represent a particular government, is not its agent and sits on the Court **in an individual capacity**, as stipulated in Article 52 of the Convention, and in accordance with Article 55(4). An *ad hoc* judge is required to meet the same prerequisites as permanent judges. The provision for all permanent and *ad hoc* judges to sit on the Court in an individual capacity is based on and must always allow for the need to protect the independence and impartiality of an international court of justice;

2. That the Statute of the Court establishes the same rights, duties and responsibilities for all judges, whether permanent or *ad hoc* (Article 10(5), in accordance with the provisions from Chapter IV of the Statute of the Court);

3. That in this specific case, Judge *ad hoc* Edgar Enrique Larraondo-Salguero, after being designated and sworn in, and subsequently joined the Court as judge, even participated in the Court's May 17, 1995 Order concerning the present case. To date the Court is unaware of any factor that might bar him from serving as *ad hoc* judge, and in these circumstances he cannot be replaced, and

4. That the Court also takes note that the person proposed by the Government to sit as *ad hoc* judge was also designated as an Assistant to the Government for the public hearing on preliminary objections next September 16, 1995. This fact in and of itself would constitute clear grounds for incompatibility by virtue of Article 18(c) of the Statute of the Court, which states that the exercise of the position of judge on the Court is incompatible with positions and activities "*that might prevent the judges from discharging their duties, or that might affect their independence or impartiality.*"

NOW, THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in accordance with Article 44(2) of its Rules of Procedure,

DECIDES:

By five votes to one,

To disallow the request for the substitution of Judge *ad hoc* Enrique Larraondo-Salguero by Mr. Alfonso Novales-Aguirre, in the Paniagua Morales *et al.* Case.

Judge Montiel-Argüello dissents.

Judge Cançado Trindade presented a concurring opinion.

Done in Spanish and English, the Spanish text being authentic, at the seat of the Court in San José, Costa Rica on September 11, 1995.

Héctor Fix-Zamudio
President

Hernán Salgado-Pesantes

Alejandro Montiel-Argüello

Máximo Pacheco-Gómez

Alirio Abreu-Burelli

Antônio A. Cançado Trindade

Manuel E. Ventura-Robles
Secretary

Dissenting Vote of Judge Montiel-Argüello

1. The institution of *ad hoc* judge has been heavily criticized in doctrine in permanent international courts as unnecessary, and a mere carryover from courts of arbitration. Some authors have proposed that the institution be abolished, with the condition that any judge who is a national of one of the Parties be removed from the case. This solution would seemingly attribute the institution of the *ad hoc* judge to the objective of preserving the impartiality of the court.

2. However, the institution has been defended on the grounds that an *ad hoc* judge is not quite the same as the other judges. He or she takes an obligatory oath to serve honorably, independently and impartially, and cannot be considered a representative of the nominating State, as can be corroborated by the numerous cases of *ad hoc* judges who have voted against the desires of that state.

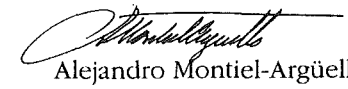
3. The Informal Inter-Allied Committee entrusted in 1920 to draft a proposed Statute for the Permanent International Court of Justice expressed the same opinion in paragraph 39 of its report, in the following terms:

> Ideally, this system would appear to be open to objection in the sense that it departs from the idea of permanence and the non-national character of the Court; but in practice, we feel it is essential and must be preserved. In fact, the countries will not feel full confidence in the decisions of the Court in cases affecting them if the court does not include a judge of the nationality of the other Party. Moreover, even though the national judges are not, nor ought they to be, representatives of their own countries to the Court, they play a useful role by supplying local knowledge and a national viewpoint.

4. Thus, no one is better equipped than the government nominating an *ad hoc* Judge to determine whether that person is able to supply "*local knowledge and a national viewpoint.*" Allowing for the self-evident fact that in some cases, the person nominated has lost this ability, it would fall to the government of the country to make this decision, jeopardizing its own honor if the Court were to conduct an investigation to determine whether in fact such a grounds for disqualification existed.

5. It is important to note that Article 10(5) of the Statute of our Court lists provisions applicable to *ad hoc* judges. It omits Article 21, resignation and incapacity, which states that resignation shall not go into effect until it has been accepted by the Court, and that the Court itself is to decide whether a judge is incapable of performing his or her functions.

6. Based on these arguments, and without giving any opinion on the person being proposed, I believe that the government of Guatemala has the right to replace the a above named *ad hoc* judge.



Alejandro Montiel-Argüello
Judge

Manuel E. Ventura-Robles
Secretary

Concurring Opinion of Judge A.A. Cançado Trindade

1. I have signed the Resolution of the Court, with which I fully concur. As clearly results from the American Convention on Human Rights itself (Article 55(4) in combination with Article 52) and from the Statute of the Inter-American Court of Human Rights (Articles 10(5) and 15 until 20), the *ad hoc* Judge is not an agent of the Government, but rather a Judge for the *cas d'espèce*. This is illustrated by the history of the Inter-American Court, which has documented cases of the work of *ad hoc* Judges whose votes have been to the same effect as those of permanent Judges (*juges titulaires*), against the respondent State.

2. Thus, once an *ad hoc* Judge is sworn in and integrated into the Court, he cannot be unilateraly removed from it by one of the parties, the respondent State. Any reasoning to the contrary would hardly find a reasonable explanation for the retention of the figure of the *ad hoc* Judge in international adjudication, even more so in a domain like that of the international protection of human rights, widely recognized as being endowed with a specificity of its own.

3. The institution of the *ad hoc* Judge bears witness to the incidence of metajuridical considerations in the functioning of international adjudication. It is, in reality, a remnant of the classic arbitral practice transplanted into judicial practice, disclosing, moreover, a conceptual difference between international and national judicial organs. Thus conceived, the institution of the *ad hoc* Judge has permeated the Statute of the Permanent Court of International Justice, and that of the International Court of Justice, and has survived to this date in the systems of the American Convention on Human Rights, and of the European Convention on Human Rights.

4. In international adjudication in the domain of the international protection of human rights, the balance of the Court (as to its composition) does not mean - cannot mean - the constant evaluation by this latter of the interests or perceptions of the parties (or of the respondent State in the *cas d'espèce*), otherwise its impartiality and independence would be undermined. The superior considerations which ought to guide the Court must always turn to the guarantee of the effective protection of human rights.

5. The renunciation (*renuncia*) of an *ad hoc* Judge does not amount to his withdrawal (*retirada*) by the respondent party. Article 21 of the Statute of the Inter-American Court provides for the renunciation and incapacity of Judges. The incapacity will be determined by the Court itself; the renunciation, in its turn, will be effective only when it has been accepted by the Court (paragraphs 2 and 1, respectively). The fact that there is no express provision on this specific point in relation to *ad hoc* Judges, does not mean, in my view, that it is up to one of the parties - the respondent - on its own initiative to replace an *ad hoc* Judge, already integrated into the Court, without having presented his renunciation to it, and without the configuration - to the best of the Court's knowledge - of any incapacity, and furthermore having already commenced to hear the case, as happens in the instant *Paniagua Morales and Others case* (cf. Resolution of the Court of 17 May 1995).

6. Precisely in order to fill the gaps of the applicable legal texts, the Inter-American Court exercises the important function of the interpretation of the letter and the spirit of the American Convention on Human Rights. The basic concern of the Court, more than with the perceptions of the parties as to the extent of their own faculties, cannot, in my view, be other than with the preservation of its total impartiality and indepen-

dence so that it may contribute effectively with the accomplishment of the ultimate object and purpose of the American Convention on Human Rights. The present Resolution of the Court contitutes a correct step in this direction.

Antônio Augusto Cançado Trindade
Judge

Manuel E. Ventura-Robles
Secretary

APPENDIX XVI

ORDER OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS OF SEPTEMBER 19, 1995

CONSIDERING:

1. That it is expedient to make a general decision resolving the Court's composition in cases in which the Court has rendered a judgment on the merits, but a decision on reparations and compensation is still pending as is the Court's supervision of State compliance with the judgment;

2. That on June 29, 1992 the Court issued an Order in the Neira Alegría *et al.* Case, a case in which the preliminary objections had been found to be without merit. In that Order, the Court decided to continue hearing the case with its new composition, except for motions filed against the judgment;

3. That this decision, which reconciles the texts of Article 54(3) in the four official languages, was based on the criterion that the Court enters into a new phase of the proceedings following a judgment on preliminary objections;

4. That the same criterion is applicable to a judgment on reparations and compensation and to the Court's supervision of State compliance with the judgment, as these are new and distinct phases of the proceedings which follow a judgment on the merits of the case;

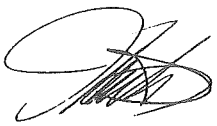
5. That the composition of the Court in each phase, retaining the same judges that made the decisions in that phase, contributes to the speed of proceedings in cases in which a violation of human rights has been verified, to the prompt reparation of the consequences of that violation, and to the just compensation of the injured party,

DECIDES:

unanimously,

That all issues related to a decision on reparations and compensation, and to the supervision of compliance with this Court's judgments, fall to the judges who served on the Court at the time the Court decided those matters, unless a public hearing has already taken place, in which case the judges that were present at that hearing will decide the issue.

Judges Fix-Zamudio and Cançado Trindade issued individual concurring opinions.

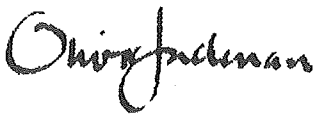


Héctor Fix-Zamudio
President

Hernán Salgado-Pesantes

Alejandro Montiel-Argüello

Máximo Pacheco-Gómez



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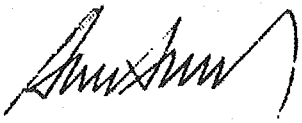


Alirio Abreu-Burelli

Antônio A. Cançado Trindade

Manuel E. Ventura-Robles
Secretary

INDIVIDUAL CONCURRING OPINION OF JUDGE FIX-ZAMUDIO

I join the Order of the Court solely because it contributes to speedy proceedings on reparations and compensation when a violation of human rights has been demonstrated, and because this has also been the practice, for similar reasons, in international courts. Conceptually, however, it cannot be sustained that the proceedings fixing reparations and compensation are separate from the merits of the case in which the respective judgment was made.

Héctor Fix-Zamudio
Judge

Manuel E. Ventura-Robles
Secretary

INDIVIDUAL CONCURRING OPINION OF JUDGE A.A. CANÇADO TRINDADE

The present Order, which I joined, establishes clear criteria that contribute to guarantee the flexible and efficient proceedings necessary in cases involving human rights violations and the corresponding decisions on reparations and compensation. In relation to the subject matter of *consideranda* 2 and 3, I wish to add my understanding that the phase of preliminary objections is always of a distinct character from that of the proceedings on the merits,[1] irrespective of the Court's decision on those objections.[2]

Antônio Augusto Cançado Trindade
Judge

Manuel E. Ventura-Robles
Secretary

1) As this Court expressly recognized in its Orders of May 17 1995 in the Paniagua Morales *et al.*, Castillo Paez and Loayza Tamayo Cases (*consideranda* 1 and 2 of the Court's Orders).

2) The grounds for my understanding can be found expressed in my Dissenting Opinion in the Genie Lacayo Case (Order of the Court of May 18, 1995).

APPENDIX XVII

INTER-AMERICAN COURT OF HUMAN RIGHTS

CABALLERO DELGADO AND SANTANA CASE

JUDGMENT OF DECEMBER 8, 1995

In the case of Caballero-Delgado and Santana,

the Inter-American Court of Human Rights, composed of the following judges:

Héctor Fix-Zamudio, President
Hernán Salgado-Pesantes, Vice President
Rafael Nieto-Navia, Judge
Alejandro Montiel-Argüello, Judge
Máximo Pacheco-Gómez, Judge

also present,

Manuel E. Ventura-Robles, Secretary, and
Ana María Reina, Deputy Secretary

pursuant to Article 45(1) of the Rules of Procedure (hereinafter "the Rules of Procedure") of the Inter-American Court of Human Rights (hereinafter "the Court"), delivers the following judgment in the instant case.

I

1. On December 24, 1992, the Inter-American Commission on Human Rights (hereinafter "the Commission" or the "the Inter-American Commission") submitted to this Court a case against the Republic of Colombia (hereinafter "the Government" or "Colombia"). The case originated on April 4, 1989 in a "request for urgent action" sent on that date to the Commission and in a petition (No. 10.319) against Colombia received at the Secretariat of the Commission on April 5, 1989. The Inter-American Commission appointed Leo

Valladares-Lanza as its Delegate before the Court and Edith Márquez-Rodríguez and Manuel Velasco-Clark as Assistants. Moreover, it named as Legal Counsel Gustavo Gallón-Giraldo, María Consuelo del Río, Jorge Gómez-Lizarazo, Juan E. Méndez and José Miguel Vivanco.

2. The Commission invoked Articles 50 and 51 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and Article 26 and following of the Rules of Procedure. The Commission submitted this case to the Court for a decision as to whether Colombia had violated Articles 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), and 25 (Right to Judicial Protection), all read in conjunction with Article 1(1) of the Convention which establishes the duty to respect and ensure those rights, to the detriment of Isidro Caballero-Delgado and María del Carmen Santana. In addition, "*based on the principle of pacta sunt servanda*," the Commission alleged that the Government had violated Article 2 of the Convention, by not adopting the domestic legal measures which give effect to those rights, and Article 51(2) in conjunction with 29(b) of the Convention, by not carrying out the recommendations of the Commission. The Commission asked the Court to require the Government to "*institute the investigations necessary to identify the responsible parties and impose punishment . . . inform the relatives of the victims of the latter's whereabouts . . .* [declare that] *it must remedy the acts committed by government agents and pay fair compensation to the victims' next of kin . . .* [and order it] *to pay the costs and attorney's fees of these proceedings.*"

3. According to the Commission, on February 7, 1989, Isidro Caballero-Delgado and María del Carmen Santana were captured in the District of Guaduas, in the jurisdiction of the Municipality of San Alberto, Department of El Cesar, Colombia, by a military patrol composed of units of the Colombian Army stationed at the Líbano military base (jurisdiction of San Alberto), attached to the Fifth Brigade headquartered in Bucaramanga. The detention took place because of Isidro Caballero's active involvement over an eleven year period as a leader of the Santander Teachers' Union. He had been held previously in the Model Prison of Bucaramanga for the crime of illegally carrying arms and was released in 1986. From that time, however, he was constantly harassed and threatened. María del Carmen Santana, "*about whom the Commission has very little information,* [also] *was a member of the Movement April 19 (M-19)*" and worked with Isidro Caballero-Delgado enlisting community participation for the "Meeting for Coexistence and Normalization" which was to be held on February 16, 1989 in the Municipality of San Alberto. This activity had been planned by the "Regional Dialogue Committee" and involved "*organizing meetings, fora, and debates in various regions in an effort to find a political solution to the armed conflict.*"

4. The application alleges that on February 7, 1989, Elida González-Vergel, a peasant woman who was passing the place where the victims were captured, was detained by the same Army patrol and later released. She saw Isidro Caballero-Delgado, wearing a camouflage military uniform, and a woman who was with them. Javier Páez, a resident of that region who served as the victims' guide, was detained by the Army, tortured, and later set free. From the interrogation to which he was subjected and the radio communications of the military patrol that detained him, he learned of the detention of Isidro Caballero-Delgado and María del Carmen Santana. After his release, he notified the unions and political organizations to which they belonged. They, in turn, notified the relatives of the detained individuals.

5. The application adds that Isidro Caballero-Delgado's family and various union and human rights organizations began to search for the detainees at the military facilities. They were told that Isidro Caballero-Delgado and María del Carmen Santana had not been detained. Legal and administrative actions were brought in an attempt to establish the whereabouts of the two persons who had disappeared and to punish those directly responsible, all to no avail. No reparations were obtained for the damages caused.

6. On April 4, 1989, the Commission, acting on a request for urgent action from a "reliable source" and

before receiving a formal communication from the petitioners, *motu proprio* sent the Government the complaint and requested that extraordinary measures be taken to protect the lives and personal safety of the victims. On April 5 of that same year, the Commission received the formal petition from the petitioners, which it processed under No. 10.319. The proceedings before the Commission were concluded on September 25, 1992, with the approval of "final" Report Nº 31/92 ratifying Report Nº 31/91, which included the Commission's resolution to submit the case to the Court. The case was submitted on December 24, 1992, pursuant to Article 51(1) of the American Convention.

II

7. The Court has jurisdiction to hear the instant case. Colombia has been a State Party to the Convention since July 31, 1973 and accepted the contentious jurisdiction of the Court, as set out in Article 62 of the Convention, on June 21, 1985.

III

8. The application to the Court was transmitted to the Government by the Secretariat of the Court (hereinafter "the Secretariat") on January 15, 1993, after it had been duly examined by the President of the Court (hereinafter "the President").

9. On January 28, 1993, the Government notified the Court of the appointment of Attorney Jaime Bernal-Cuéllar as its Agent, and Attorney Weiner Ariza-Moreno as its Alternate Agent.

10. By order of February 5, 1993, the President granted the Government's request for a forty-five day extension of the time limit established by Article 29(1) of the Rules of Procedure for filing an answer to the application in this case. On February 16, 1993, the Court also granted the Government a fifteen day extension of the deadline to submit its memorial on the preliminary objections.

11. The Government interposed preliminary objections on March 2, 1993, and the Commission responded to them on April 6 of the same year. The answer to the application was submitted on June 2, 1993.

12. On July 12, 1993, Judge Rafael Nieto-Navia was elected President. As the new President is Colombian, by Order of July 13, 1993, he relinquished the presidency for the instant case to Judge Sonia Picado-Sotela, the Vice President. Subsequently, by Order of the President of June 22, 1994 and owing to the Vice President's renunciation of her position as Judge of the Court, the presidency for the consideration of this case was ceded to Judge Héctor Fix-Zamudio.

13. On July 15, 1993, a public hearing was held for the presentation of oral arguments on the preliminary objections interposed by the Government, and on January 21, 1994 the Court delivered its judgment, deciding unanimously to:

1. Rejects the preliminary objections interposed by the Government of Colombia.

. . .

2. Decides to proceed with the consideration of the instant case.

14. By Order of the President of August 18, 1993, the Government was asked, at the Commission's request, to submit the records of eight different domestic proceedings in Colombia and other documentation related to this case. The Government submitted said documentation by means of communications of November 15 and 19, 1993, and February 7, 1994.

15. By note of March 24, 1994, the Government informed the Court of the protection provided to María Nodelia Parra-Rodríguez, the companion of Isidro Caballero-Delgado, by the Administrative Department of Security (hereinafter "DAS") of Colombia.

16. By means of a note dated April 22, 1994, the Government submitted the list of witnesses to be summoned by the Court to appear at the public hearings on the merits of the case. Later, by note of October 26, 1994, the Government partially modified that list. The Inter-American Commission, by notes of April 27, November 17, and November 28, 1994, submitted the list of its witnesses and requested that the testimony of Rosa Delia Valderrama be taken in Colombia due to her poor state of health. Upon the agreement of the Government, the President, by Order of July 18, 1994, named Professor Bernardo Gaitán-Mahecha as the expert representing the Court. On October 15, 1994, the Professor oversaw the questioning of Mrs. Valderrama which was conducted by representatives of the Government and the Commission.

17. On July 18, 1994, the President summoned the parties to a public hearing, to begin on November 28 of the same year, to receive the testimony of the witnesses named by the parties and the arguments on the merits of the case. That order was partially modified by the President on November 15, 1994 in order to replace two of the proposed witnesses of the Government and to summon the new witnesses named by the Government.

18. From November 28 to December 1, 1994, the Court held public hearings on the merits of the case and heard the closing arguments of the parties.

There appeared before the Court

for the Government of Colombia:

Jaime Bernal-Cuéllar, Agent
Gerardo Barbosa-Castillo, Counsel
Jaime Lombana-Villalba, Counsel

for the Inter-American Commission on Human Rights:

Leo Valladares-Lanza, Delegate
Oscar Luján Fappiano, Member
Manuel Velasco-Clark, Attorney of the Secretariat
Gustavo Gallón-Giraldo, Assistant
Tatiana Rincón, Assistant
José Miguel Vivanco, Assistant
Juan E. Méndez, Assistant

Witnesses presented by the Inter-American Commission on Human Rights:

Zoilo Javier Jerez-Medina
María Nodelia Parra-Rodríguez
Elizabeth Monsalve-Camacho
Elida González-Vergel
Ricardo Vargas-López
Javier Páez
Guillermo Guerrero-Zambrano
Luis Alberto Gil-Castillo
Víctor Enrique Navarro-Jiménez

Witnesses presented by the Government of Colombia:

Armando Sarmiento-Mantilla
Manuel José Cepeda-Espinosa
Hernando Valencia-Villa
Luis Alberto Restrepo-Moreno
Juan Salcedo-Lora.

19. On December 7, 1994, at the request of the Commission, the Court ordered provisional measures requiring that the Government adopt those measures necessary to protect the lives and personal integrity of Gonzalo Arias-Alturo, Javier Páez, Guillermo Guerrero-Zambrano, Elida González-Vergel and María Nodelia Parra-Rodríguez. By means of communications of December 8, 1994, March 7 and 8 and August 11, 1995, the Government informed the Court of the measures taken in compliance with this order.

20. By note of December 19, 1994, the Government sent the Court a copy of the records of the proceedings in progress in Colombia concerning the disappearance of Isidro Caballero-Delgado and María del Carmen Santana.

21. The Court, by Order of January 25, 1995, appointed Gabriel Burgos-Mantilla and Bernardo Gaitán-Mahecha as experts to take the testimony in Colombia of Gonzalo Arias-Alturo and Diego Hernán Velandia-Pastrana, who did not testify before the Court. On March 11, 1995 these experts took the testimony of Gonzalo Arias-Alturo. Hernán Velandia-Pastrana could not be questioned as he would not voluntarily appear. The Government, which was the party that named him, did not insist on the testimony, because it did not consider it to be indispensable.

22. On December 1, 1994, in its final brief in this case, the Government stated that:

> A. The facts, which have been regarded as true in the application, have not been substantiated with proof that conforms to the standards of sound proof. In effect, the evidence in the case is contradictory and does not effectively demonstrate the participation of Colombian soldiers in the events described, or even the existence of the alleged violation of the provisions of the American Convention on Human Rights.
>
> B. Consequently, the evidence obtained to date cannot lead to an assertion of the responsibility of the

> Colombian Government, considering that there is no certain knowledge that its agents took part in the events which are the object of the application. Additionally, the decisions made in the judicial proceedings in the investigation of these same events comply with the norms and principles of the substantive and procedural law in force and applicable in the country.

The Government, moreover, requested that the Court, "*render a judgment absolving the Government of Colombia because of the failure of the Inter-American Commission on Human Rights to prove the charges it had formulated . . .* "

23. On February 24, 1995, the Commission submitted its final brief in which it requested that the Court:

> 1. Declare that the Government of Colombia is responsible for the violations cited [of the rights provided for in Articles 2, 4, 5, 7, 8, and 25 of the Convention, all read in conjunction with Article 1(1)].
>
> 2. Declare that based on the principle of pacta sunt servanda, in accordance with Article 26 of the Vienna Convention on the Law of Treaties, the Government has violated Articles 51(2) and 44 of the American Convention read in conjunction with Article 1(1) by deliberately failing to comply with the recommendations made by the Inter-American Commission.
>
> 3. Require that the Government of Colombia continue the necessary investigations until those responsible have been identified and punished, thereby avoiding the commission of acts of serious impunity that transgress the very bases of the legal system.
>
> 4. Require that the Government of Colombia, in conformity with the judgment of the Court in the Velásquez Rodríguez Case, inform the family of the whereabouts of the victims.
>
> 5. Declare that the Colombian Government must make reparations and pay compensation to the relatives of the victims for the acts committed by its agents and institutions, in compliance with that established under Article 63(1) of the Convention. For that purpose the Court should enter into the damages phase in which the victims' families can participate.
>
> 6. Order the Colombian Government to pay the costs incurred by the counsel of the Commission in assembling the witnesses.

24. As a consequence of the March 11, 1995 deposition of Gonzalo Arias-Alturo in the city of Bucaramanga, Colombia, the Commission asked the Court to request that the Government exhume the bodies of Isidro Caballero-Delgado and María del Carmen Santana and summon qualified experts to collaborate with those named by the Court in order to identify their mortal remains. Likewise, it requested the adoption of *"special security measures"* to avoid unlawful tampering with the graves by those who would like to eliminate all vestiges that would lead to a clarification of the facts. The Commission also requested "exceptional precautionary measures" to protect the life and personal safety of Einer Pinzón, *"who is the only survivor that knows exactly where these people are buried."* The Commission reiterated the request for *"precautionary measures"* on behalf of Gonzalo Arias-Alturo who "*has told the Commission that the measures requested previously on his behalf have not been adequately implemented and that his life is in imminent danger.*"

25. Before acceding to the request of the previous paragraph and for the purpose of gathering more evidence, the Secretariat, following the instructions of the President, requested that the Government submit several documents to which the Commission had not had access. With respect to Einer Pinzón, the Government agreed to receive his testimony in Colombia. On April 26, 1995 the Government sent the remaining documentation.

26. On March 30, 1995, the Commission again requested the adoption of provisional measures on behalf of Gonzalo Arias-Alturo because he had been "*suddenly transferred from the Model Prison of Bucaramanga to the Prison of Armenia-Quindio,*" which in the Commission's judgment "*does not offer guarantees for the case, because his life and personal security...would be in imminent danger.*" The following day the President requested information about this move from the Government. By a communication of April 26, 1995, the Government responded that as soon as the Office of the Attorney General of Colombia became aware of this transfer, it immediately asked the General Office of the National Penitentiary Institute (INPEC) "*to order the immediate return of the prisoner to the city of Bucaramanga,*" where he has been since that time.

27. On April 21, 1995, the Government remitted a copy of a report from the National Office of Public Prosecutors of Colombia concerning a judicial inspection conducted by the department in Bucaramanga where, according to information supplied by Gonzalo Arias-Alturo, the remains of Isidro Caballero-Delgado could be found. The Inter-American Commission, by note of May 3, 1995, asserted that this effort had taken place without the presence of the Commission or the representatives of the victims and without the participation of the magistrate commissioned by the Court. The Government responded by means of a communication of May 13, 1995, that the investigation had been conducted by the Office of the Public Prosecutor "*within the autonomy that characterizes it, in accordance with constitutional and legal authority.*"

28. On October 6, 1995, Colombia submitted information on the advances made in the internal criminal investigation conducted by the Regional Office of the Public Prosecutors of Santafé de Bogotá, in which it reported on the resolution of the legal situation of several of those implicated and ordered preventive detention for Gonzalo Arias-Alturo. By communications of November 30 and December 5, 1995 the Government sent new documentation concerning other developments in the investigation.

IV

29. The Inter-American Commission submitted with its application copies of testimony of witnesses, newspaper clippings, diagrams, maps, and reports.

30. The Government submitted to this Court voluminous records of the proceedings conducted by several civil and military authorities related to the disappearance of Isidro Caballero-Delgado and María del Carmen Santana.

31. Included among these files was the record of an investigative proceeding in the lower criminal court initiated on March 2, 1989, before the Second Mobile Court of Criminal Investigation. That action resulted in an Order of September 20, 1990, which in conjunction with the Order of the 11th of the same month, absolved for lack of evidence all of those charged and ordered their immediate release. Although the case was closed on October 3, 1990, it was reopened as of March 12, 1992 due to the alleged participation of Carlos Julio Pinzón-Fontecha in the events. He was later shown to have died on May 29, 1989. Currently, the investigation has been reopened because of the statement of an official of the Prosecutor's Office. The official who reported that, in an interview undertaken as part of an investigation, Gonzalo Arias-Alturo related facts incriminating himself and others in the commission of the crime under investigation.

32. It has also been confirmed that, from February 27 to June 6, 1989, preliminary proceedings inquiring into those responsible for the kidnapping of Isidro Caballero-Delgado and María del Carmen Santana took place before the 26th Court of Military Criminal Investigation. These proceedings were suspended because, at

that time, no member of the Army was connected with the events.

33. In the course of oral arguments this Court heard the testimony of witnesses called by the Commission and the Government. This testimony is summarized in the following paragraphs. Witness Doctor Zoilo Javier Jerez-Medina testified that he is President of the Committee for Human Rights of Santander; that Isidro Caballero-Delgado offered to organize a forum in San Alberto; that he could not be precise as to the date on which he had seen Caballero-Delgado for the last time, but that it was at the end of October, 1988; and that on February 9 or 10, 1989, he found out about his disappearance.

34. Witness María Nodelia Parra-Rodríguez testified that she is an educator, but that, at present, instead of working as a teacher, she is the director of the Teachers' Union of Santander; that she had lived with Caballero-Delgado since 1986; that they are co-owners of an apartment, and that they had a child in 1988; that Caballero-Delgado had many responsibilities in the Teachers' Union; that in 1984 he was arrested for illegally carrying weapons and was sentenced to 36 months in prison but was released in November 1986; that Caballero-Delgado told her that he was a militant member of the M-19 and was afraid; that in December 1987 or January 1988 members of DAS came to the Union looking for him and he also received death threats by telephone; that Caballero-Delgado told her that he was in charge of organizing a Forum for Citizens' Coexistence in San Alberto; that the Laborers' Union of Santander was affiliated with USITRAS, which is the trade union organization of the Department of Santander that sponsored the Forum; that Caballero-Delgado left for San Alberto in the middle of January, because the Forum was going to take place on February 16, and it required preparation; that he called her every week and that he called on Thursday of the week before February 7 and left a message that he would call her on February 7, but that call never came through; that on February 8 she received word that Caballero-Delgado had been captured the previous day by an Army patrol; that on the 9th she filed a writ of *habeas corpus* in the Superior Court of Bucaramanga and on the 10th she traveled to San Alberto where she met with the leaders of the Union and asked them to join in the search; that they proposed that a committee accompany her the next day to speak with the peasants, look over the farm, take photographs, and find witnesses; that she went to the Líbano mobile base, and there Sergeant Cárdenas denied that Caballero-Delgado had been captured; that on the same day she went to the Morrison or Morrinson Base where Lieutenant Ríos told her that he had no knowledge of the capture; that three months later she found out that the results of the writ of *habeas corpus* had been negative; that she went to the Mayor's Office in San Alberto, and from there she went with the Municipal Representative, Doctor Isabel Monsalve, to the Guaduas District where they talked with Rosa Delia Valderrama; that Mrs. Valderrama told them that Caballero-Delgado had been detained and recognized him from the photograph they showed her; that both Mrs. Valderrama and her granddaughter rendered testimony before Doctor Monsalve and stated throughout it that the capture had been made by members of the Army who identified themselves as such and dressed in camouflage uniforms; that, subsequently, they went to the Morrison Military Base and there the Commander-in-Chief, Colonel Velandia-Pastrana, denied that Caballero-Delgado had been captured; that Caballero-Delgado was detained in the company of María del Carmen Santana, who the witness did not know; that Doña Rosa and her granddaughter had said that Caballero-Delgado had disappeared in the company of a woman, and María del Carmen Santana is named in the writ of *habeas corpus* and all of the judicial motions; that she requested that a judge be named for the criminal investigation; that some of those responsible were found in the jails, including Gonzalo Pinzón-Fontecha, who was identified in the line-up by one of the witnesses, and Gonzalo Arias-Alturo, who was also identified as being one of the perpetrators; that Captain Héctor Alirio Forero-Quintero could not be identified and it was then that the telephone death threats began and that witness Javier Páez, who was going to identify Captain Forero was also threatened and did not contact her again; that Administrative Judge Blas Almanza told her that Captain Forero, had sent him a threatening letter; that she had received more threats; that she had gone with sixty teachers to the Episcopal Palace to make the authorities pass judgment on the disappearance of Caballero-Delgado; that after these actions almost all of the remedies to establish the whereabouts of Caballero-Delgado were exhausted; that she subsequently continued

receiving threats and that since May 1993 she has been guarded by two officials of DAS and one from the Public Prosecutor's Office of Bucaramanga; that she knows that witness Javier Páez and the leader of the Union of San Alberto, Guillermo Guerrero-Zambrano, have been threatened; that twenty teachers have been assassinated in Santander and more than four hundred have been assassinated in the country; that Judge Blas Almanza told her that Gonzalo Arias-Alturo had informed him, off the record, that Caballero-Delgado was dead; that Gonzalo Arias-Alturo, Captain Héctor Alirio Forero-Quintero, and Norberto Báez-Báez had been charged and exonerated, although the proceeding was reopened; that she told the person in charge of the investigation to try to find Arias-Alturo, which was done, and he informed on the persons who had ordered him to execute Caballero-Delgado and told where they had possibly buried him; that Arias-Alturo stated that the persons who participated in the events were members of the Army; that she knows that Arias-Alturo is at liberty; that according to witnesses Rosa Delia Valderrama and Sobeida Quintero, the soldiers had Caballero-Delgado detained from approximately one thirty in the afternoon until four, not in the house but about twenty meters away; that in addition to those witnesses, Elida González saw him detained; that later the Army went to the house of Carmen Belén Aparicio between four and five in the afternoon; that there were no acts of violence during the interrogation, and that Caballero-Delgado and María del Carmen Santana were taken away separately by Army patrols; that Javier Páez was captured the next day; that Rosa Delia Valderrama identified Caballero-Delgado from a photograph that she showed her; that Doctor Horacio Serpa-Uribe knew Caballero-Delgado and visited him when he was in jail and offered to assist in establishing his whereabouts; that Manuel Salvador Betancourt telephoned the Commander of the Morrison Base in order to make visual inspection; that at the request of the Inter-American Commission, the Government has assigned three persons for her protection; that she is the complainant in the investigative proceeding and acknowledges that the authorities have tried to accumulate the greatest amount of evidence; that she has not submitted a claim against the State for compensation of damages; that she is affiliated with the Ministry of Education, but since 1984 or 1985 has had a union commission; that to continue receiving the salary of a teacher is an exception made on her behalf, and the Government has not withheld her pay; that she does not know what weapon Caballero-Delgado was carrying when he was arrested for carrying weapons illegally; that the M-19 was a clandestine movement that tried to find a political opening, and it is now a legal political movement that is called the Democratic Alliance M-19; that DAS is the Administrative Department of Security and is a civilian organization; that only the Army uses camouflage uniforms; that after the disappearance of Caballero-Delgado, Pinzón-Fontecha and Arias-Alturo were in prison for attacking toll booths, and Captain Forero was also imprisoned for the same reason; and that the threat from Colonel or General Cifuentes was made by means of a politician whose name she withheld.

35. Witness Elizabeth Monsalve-Camacho, attorney, testified that from 1987 to 1989 she worked in the Municipality of San Alberto, initially as the Secretary of Government and later as the Municipal Representative; that in mid-February, 1989, María Nodelia Parra-Rodríguez and two other persons came to her office to ask her assistance in taking testimony; that she had never known Caballero-Delgado; that they went to the Guaduas District and there took the statements of a woman named Rosa Delia and a girl named Sobeida; that the former testified that some days earlier a group from the Army had come within about fifty meters, and then Caballero-Delgado remained talking with the Army group; that when the photograph of Caballero-Delgado was shown to the declarant, she recognized him, and she stated that those from the Army did not act violently; that they then went to the mobile Líbano Base and asked if they had detained a man and woman, and they were answered negatively; that next they went to the Morrison Base where Colonel Velandia spoke with them and told them that he did not have anyone detained; that she turned over the original file of the investigation and did not find out anything more about the proceedings; that she left proof of the testimony that she took in the file but not of the inquiry at the Morrison Base; that Rosa Delia Valderrama described Caballero as thin with a mustache, approximately thirty-three years old, and she thought she had said that he was dressed in a red shirt and that the young woman had on blue jeans; that there was no hinderance in the investigation; that it is public knowledge that San Alberto is a guerrilla zone; that it is also public knowledge

that the guerrillas at times dress in camouflage, the spotted uniform of the Army; and that she viewed Rosa Delia Valderrama as being mentally sound.

36. Witness Elida González-Vergel testified that she is a cook in Cúcuta and that she does not know how to read or write; that the day of the disappearance of Caballero-Delgado and María del Carmen Santana she was going to visit her sick mother who lived on the Guaduas District; that for that reason she left San Rafael, where she lived, at about twelve-thirty in the afternoon and arrived in San Alberto at about three; that in route she met a group of about ten army soldiers who searched a bag that she was carrying, and that one soldier from the coast who was swarthy, tall, and husky detained her and did not allow her to continue on her way; that the father of her daughter is a Corporal Second-Class in the Army, and, therefore, she is familiar with soldiers who can be recognized by their haircut and their uniform; that she knew that the group that detained her was Army because they wore the standard uniform boots; that the man who the soldiers called "commander" had little stars, and the soldiers did not have them; that the commander was white, had light colored eyes,a mustache, and wore a thick gold chain; that Caballero-Delgado and his companion were in the group along with the soldiers, and she recognized him because on Sunday when she was at her mother's house, she was introduced to him; that she did not speak with him or greet him; that Caballero-Delgado was dressed in the same Army uniform, but that his companion was totally nude with her hands tied behind her back; that she spent the night in a hut and arrived the following day at her mother's house, where she heard talk that they had captured Caballero-Delgado and his companion; that the guerrillas use rubber boots, have long hair and carry machetes tied with straps, while the Army does not use rubber boots or machetes; that she encountered the military patrol at around five-thirty in the afternoon; that she did not try to converse with Caballero-Delgado; that she has not testified earlier; that she had seen Rosa Delia Valderrama before, but that she did not know her name; that from her mother's house to that of Mrs. Valderrama it is three hours on foot, and from Mrs. Valderrama's to the site where she met the military patrol it is about ten minutes; that Caballero-Delgado had a mustache, straight hair, was tall but not very tall, and had an average build; that she has not commented about what took place to anyone except Mrs. Valderrama; that the woman was tied up, but Caballero-Delgado was not, and that he was standing leaning against a mango tree; that the woman had straight hair with a rounded haircut, brown eyes, and was rather short, about twenty years of age, and that she recognized her by her hair, and because she had seen her in her house on Sunday; that she did not denounce what she had seen to any authority because she was afraid; that she verified that she had not testified before the Court previously, but she had testified in the internal Columbian proceeding, and that her testimony was the same; that she had not received threats, but that the rest of the family had; and that she knows from the neighbors' comments that Caballero-Delgado had been put to death.

37. Witness Ricardo Vargas-López testified that he is a member of the Technical Corps of Investigation of the National Office of the Attorney General; that he retired from the police with the rank of Captain and then joined the Technical Corps of Criminal Investigation in Bucaramanga; that at the end of January 1992 his superior, Doctor Víctor Enrique Navarro-Jiménez, National Sub-director of Criminal Investigations, went to Bucaramanga to investigate the case of Caballero-Delgado and María del Carmen Santana, and he was chosen to work with him; that they went to the San Alberto Zone and took testimony from five or six persons, including Carmen Belén Aparicio, Rosa Delia Valderrama and Javier Páez, who all asserted that members of the Army had captured Isidro Caballero-Delgado and María del Carmen Santana; that those witnesses did not waver in saying that the perpetrators had been members of the Army; that Dr. Navarro returned to Bogotá and turned over the remainder of the investigation to the declarant; that Javier Páez accused two persons, Gonzalo Arias-Alturo and Gonzalo Pinzón-Fontecha, of being part of the group that captured him; that he tried to locate those two persons, and he found out that Pinzón-Fontecha had died; that he located Arias-Alturo who told him, after the questioner had promised not to make a recording or take written notes, that he and Pinzón-Fontecha had been in the Army and, although they later retired, they continued collaborating and sporadically went on patrol with groups from the Army; that they were patrolling with three members of the Army

in the zone of Guaduas when another patrol brought two detained teachers; that they killed them by shooting them with a pistol, buried them in a common grave, had to cut up the bodies, and that a lieutenant, a sergeant, a corporal, and two civilians participated. The witness continued, saying that he had more than three interviews with Arias-Alturo to convince him that he was not going to compromise him, and he made two reports to Doctor Navarro; that from his experience as a professional investigator he did not doubt what Arias-Alturo told him; that Doctor Navarro told him to offer a sum of money to Arias-Alturo in return for a formal statement, but that Arias-Alturo refused and was reticent and did not want to be interviewed by him anymore; that last year the declarant was summoned to the National Office of the Attorney General, and that there he said what he was now saying; that in the interview with Rosa Delia Valderrama she told him that the Army patrol had captured a teacher and his companion, and he found her to be believable; that they took a written affidavit from Mrs. Valderrama, but that he does not remember if they also took one from Javier Páez; that due to his experience in dealing with informers, he believed Arias-Alturo, because his version of the events coincided with that of Javier Páez, he gave an exact description of the site, and he made his statement without pressure and in a spontaneous manner; that one of the reasons for offering money to Arias-Alturo was to find the bodies, but Arias-Alturo refused to accompany them, and in that type of area it is difficult to make a search; that he transmitted the information that he received to his superior and he does not know if it was sent to the judicial authorities; and that from the house of Mrs. Valderrama it is some two thousand five hundred or three thounsand meters to the site where the informer said the bodies were buried.

38. Witness Javier Páez testified that he belonged to an M-19 Peace Committee in San Alberto; that in 1988 he met Caballero-Delgado who was a member of the same Committee, and the last time that he saw him was February 7 in the zone of Guaduas; that the army captured the declarant, threw him in a ditch, and the Sergeant in command of the group asked him if he was a guerrilla, to which he answered no, that he was a worker; that he had been asked to get a donkey for a peasant, and he left it at the house of an elderly woman to be given to that man, and he went to make some purchases in the market, since Caballero-Delgado could not leave the zone because the presence of the Army made it dangerous; that he left the donkey and went to see Caballero-Delgado, who told him that he was going to San Alberto, and this was the last time that he saw him; that on the eighth the Army captured the declarant at about eight in the morning when he was returning to Guaduas; that there were about five soldiers, and he knows that they were in the army because the guerrillas use a green uniform, rubber boots, and the knapsack is different; that when they captured him there was a peasant who they searched and let go, and they searched him but did not allow him to continue; that he was detained until noon, and while they were interrogating him Mrs. Belén arrived, and they searched her, but she did not see him; that they asked him where the other guerrillas were, and they told him that the day before they had captured two of them; that Gonzalo Pinzón arrived, who he already knew, and that Gonzalo Pinzón also recognized him; that the Líbano Base is not stationary, and that Morrison is; that he saw an emblem on the shoulder of a soldier that read "Santander Battalion"; that they took him to a ditch and put his head in the water and continued asking him about the guerrillas; that they put a wet rag in his mouth, they threatened to kill him, and they hit him with a rifle; that the Sergeant communicated by radio with the Morrison Base, said that he had captured another, and asked for instructions; that in the end they let him go; that he thinks that Pinzón-Fontecha saved his life; that Pinzón was there with the Army and was a hired assassin, known to be a killer; that in his earlier testimony the declarant had not stated that he was with the M-19, but that now he had because he was amnestied; that a peasant woman, Leonor, told him that a day earlier they had captured Caballero-Delgado and his companion, and the peasants say that they had taken them around the region, and that they had put an Army uniform on Caballero-Delgado, and she was in underwear and barefoot; that on that morning he had seen Caballero-Delgado dressed in a red sweat suit, and the last time that he saw him was before noon on Tuesday the 7th in the house of Mrs. Belén; that it was about ten minutes from there to the house of Mrs. Valderrama; that they call it a camp because the guerrillas gather there; that Caballero-Delgado knew the region; that they captured Caballero-Delgado at a gate alongside a mango tree; that Caballero-Delgado was about 1.72 meters tall, husky, with straight hair, and a mustache; that

he knew that those who captured Caballero-Delgado were in the Army because of the way they treated each other and because of the uniform, and that they were from the Morrison Base because they called the Base; that some wore rubber boots and others Army boots; that the donkey belonged to Andrés Ortega, and he did not leave it at Mrs. Valderrama's house because Caballero-Delgado could not get there; that, at that time, the guerrillas of San Alberto were not wearing camouflage uniforms; that he knows that Pinzón was a hired assassin because of what people said; that he, the declarant, currently receives a salary from the Colombian Government, and he was trained and works as a guard; that on the afternoon of February 7 he stayed in the woman's house, and he did not find out that day that they had detained Caballero-Delgado; that Santana also participated in the Dialogue for Peace with the people, and he saw her that same day.

39. Witness Guillermo Guerrero-Zambrano testified that he is a resident of San Alberto and has worked gathering fruit on an African palm plantation for nineteen years; that he met Caballero-Delgado in a Unity and Democracy Seminar; that Unity and Democracy was not only the title of the seminar but also the name of a group of persons that took part in activities such as talking about what is happening to the people; that the union issued invitations to other unions to organize a Forum on Peace, and Caballero-Delgado was the delegate of the Educators' Union of Santander, that he came to San Alberto, and that they became friends; that Caballero-Delgado was involved with the M-19; that the last time that the declarant saw him was February 4, and he accompanied him until he left in a small bus for Guaduas; that he found out about the disappearance of Caballero-Delgado on the same day that it happened from the radio that Caballero-Delgado had given him; that that day they called him at six in the afternoon and told him the news, and he passed it on to friends and the Santander Educators' Union, and that the Union obtained permission for him to miss work and investigate; that on Wednesday afternoon he went alone to Guaduas to the store at the entrance of that path where he had introduced Caballero-Delgado to the woman, and when he returned that woman told him that they had detained Caballero-Delgado and a young woman; that he went to the school, and there was no one there; that then he met Doña Rosa Delia and her granddaughter, and at first she was afraid and said that she didn't know anything, and then she told him that the Army had detained Caballero-Delgado; that the next day several persons stated that they had seen a girl clothed in underwear being taken away by the Army; that he went with Nodelia to the representative, and later they took testimony from Doña Rosa and her family, and they went to the Líbano Base and later to the Morrison Base and to La Palma; that they were treated badly at the Líbano Base and told that those there did not know anything, and that maybe people at the Morrison Base knew something; that at Morrison they were not allowed to enter, but Colonel Velandia told Nodelia that he did not know anything but that the counter-guerrillas, a special army that combats guerrillas, was around there; that then they went to La Palma, and that they did all of this in only one day; that he continues working in Indupalma, although not in San Alberto, because he has received death threats, and he returned to Bucaramanga; that he was told by the Red Cross that he is on the paramilitary's list of persons who they are going to kill; that previously he had testified that he had not seen Santana; and that Doña Rosa Delia told him that Caballero-Delgado arrived after mid-day.

40. Witness Luis Alberto Gil-Castillo testified that he is a school teacher, activist, and currently the President of the Santander Educators' Union and a Delegate in the Assembly of Santander; that he knew Caballero-Delgado from 1969 to 1970 when he was a student; that they agreed with the democratic ideas of the old M-19; that Caballero-Delgado carried out political activities and was arrested in 1985 for illegally carrying weapons; that later he was elected to the Board of Directors of the Workers' Trade Union of Santander (USITRAS); that in 1985 the disappearances started; that in 1987 there was a strike, and Caballero-Delgado was one of the organizers; that the organizers were thought to be instruments of the guerrillas; that they asked for protection for Caballero-Delgado, but he was only given a union commission; that it fell to Caballero-Delgado to organize the Forums for Peace in Bucaramanga, San Alberto, and Aguachica; that the military command of M-19 advised him of the capture of Caballero-Delgado; that the declarant went to the Morrison Base, and Colonel Velandia denied everything; that one of the points put forward in the negotiations between the

Government and the M-19 was the realization of regional forums; and that in 1989 the M-19 was a clandestine movement, and it was risky for him to admit his militancy.

41. Witness Doctor Víctor Enrique Navarro-Jiménez, Sub-Director of the Technical Corps of the National Office of the Attorney General at the time of the events and currently its Director, testified that he had attended four meetings in the Ministry of Foreign Relations about disappearances, and that one had been about the Caballero Delgado Case; that they had reached an agreement with the Military Prosecutors to send personnel, and he went to Guaduas where they interviewed Carmen Aparicio, and they took photographs of the farm; that that woman was in charge of the El Danubio Farm, and she testified that she had been threatened; that his assistant Ricardo Vargas made contact with one of the paramilitaries, Arias-Alturo, who had just finished serving his time for assault, and with another by the last name of Fontecha who had been identified by a scar; that in this case he could not confirm that they were involved with soldiers; that Arias-Alturo confessed the facts to Vargas but he was afraid, and they offered him money so that he could move to a safe place, and then he disappeared; that all this occurred in 1992; and that they were waiting to detain Caballero-Delgado.

42. Witness Doctor Armando Sarmiento-Mantilla, the National Director of Prosecutors, testified that he coordinated all the investigation policies of the National Office of General Prosecutors, and that the Government had never interfered with his duties; that the Unit of Prosecutors had been created and was dedicated exclusively to the investigation of violations of human rights; that in Santander there was a climate of violence probably due to subversion, drug trafficking, paramilitaries, and common crime; that he heard about the investigation of the Caballero Delgado Case through the news media and knows that the National Director of Criminal Investigation ordered the case reopened in 1992; that he had taken the testimony of one witness who will remain unidentified, and that Arias-Alturo, who had been absolved, now is incriminating himself and accusing the Army; that he knows that Arias-Alturo testified that he was with some soldiers from the Morrison Base, they stopped a bus, made Caballero-Delgado and Santana get off, and killed them; and that he is willing to submit a copy of the records of all stages of the proceedings.

43. Witness Manuel José Cepeda-Espinosa testified that he is an attorney, and that he has been Presidential Advisor in all matters related to constituent proceedings; that during the Government of President Barco he drafted legal instruments to facilitate the incorporation of the M-19 into civilian life, and that the M-19 participated in the call of the Constituent Assembly and in the elections of March 1990, winning nineteen of seventy seats in the Constituent Assembly and one in the Presidential Tripartite, and the M-19 has a Minister in the Cabinet; that they have developed protection for human rights and have reformed the institutions of justice; that he knows of the Caballero Delgado Case only from the newspapers; that the Constituent Assembly limited what can be done by the Public Forces during marshal law; that the Government has issued decrees to eliminate civilian groups carrying weapons; that from 1982 until 1991 Colombia was under marshal law; that the police and soldiers are subjected to civil justice in a wardship proceeding; that no guerrilla group had been incorporated in civilian life for the last six years; that there was a situation of armed conflict and drug trafficking was at its highest level; and that there was no governmental policy to obstruct the actions of unions, nongovernmental organizations, or the administration of justice.

44. Witness Hernando Valencia-Villa testified that he is the Public Prosecutor's Human Rights Delegate in the National Attorney General's Office; that his office has complete autonomy in investigations, and that at present he is investigating around five hundred charges against soldiers; that the Public Prosecutor's Delegate for Military Forces is in charge of the Caballero Delgado Case because the Human Rights Delegate was created in 1990; that in the Caballero Delgado Case they have not passed the investigatory stage, which means that no one has been charged; that at the end of last year a special agent was appointed from the Ministry for the proceeding in the Regional Prosecutor's Office in Barranquilla; that in eleven years, from 1983 to 1994, there were 1947 forced disappearances attributed to public officials and about 1650 have not been resolved;

that disappearances reached their peak in the years 1988, 1989, and 1990; that in recent months there has been recognition of the gravity of the human rights crisis; and that the proposed law on the disappearance of persons had not been approved as of yet.

45. Witness Luis Alberto Restrepo-Moreno testified that he was a Jesuit priest and is currently an investigator at the Institute for Political Studies and International Relations at the National University; that in Colombia there has not been a policy against human rights nor interference in the administration of justice; that, from a strictly legal point of view, the only violators of human rights are agents of the State, but he thinks that all armed political actors and, of course, the guerrillas should be considered as such; that there are many problems in exercising justice in Colombia; and that from 1978 to 1982 the Government gave a somewhat free hand to the military forces, and that there were no precautions taken to constrain human rights violations.

46. Witness, General Juan Salcedo-Lora testified that he is the Inspector General of the Army; that subversion increased considerably in the Department of El Cesar as of 1987; that groups of paramilitaries are said to help the Government, but in reality they cause very serious problems; that an area of very grave conflicts is centered in San Alberto; that nineteen days before the disappearance of Caballero-Delgado there was a massacre of a group of judges, investigators, and justice officials, and the guerrillas commit all kinds of atrocities; that the M-19, on having submitted to the law, has seats on the councils and in the Chamber and the Senate; that its leader occupies the mayor's office in the capital of one of the departments, and the M-19 members have been sent on diplomatic missions; that the guerrillas take the uniforms from dead soldiers, and there have been cases in which army officials confused guerrillas with their own troops; that the guerrillas have become engaged in drug trafficking for their financing; that the Government has tried to protect human rights by instructing the Armed Forces, creating new institutions, and reforming the Penal Code; that his only relationship to the Caballero-Delgado Case has been in collecting documents; that the investigation has been very difficult, the investigators have run many risks, and the case is in the hands of the Public Prosecutor's Office and the lower courts; that he has offered total cooperation in the exhumation of the bodies if they are able to locate them; that by order of the Command of the Fifth Brigade, the Public Prosecutor's Office began six investigations on February 27; that prison cells for detained civilians in military bases have been prohibited since 1986 or 1987; that in San Alberto there are paramilitary groups, and in that zone there has been some crime committed by the army; that special forces are military organizations with training in counter-guerrilla techniques, and they wear uniforms and cannot operate in civilian clothes; that there have been cases of corruption in the public forces, and they have been processed; that the Rules of Disciplinary Regimen and the Military Penal Code have been in existence since the mid-1980s, and there is no violation of human rights that is not covered therein; that in the investigation of the Caballero Delgado Case some witnesses accused persons who later turned out to be innocent, and there are witnesses that disappear and do not come to appointments; that Captain Héctor Alirio-Forero was discharged from service by means of a disciplinary action; and that the military forces have about 200,000 men and the police have 115,000.

V

47. Additionally, the following evidence was submitted to the Court during the hearing:

a) Investigator Ricardo Vargas-López personally submitted the report which he had made to Doctor Víctor Enrique Navarro-Jiménez, Director of the Technical Corps of Investigation of the National Office of the Attorney General, dated September 28, 1992. (*supra* para. 37) In the report he states that Gonzalo Arias-Alturo told him:

> that he and GONZALO PINZON, after having performed their military service, collaborated with the army as informants. As such they wore camouflage army uniforms and integrated into patrols. On precisely the day of the disappearance of ISIDRO CABALLERO and his companion, he and RODRIGUEZ (*sic*) FONTECHA were with a patrol commanded by CAPTAIN HECTOR ALIRIO FORERO-QUINTERO which was also made up of Sub-officers PLACIDO CHACON-HERNANDEZ and NORBERTO BAEZ. It was this patrol that initially detained JAVIER PAEZ and that later received the detainees ISIDRO CABALLERO and MARIA DEL CARMEN SANTANA from another detachment in the zone, to later kill them and bury them in a common grave, in a site know by ARIAS-ALTURO, who promised to identify it.

b) The testimony rendered by Gonzalo Arias-Alturo on November 24, 1994 before the Regional Prosecutor of Barranquilla, submitted by the Agent of Colombia. Arias-Alturo testified that there was a meeting of officials at the Morrison Base presided over by General Alfonso Baca-Perillas, Commander of the Army's Fifth Brigade; that there it was decided to authorize Captain Héctor Alirio Forero-Quintero and another captain, whose name he does not remember, to organize a group, of which Arias-Alturo was a member, to capture Isidro Caballero-Delgado; that dressed as guerrillas they stopped a bus and ordered the passengers to get out; that when Caballero-Delgado showed his identification card to Captain Forero he detained him; that the rest of the passengers got back on the bus, but a woman who was with him also stayed; that they turned the two over to the paramilitaries of the Riverandia Farm, who tied them up and put them in a small truck; that they tortured and killed them, and that Gonzalo and Einer offered to dig a grave; that he heard Captain Forero say that Caballero-Delgado and María del Carmen Santana were in a meeting with the guerrillas; that he could find a young man who knows the burial site because he buried them, and that man is Einer, since Gonzalo is dead; that the order came from the Morrison Base, and that the person who fired two shots to the head of each of the detainees is a paramilitary by the name of Segundo who administers the Riverandia Farm; that the other captain who went with them is named Jorge Enrique García-García; that the operation was coordinated by the Fifth Brigade of the Army; and that they did not detain Caballero-Delgado and María del Carmen Santana in the farm of a peasant woman, *"they were only checking to see if they were or were not to be found in the area. The troop found out that they were there, because an informant said they were in the area at a meeting in a school, that was located above the farm where they stopped them. They stopped them to verify his identity and to find out where he was going."*

c) Witness Juan Salcedo-Lora brought 35 slides and 13 photographs related to the investigation into the disappearance of Caballero-Delgado and María del Carmen Santana. The slides and photographs were meant to demonstrate, among other things, that on occasion the guerrillas use military uniforms.

d) Witness Hernando Valencia-Villa brought Report III on Human Rights, Colombia 1993-1994, issued by the Attorney General of the Nation.

48. At the Commission's request the Court appointed Colombian jurist, Bernardo Gaitán-Mahecha as expert to take the testimony of Rosa Delia Valderrama in Colombia, who due to her poor state of health could not travel to the seat of the Court (*supra* para. 16). On that occasion, they read her the statements that she had given to the Municipal Representative of San Alberto, the Second Mobile Court of Criminal Investigation of the Judicial District of Valledupar on March 18, 1989, and the National Sub-director of Criminal Investigation and the Technical Corps of the Judicial Police on January 22, 1992. She confirmed them in their entirety. In the first statement, she had testified that on February 7 [1989], at approximately one in the afternoon, an Army group dressed in camouflage was on her farm; that a young man and woman arrived, and he asked if his godfather Andrés had left a mule, and the declarant answered no; that the Army group captured them, they sat down to talk, and at about four in the afternoon they were taken away; that he was dressed in red pants and

a red shirt and she was in blue jeans and a black shirt; and that the persons in the group appeared to be from the National Army. When the witness was shown a photograph of Isidro Caballero-Delgado, she said that he was the person who had been detained. In her second statement she had added that one of the members of the military group was called "my Sergeant" by the others. Moreover, in her third statement the witness added that about ten minutes before the young man and woman arrived, an Army group had arrived and was sitting in a neighboring kiosk near the house. When the young man and woman left, another group of soldiers, who were on a hill about 120 meters from the house, came running down to catch up with them, and those that were in the house joined them. There were about fifteen that came down the hill and about four that were in the house.

49. In addition to confirming her earlier testimony the witness answered the questions put to her by the Government representative. She testified, among other things, that the person who came to her house differed from the photograph that they had shown her in that he did not have a mustache, and that the soldiers who came to her house had their faces covered with a red cloth. On being questioned by the Commission Delegate, she testified that the soldiers arrived at about noon, asked her if she had weapons of the guerrillas, and searched the house.

50. The Government has sent a copy of the testimony, rendered by Gonzalo Arias-Alturo on December 19, 1994 before the Assistant Attorney of the General Office for the Attention and Processing of Complaints of the Public Defender's Office; the declarant testified that on January 3, 1989, two professional counter-guerrilla groups were reunited to organize a special Delfín group, of which he was a member, and that group was attached to the Santander Battalion; that on January 9 they moved to the Morrison Base, and there General Alfonso Baca-Perillas, who coordinated operations in the zone, visited them; that the group was organized in San Alberto under the command of Captain Héctor Alirio Forero-Quintero; that the group moved toward Minas, which is a town on the highway to the coast between San Alberto and Morrison, and Captain Forero-Quintero told them that their mission was to capture a leader of the M-19 named Isidro Caballero-Delgado; that on February 6 they were told that Caballero-Delgado was in the zone and should not be detained in the presence of many people; that at about 4:30 Sergeant Vanegas advised them that he had talked with Caballero-Delgado, who told him that he was going to Bucaramanga; that at about 6:30 the same Sergeant said that Caballero-Delgado had boarded a COOPETRAN bus; that Captain Forero-Quintero set up a road block that detained the bus, and Luis Gonzalo Pinzón-Fontecha boarded the bus and ordered all the passengers to get out and present their identification; that when they identified Caballero-Delgado they detained him together with María Del Carmen Santana who was traveling with him, and they turned them over to the paramilitaries; that at about 11:30 pm he arrived at the Riverandia Farm with Captain Forero-Quintero and others and asked for Captain Jorge Enrique García-García; that they found him with Caballero-Delgado and María del Carmen Santana who were gagged with adhesive tape, and there was also another person detained; that they had pulled out part of Caballero-Delgado's mustache; that Captain Forero said to Segundo, the paramilitary commander whose family name he does not know, that he already knew what they had to do with the detainees; that Segundo called to Vicente Pinzón-Fontecha and Einer Pinzón-Pinzón to take the three detainees, and that the witness also went with them; that they cut off the legs of the detainees so that they would fit in some holes that Einer had dug, and later they informed Captain Forero-Quintero that they had buried them; that the capture of Caballero-Delgado and María del Carmen Santana was not at the house of a peasant woman but rather in a bus, after Sergeant Vanegas informed them that he had talked with him; that the reason that the peasants say that they captured him there may have been because Vanegas accompanied Caballero-Delgado almost to the highway; that the capture in the bus took place between 6:30 and 7:00 pm; that he asked Segundo about the instructions that Captain Forero had given him, and he answered that they were to kill and disappear the detainees; that he does not know who the third detainee was, but that he is buried with Caballero-Delgado and María del Carmen Santana; that he did not witness the death of the detainees because he was on guard about thirty meters away and only heard the shots, and that the third detainee was killed

with a knife; that he can make a sketch of the place of the burial, but that Einer Pinzón is the one who knows the exact place; that the valuables and papers of the detained were given to Captain García-García; that this is the first time that he has testified in a complete form; and that he wants to be given a fair hearing and security for his life and his family. A rough sketch made and signed by the witness is attached to the statement.

51. The Government also submitted the record of the investigations conducted on the Riverandia Farm on March 11, 1995 by the Criminal Department of the Technical Corps of the National Office of the General Prosecutor of Bucaramanga. According to this investigatory record a probable area was selected where, according to an unnamed witness, the remains of two disappeared persons might be buried; they made four excavations without finding human remains, and observed that the ground was uniformly compact with no sign of disturbance in many years. The attempt was concluded after measuring the area and photographing it. Then, on two later occasions, the Government reported two more unsuccessful attempts to locate these remains.

52. In the deposition taken by the Colombian Jurist Gabriel Burgos-Mantilla, commissioned by this Court, and in which the Delegate of the Inter-American Commission, its Attorneys, and the Government representatives participated (*supra* para. 21), Gonzalo Arias-Alturo gave a different version of the details about the murder of Isidro Caballero-Delgado and María del Carmen Santana.

53. The Court will now specify the relevant facts that it considers proved:

a) That the Municipality of San Alberto (El Cesar), the place where the events under consideration occurred, was at that time a zone of intense army, paramilitary and guerrilla activity (specifically the testimony of Gonzalo Arias-Alturo, Carlos Julio Parra-Ramírez, Elizabeth Monsalve-Camacho, Armando Sarmiento-Mantilla, and Juan Salcedo-Lora).

b) Notwithstanding the fact that much of the testimony rendered before this Tribunal, both at the public hearing and in Colombia, and in the domestic proceedings conducted in that country differs as to details about the place and the hour of detention, there exists sufficient evidence to infer the reasonable conclusion that the detention and the disappearance of Isidro Caballero-Delgado and María del Carmen Santana were carried out by persons who belonged to the Colombian Army and by several civilians who collaborated with them (testimony of Rosa Delia Valderrama, the minor Sobeida Quintero, Elida González-Vergel, Javier Páez, and the declarations of Gonzalo Arias-Alturo). The fact that more than six years have passed, and there has been no news of Isidro Caballero-Delgado and María del Carmen Santana permits the reasonable conclusion that they are dead.

c) This conclusion is reinforced by data from the criminal action that took place before the Second Judge of the Public Order of Valledupar for the kidnapping of Isidro Caballero-Delgado and María del Carmen Santana. In that case, preventive detention was ordered against Gonzalo Pinzón-Fontecha, Captain Héctor Alirio Forero-Quintero, and Gonzalo Arias-Alturo, as a precaution, because the judge determined that there were factors that raised the presumption of their responsibility for that crime. They were later absolved due to insufficient evidence. The criminal action was ordered reopened, however, because of the subsequent statements of Gonzalo Arias-Alturo.

d) Moreover, one must take into consideration other actions before criminal and military courts, in which those accused and Corporal Norberto Báez-Báez were sentenced for other unlawful acts (aggravated robbery, breach of faith, and illegally carrying weapons) which took place one month after the disappearance of Isidro Caballero-Delgado and María del Carmen Santana. These sentences demonstrate that the soldiers and civilians named acted in concert to commit crimes. The statements given by

Captain Forero in that proceeding resulted in his being subjected to psychiatric examinations and to treatment in a military hospital for *"a paranoid mental disorder of a permanent nature,"* according to the doctor's examination.

e) Finally, in the Order of April 26, 1990 in the Court of military discipline, Captain Forero was ultimately discharged from the Colombian Army because,"*he did not carry out his obligation of custodian, as guarantor of the life and personal safety of [two] citizens, conduct that lead to the disappearance of those apprehended at the hands of military troops* . . . ", an event which took place one year earlier in the region next to that in which the disappearance of Isidro Caballero-Delgaado and María del Carmen Santana took place.

f) Conversely, this Tribunal does not find sufficient evidence to demonstrate that Isidro Caballero-Delgado and María del Carmen Santana had been subjected to torture or inhumane treatment during their detention, since that allegation is based solely on the vague testimony of Elida González-Vergel and Gonzalo Arias-Alturo and was not confirmed by the statements of the other witnesses.

VII

54. Once it has been established that the detention and disappearance of Isidro Caballero-Delgado and María del Carmen Santana was carried out by members of the Colombian Army and civilians who acted as soldiers, it remains to be determined, in accordance with the norms of international law, if the Government is responsible for having violated the Convention.

55. In accordance with Article 1(1) of the Convention, the States Parties are obligated to respect the rights and freedoms recognized in the Convention and to ensure their free and full exercise to all persons subject to their jurisdiction.

56. The Court has interpreted the above-cited Article in the Velásquez Rodríguez and Godínez Cruz Cases as follows:

> Article 1(1) is essential in determining whether a violation of the human rights recognized by the Convention can be imputed to a State Party. In effect, that article charges the States Parties with the fundamental duty to respect and guarantee the rights recognized in the Convention. Any impairment of those rights which can be attributed under the rules of international law to the action or omission of any public authority constitutes an act imputable to the State, which assumes responsibility in the terms provided by the Convention. *(Velásquez Rodríguez*, Judgment of July 29, 1988. Series C No. 4, para. 164; *Godínez Cruz Case*, Judgment of January 20, 1989. Series C No. 5, para. 173.)
>
> According to Article 1(1), any exercise of public power that violates the rights recognized by the Convention is illegal. Whenever a State organ, official or public entity violates one of those rights, this constitutes a failure of the duty to respect the rights and freedoms set forth in the Convention. (*Ibid.*, para. 169 and para. 178, respectively.)
>
> Thus, in principle, any violation of rights recognized by the Convention carried out by an act of public authority or by persons who use their position of authority is imputable to the State. However, this does not define all the circumstances in which a State is obligated to prevent, investigate and punish human rights violations, nor all the cases in which the State might be found responsible for an infringement of

those rights. An illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention. (*Ibid.* para 172 and paras. 181-182, respectively.)

57. In the instant case, Colombia has undertaken a prolonged judicial investigation, not free of defects, to find and sanction those responsible for the detention and disappearance of Isidro Caballero-Delgado and María del Carmen Santana, and those proceedings have not been closed.

58. As the Court held in the cases cited above, "*[i]n certain circumstances, it may be difficult to investigate acts that violate an individual's rights. The duty to investigate, like the duty to prevent, is not breached merely because the investigation does not produce a satisfactory result.* (*Velásquez Rodríguez Case, supra* 56, para. 177; *Godínez Cruz Case, supra* 56, para. 188.) Nevertheless, to fully ensure the rights recognized in the Convention, it is not sufficient that the Government undertake an investigation and try to sanction those guilty; rather it is also necessary that all this Government activity culminate in the reparation of the injured party, which in this case has not occurred.

59. Therefore, as Colombia has not remedied the consequences of the violations carried out by its agents, it has failed to comply with the duties that the above-cited Article 1(1) of the Convention imposes on it.

60. As to the responsibility that could fall to the individuals who have been named in the testimony reported above, the Court cannot express any opinion because that is the responsibility of the Colombian authorities. This Tribunal has held: "*[a]s far as concerns the human rights protected by the Convention, the jurisdiction of the organs established thereunder refers exclusively to international responsibility of states and not to that of individuals.*" (*International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Arts. 1 and 2 of the American Convention on Human Rights)*, Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14, para. 56.)

VIII

61. With respect to the violation of other provisions of the Convention which have been imputed to Colombia, this Court determines the following:

62. The Commission alleges that Colombia has violated Article 2 of the Convention. However, this Court does not find that Colombia lacks the legislative or other measures necessary to give effect to the rights and freedoms ensured by the Convention. Consequently, there is no violation of Article 2.

63. Whereas Colombia's responsibility for the illegal detention and presumed death of Isidro Caballero-Delgado and María del Carmen Santana has been established, violations of their rights to personal liberty and to life, as ensured by Articles 7 and 4 of the Convention, are attributable to Colombia.

64. Given the short time that transpired between the capture of the persons named in this case and their presumed death, the Court holds that there was no opportunity for the application of the judicial guarantees contained in Article 8 of the Convention and that, as a result, there is no violation of that Article.

65. Nor does the Court hold that Colombia has violated the right to humane treatment ensured by Article

5 of the Convention, since, in its judgment, there is insufficient proof that those detained were tortured or subjected to inhumane treatment.

66. As to Article 25 of the Convention, which concerns judicial protection, the Court determines that this Article was not violated inasmuch as the writ of *habeas corpus* filed on behalf of Isidro Caballero-Delgado by María Nodelia Parra-Rodríguez was processed by the First Superior Judge of Bucaramanga. The fact that this remedy was not successful, because the Commander of the Fifth Brigade of Bucaramanga, the Director of the Model Prison of Bucaramanga, DAS, and the Judicial Police answered that Isidro Caballero-Delgado was not to be found in those places, does not constitute a violation of the guarantee of judicial protection.

67. In its final pleading, the Commission requested that the Court "*declare that based on the principle of pacta sunt servanda in accordance with Article 26 of the Vienna Convention on the Law of Treaties, the Government has violated Articles 51(2) and 44 of the American Convention read in conjunction with Article 1(1), by deliberately failing to comply with the recommendations made by the Inter-American Commission.*" In this respect it is enough to state that this Court, in several judgments and advisory opinions has interpreted the meaning of Articles 50 and 51 of the Convention. Article 50 provides for the drafting of a preliminary report that is transmitted to the State so the State may adopt the proposals and recommendations of the Convention. The second provision provides that, if within a period of three months, the matter has not been resolved or submitted for a decision of the Court, the Commission will draw up a final report. Therefore, if the matter has been submitted for a decision of the Court, as it has been in the instant case, there is no authority to draw up the second report.

In the Court's judgment, the term "recommendations" used by the American Convention should be interpreted to conform to its ordinary meaning, in accordance with Article 31(1) of the Vienna Convention on the Law of Treaties. For that reason, a recommendation does not have the character of an obligatory judicial decision for which the failure to comply would generate State responsibility. As there is no evidence in the present Convention that the parties intended to give it a special meaning, Article 31(4) of the Vienna Convention is not applicable. Consequently, the State does not incur international responsibility by not complying with a recommendation which is not obligatory. As to Article 44 of the American Convention, the Court finds that it refers to the right to present petitions to the Commission, and that it has no relation to the obligations of the State.

68. As the Court has found that there has been a violation of the human rights protected by the Convention, it must rule on the reparation of the consequences of the measure or situation that constituted the violation of those rights and the payment of fair compensation to the injured party, pursuant to Article 63(1) of the Convention.

69. In the instant case, reparations should consist of the continuation of the judicial proceedings inquiring into the disappearance of Isidro Caballero-Delgado and María del Carmen Santana and punishment of those responsible in conformance with Colombian domestic law.

70. As to the costs requested by the Commission, the Court has already stated that:

> the Commission cannot demand that expenses incurred as a result of its own internal work structure be reimbursed through the assessment of costs. The operation of the human rights organs of the American system is funded by the Member States by means of their annual contributions. (*Aloeboetoe et al. Case, Reparations (art. 63(1) of the American Convention on Human Rights)*, Judgment of September 10, 1993. Series C No. 15, para. 114; *Neira Alegria et al. Case*, Judgment of January 19, 1995, Series C No. 20, para. 87.)

71. With respect to compensation and the reimbursement of the expenses incurred by the relatives of the victims in their legal actions before the Colombian authorities in relation to this proceeding, the Court holds that those costs should be charged to the State. As the Court lacks the evidence to allow it to fix the amount, the compensation and costs phase is opened.

72. **NOW, THEREFORE,**

THE COURT

By four votes to one

1. Decides that the Republic of Colombia has violated, to the detriment of Isidro Caballero-Delgado and María del Carmen Santana the rights to personal liberty and to life contained in Articles 7 and 4, read in conjunction with Article 1(1) of the American Convention on Human Rights.

Judge Nieto-Navia dissenting.

By four votes to one

2. Decides that the Republic of Colombia has not violated the right to humane treatment contained in Article 5 of the American Convention on Human Rights.

Judge Pacheco-Gómez dissenting

Unanimously

3. Decides that the Republic of Colombia has not violated Articles 2, 8, and 25 of the American Convention on Human Rights, relative to the duty to adopt measures to give effect to the rights and freedoms ensured by the Convention, right to a fair trial, and the judicial protection of rights.

Unanimously

4. Decides that the Republic of Colombia has not violated Articles 51(2) and 44 of the American Convention on Human Rights.

Unanimously

5. Decides that the Republic of Colombia is obligated to continue judicial proceedings into the disappearance and presumed death of the persons named and to extend punishment in accordance with internal law.

By four votes to one

6. Decides that the Republic of Colombia is obligated to pay fair compensation to the relatives of the victims and to reimburse the expenses they have incurred in their actions before the Colombian authorities in relation to these proceedings.

Judge Nieto-Navia dissenting.

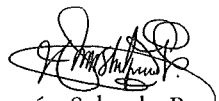
By four votes to one

7. Decides that the manner and amount of the compensation and reimbursement of the expenses will be fixed by this Court and for that purpose the corresponding proceeding remains open.

Judge Nieto-Navia dissenting.

Done in Spanish and English, the Spanish text being authentic. Read at a public hearing at the seat of the Court in San José, Costa Rica on December 8, 1995.

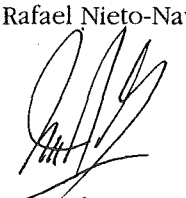
Héctor Fix-Zamudio
President



Hernán Salgado-Pesantes

Rafael Nieto-Navia

Alejandro Montiel-Argüello



Maximo Pacheco-Gómez

Manuel E. Ventura-Robles
Secretary

So ordered,

Héctor Fix-Zamudio
President

Manuel E. Ventura-Robles
Secretary

DISSENTING OPINION OF JUDGE NIETO-NAVIA

Although it has not proved that those responsible acted under official orders or that this was a practice of the Colombian Army and, whereas, from the record one can deduce the opposite (apparently those kidnapping the victims were dressed as guerrillas, although the difference between a military and a guerrilla uniform is not clear; and Captain Forero-Quintero was treated for several months in a military hospital for paranoia resulting from psychological trauma caused by the assassination at the hands of the guerrillas of several members of his troop while they were building a highway), the Court has not found it inappropriate to infer that the death and disappearance of Isidro Caballero-Delgado and María del Carmen Santana occurred at the hands of a paramilitary group in collusion with an official and a sub-official of the Army. The undersigned judge understands that, according to modern trends in international law, this could constitute an act of the State, which is not excused by the circumstance that those involved could have acted under their own initiative.

The criminal judge who investigated those implicated absolved them because the evidence used to charge them was weak and circumstantial. That judgment, which is a model of analysis, makes one think that, perhaps, condemning the accused would have violated the procedural rights and presumption of innocence required by Colombian law and the Convention. Except for testimony from the same individuals, which did not always coincide with their initial testimony, and the testimony of Gonzalo Arias-Alturo, which also does not agree with his earlier statements, this Court did not have additional evidence beyond that which was considered by that judge.

However, here, as the Court has stated (*Velásquez Rodríguez Case*, Judgment of July 29, 1988. Series C No. 4, paras. 134 and 135; *Godínez Cruz Case*, Judgment of January 20, 1989. Series C No. 5, paras. 140 and 141), we are dealing with the assumption of international State responsibility for violation of the Convention and not a case of criminal responsibility. Consequently, what must be analyzed is not whether Isidro Caballero-Delgado and María del Carmen Santana were killed under the circumstances accepted as a working hypothesis by the Court, which would produce criminal responsibility in those implicated, but whether Colombia has violated the Convention. That is to say, whether conditions exist under which an act which violates a right recognized in the Convention can be attributed or imputed to that State, thereby establishing its international responsibility. (*Ibid.* para. 160 and para. 169, respectively.) In paragraph 60, the Court cites Advisory Opinion OC-14/94 which fully confirms what I say here. (*International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Arts. 1 and 2 of the American Convention on Human Rights)*, Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14, para. 56.)

In an earlier case, the Court stated that

> Article 1(1) is essential in determining whether a violation of the human rights recognized by the Convention can be imputed to a State Party. In effect, that article charges the States Parties with the fundamental duty to respect and ensure the rights recognized in the Convention. Any impairment of those rights, which can be attributed under the rules of international law to the action or omission of any public authority constitutes an act imputable to the State, which assumes responsibility in the terms provided by the Convention. (*Velásquez Rodríguez Case*, para. 164 and *Godínez Cruz Case*, para. 173.)

"The rules of international law" to which the Court refers, are, of course, the principles that regulate the international responsibility of States in general and the subject of human rights in particular.

The theories of international State responsibility are well known to scholars. These theories have been evolving since the *liability for fault theory* of Grotius, in which the psychological elements peculiar to human beings are attributed to the State. This theory resulted from the identification of the State with its ruler, which was in

vogue at that time. Then there came the *causal liability theory*, in which the acts which generate responsibility must not only be illicit but also attributable to the State. The *risk theory*, according to which the relationship of causality between the illicit act and the act of State would be sufficient to generate State responsibility is passed over. The codifications of the International Law Commission do not accept this last thesis. They require imputability as a precondition to the attribution of international State responsibility.

In endorsing human rights treaties, States have not reached the stage of accepting that the mere relationship of causality between the act of the State and the violation of the right protected generates international responsibility. For that reason, the analysis of the instant case cannot be separated from the content of these rights and from the duties assumed by the States under Articles 1(1) and 2 of the Convention, as they have been interpreted by this Court when dealing with the application of its international jurisdiction.

It is obvious that certain protected rights are closely linked to the act of the State and cannot be violated except by the State. For example, the promulgation of a law that conflicts with the duties assumed by the State on accepting the Convention is an act of State that violates the Convention, since only States can promulgate laws. But even under this hypothesis, as the Court has already stated, the sole promulgation of a law does not produce international responsibility, rather it must be implemented and it must affect *"the protected rights and freedoms of specific individuals." (International Responsibility For the Promulgation and Enforcement of Laws in Violation of the Convention, cf. para. 58(1).)*

The Court has held, in interpreting Article 1(1) of the Convention, that

> [w]hat is decisive is whether a violation of the rights recognized by the Convention has occurred with the support or the acquiescence of the government, or whether the State has allowed the act to take place without taking measures to prevent it or to punish those responsible. Thus, the Court's task is to determine whether the violation is the result of a State's failure to fulfill its duty to respect and guarantee those rights, as required by Article 1(1) of the Convention. *(Velásquez Rodríguez Cas*e, cf. para. 173 and *Godínez Cruz Case*, cf. para. 183). The State, [the Court added] has a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation. (*Ibid.* para. 174 and para. 184, respectively.)

The word "reasonable" qualifies the duty of prevention and was explained by the Court when it stated that, "*while the State is obligated to prevent human rights abuses, the existence of a particular violation does not, in itself, prove the failure to take preventive measures.*" (*Ibid.* para. 175 and para. 185, respectively.) It is not enough that there be a violation to say that the State failed to prevent it. To interpret the Convention in this manner obviously goes farther than what the States accepted on subscribing to it, because it would imply that it is sufficient that the act of State which violates a protected right be present for the State to have to answer for it. This would signify, neither more nor less, that the protective organs, the Commission and the Court, are intrusive, unless their function is limited to pronouncing judgment on whether the act took place. It would also signify that international protection is not subsidiary to domestic protection but that, conversely, it operates automatically. Neither of these two suppositions is true under the American Convention.

For that reason "*[t]his duty to prevent includes all those means of a legal, political, administrative and cultural nature that promote the protection of human rights and ensure that any violations are considered and treated as illegal acts, which, as such, may lead to the punishment of those responsible and the obligation to indemnify the victims for damages.*" (*Ibid.*)

The record of this case does not prove that "reasonable" steps to prevent acts of this nature, do not exist, or

if they do exist, that they have not been taken. Conversely, the record gives the impression that the event under consideration was probably due to an official who later was shown to suffer from mental disturbances, which is surely beyond existing contingent measures of protection.

The duties of the State are not limited to prevention but also include investigation of the facts so that "*[i]f the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction.*"(*Ibid.* para. 176 and para. 187, respectively.) The Court has stated that

> [i]n certain circumstances, it may be difficult to investigate acts that violate an individual's rights. The duty to investigate, like the duty to prevent, is not breached merely because the investigation does not produce a satisfactory result. Nevertheless, it must be undertaken in a serious manner and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government. This is true regardless of what agent is eventually found responsible for the violation. Where the acts of private parties that violate the Convention are not seriously investigated, those parties are aided in a sense by the government, thereby making the State responsible on the international plane.(*Ibid.* para. 177 and para. 188 respectively.)

In this case, the Government submitted to the Court copies of more than one thousand pages of records of investigations, now reopened based on the testimony of Gonzalo Arias-Alturo, which are precisely what have allowed this Court to infer that the violation of human rights was committed at the hands of those persons implicated and discussed therein.

Based on these documents, the internal procedures have included the following:

a. Writ of *habeas corpus*:

Was interposed on February 10, 1989, before the First Superior Court of Bucaramanga by María Nodelia-Parra, companion of Caballero-Delgado. On that same date and after having obtained information "in the institutions and organizations of the State where a person can be detained for several causes," the judge concluded that Caballero was not deprived of his liberty by institutions of the State. Moreover, according to the judge, a writ of *habeas corpus* should be interposed before the criminal judge of the closest municipality, in accordance with the Code of Criminal Procedure. The petitioner, therefore, should have resorted to another authority such as the Regional or General Office of the Public Prosecutor of the Nation. Nevertheless, the judge himself sent all the documentation to the Office of the Public Prosecutor for action. (p. 392, Penal Statute I)

b. Investigation in the lower criminal court of justice:

On March 2, 1989, in view of the oral complaint of María Nodelia-Parra, a criminal proceeding was opened before the Second Mobile Court of Criminal Investigation, although there was no party directly accused at that time. In in line-ups which took place on July 12, 1989 and April 4, 1990, Javier Páez, one of the alleged witnesses to the disappearance of Caballero-Delgado and Santana, identified Luis Gonzalo Pinzón-Fontecha, who he already knew as they were natives of the same region. He also identified Gonzalo Arias-Alturo after initially confusing him with someone else. Both of these men had been captured together with Captain Forero-Quintero and Sergeant Báez for assaulting several gas stations and highway toll booths.

The Second Court of Public Order of Valledupar rendered a court order for the investigation of the crime on August 1, 1989. Considering that Pinzón-Fontecha had been captured in another case with Captain Héctor Alirio Forero-Quintero, Corporal Second-Class Norberto Báez-Báez, and Gonzalo Arias-Alturo, the Court linked them with the disappearance of Isidro Caballero-Delgado and rendered an order of detention against all of them except Norberto Báez-Báez.

By decisions of September 11 and September 20, 1990, all those implicated in this proceeding were absolved and their immediate freedom was ordered. The case was closed on October 3, 1990.

On March 12, 1992, the criminal investigation was reopened, this time against Carlos Julio Pinzón-Fontecha, who had been accused by his brother, Gonzalo Pinzón-Fontecha, in an unsworn statement made on October 17, 1989. According to information in the file, Carlos Julio Pinzón-Fontecha had died on May 29, 1989.

On November 4, 1994, the complainant requested that the case be reopened based on testimony rendered before the Public Prosecutor's Delegate for the Military Forces by an official of the General Prosecutor of the Nation, Doctor Ricardo Vargas-López. He reported that, as part of an investigation he conducted as Chief of the Investigation Section, he interviewed Gonzalo Arias-Alturo, who told him facts which incriminated him and others in the commission of the crimes of the kidnapping and disappearance of Isidro Caballero-Delgado and María del Carmen Santana. The Regional Prosecutor's Office, which is in charge of the investigation, rendered an order of detention on May 19, 1995 against Gonzalo Arias-Alturo. It abstained from issuing an order against the others who were implicated. The Court continued gathering evidence and in so doing made a new attempt to find the bodies at the site described by Arias-Alturo. That attempt was also unsuccessful.

c. Military Criminal Process

On February 27, 1989, preliminary proceedings of inquiry before 26th Court of Military Criminal Investigations were initiated to determine those responsible for kidnapping Isidro Caballero-Delgado and María del Carmen Santana. This investigation was initiated under orders from Lieutenant Colonel Diego Velandia, Commander of the Santander Infantry Battalion, because of the publication of newspaper articles which "*directly and in a general manner accuse soldiers of the Morrinson Base of having apprehended Isidro Caballero-Delgado and María del Carmen Santana on February 7, 1989 in the District of Guaduas. They remain disappeared.*"

As part of this investigation, personnel from the base who were in service on the day of the events, were questioned. Several inspections were also conducted to determine if, on February 7, 1989, operations by a troop from the Morrison Base had been ordered and executed. María Nodelia Parra was summoned to render sworn testimony about the events investigated, but she did not appear. They also requested and added to the file those documents relating to investigations completed by the Office of Criminal Investigation of Valledupar and the Municipal Representative of San Alberto.

On June 6, 1989, the 26th Court mentioned above, decided to suspend the preliminary investigation into the disappearance of Caballero-Delgado and Santana and to close the proceedings provisionally, without prejudice, so that if a person were later accused it could continue the investigation.

One cannot attribute to the Republic of Colombia negligence or indolence in the investigation. Moreover, the fact that those implicated have been absolved in the first proceeding does not signify that there is "collusion" between them and the Public Power given that the rules that criminal judges must apply require that doubts

be resolved in favor of the accused. Nor has it been demonstrated that the judges were not independent.

***

Except in reference to the duty to make reparations, this judgment of the Court lacks legal analysis proving that the Republic of Colombia violated the Convention. That is to say that the Court has made a pure and simple application of the *risk theory* which goes beyond not only what the States accepted on giving their consent to the Convention but also the previously cited case law of the Court.

The duty to make reparations is not autonomous in either the domestic or the international order. That is to say, to impose reparations it is first necessary to demonstrate a violation of the Convention. The Court has already stated in the Velásquez Rodríguez and Godínez Cruz Cases that "[t]*he State has a legal duty to take reasonable steps to prevent . . . to carry out a serious investigation . . . to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation.*" (*Ibid.*, para. 174 and para. 184, respectively.) This sequence is not accidental.

Therefore, there cannot be a violation of the Convention due to the failure to make reparation, unless that reparation arises from an injury due to another violation. Article 63(1) of the Convention recognizes it in this way and provides that:

> 1. If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.

The reasoning of the Court on the subject of reparations is even weaker as it continues. Paragraph 69 of this Judgment states that "[i]*n the instant case reparations should consist of the continuation of the judicial proceedings for the clarification of the disappearance of Isidro Caballero-Delgado and María del Carmen Santana and punishment in conformance with Colombian domestic law,*" which it then orders in the Resolutions of the Court. Interpreted strictly, one must conclude that the Court charges the Colombian Government with violation of the Convention because the internal proceedings have not yet been concluded, even though, as the Court itself sets forth (paragraph 58 of this Judgment) in citing its earlier case law, the duty to investigate is a means and not an end. In this Judgment, the Court has not imputed to Colombia a violation of the articles that provide for the fair administration of justice.

***

As sound rules of interpretation require, legal norms in treaties should be interpreted in such a way that they have an effect, and not so that they have none. In criminal law, if a person is killed by a dagger it is obvious that he was also the victim of lesions. However, the crime that was committed is murder, and no judge will interpret the norms in such a way that the dead person was the victim of "murder and lesions." It is the same in the matter of violations of human rights. The Commission does not appear to understand this point, because it claims a series of violations which are connected but absorbed in others, so that they can not be duly sustained. The Court cannot fall into the same error.

This is not to say that in the matter of human rights, several violations can not be committed simultaneously or successively, as in the Velásquez Rodríguez and Godínez Cruz Cases, in which the Court held proved prolonged detention without benefit of law with presumed torture before death. The instant case, nevertheless,

does not present the same situation. According to the records, the two persons were apparently detained at about 7:00 pm and killed before midnight, so that, although it is true that the proceedings in Colombia were for kidnapping, here what is being dealt with is the violation of the right to life (Article 4), since the Court did not find proof of torture. In the Gangaram Panday Case, the Court found that "*it [is] impossible to establish the responsibility of the State in the terms described above because, among other things, the Court is fixing responsibility for illegal detention by inference but not because it has been proved that the detention was indeed illegal or arbitrary or that the detainee was tortured.*" (*Gangaram Panday Case*, Judgment of January 21, 1994. Series C No. 16, para. 62.) If the earlier case law of the Court is of value, the Tribunal should be consistent with it.

For the above reasons I dissent, respectfully but firmly, from the conclusions of the Court stated in resolutory part 1 and in those resolutions that derive therefrom.

Rafael Nieto-Navia

Manuel Ventura-Robles
Secretary

DISSENTING OPINION OF JUDGE MAXIMO PACHECO-GOMEZ

For the following reasons, I dissent from the majority opinion with respect to resolutory part 2 of the judgment, in which the Court decided that the Republic of Colombia has not violated the Right to Humane Treatment of Isidro Caballero-Delgado and María del Carmen Santana:

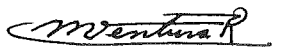
1. Article 5 of the American Convention on Human Rights establishes that

> 1. Every person has the right to have his physical, mental, and moral integrity respected.
>
> 2. No person shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.
>
> . . .

2. The statements of witnesses Elida González and Gonzalo Arias-Alturo have convincingly shown that Isidro Caballero-Delgado and María del Carmen Santana were not treated with the respect owed to their dignity as human beings.

3. For these reasons I believe that the Republic of Colombia has violated, to the detriment of Isidro Caballero-Delgado and María del Carmen Santana, the right to humane treatment as guaranteed by Article 5 of the American Convention on Human Rights.

Máximo Pacheco-Gómez
Judge



Manuel E. Ventura-Robles
Secretary

APPENDIX XVIII

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

January 12, 1995

Dear Mr. Secretary:

I have the honor to submit to you 10 copies of the complaint, with their respective annexes, submitted by the Inter-American Commission on Human Rights to the Inter-American Court of Human Rights against the Peruvian Government, in regards to Case Nº 11.154 concerning María Elena Loayza-Tamayo.

The Commission has designated Dr. Oscar Luján Fappiano as its Delegate and Dr. Edith Márquez, Executive Secretary, and Dr. Domingo E. Acevedo, Special Advisor, to act as its Attorneys.

The Commission has designated the following professionals, who at the same time represent the plaintiff before the Commission as petitioners, as Assistants: Dr. Juan Méndez, Dr. José Miguel Vivanco, Dr. Carolina Loayza, Dr. Viviana Krsticevic, Dr. Verónica Gómez and Dr. Ariel Dulitzky.

I take this opportunity to renew the assurances of my highest esteem.

Edith Márquez-Rodríguez
Executive Secretary

Dr. Manuel E. Ventura
Secretary
Inter-American Court of Human Rights
San José, Costa Rica

APPENDIX XIX

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

January 12, 1995

Dear Mr. Secretary:

I have the honor to submit to you 10 copies of the complaint, with their respective annexes, submitted by the Inter-American Commission on Human Rights to the Inter-American Court of Human Rights against the Peruvian Government, in regards to Case Nº 10.733 concerning Ernesto Rafael Castillo-Páez.

The Commission has designated Dr. Patrick Robinson to as its Delegate and Dr. Edith Márquez, Executive Secretary, and Dr. Domingo E. Acevedo, Special Advisor, to act as its Attorneys.

The Commission has designated the following professionals, who at the same time represent the plaintiff before the Commission as petitioners, as Assistants: Dr. Juan Méndez, Dr. José Miguel Vivanco, Dr. Ronald Gamarra, Dr. Kathia Salazar, Dr. Viviana Krsticevic, Dr. Verónica Gómez and Dr. Ariel Dulitzky.

I take this opportunity to renew the assurances of my highest esteem.

Edith Márquez-Rodríguez
Executive Secretary

Dr. Manuel E. Ventura
Secretary
Inter-American Court of Human Rights
San José, Costa Rica

APPENDIX XX

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

January 18, 1995

Mr Secretary:

I have the honor of transmitting ten copies of the complaint submitted by the Inter-American Commission on Human Rights before the Inter-American Court of Human Rights against the State of Guatemala concerning the case of Ana Elizabeth Paniagua-Morales, *et al.* (Case 10.154). Ten copies of the exhibits referred to in the brief are also enclosed.

The Commission is presently submitting one copy of the 15 volume case file prepared by the Guatemalan judiciary during the investigation of the "panel blanca" Case. Additionally, we are submitting one copy of the documents listed under the heading "reports" in the summary of evidence. These documents are also submitted as evidence in this case. They are, however, extremely voluminous. We respectfully suggest therefore, in the interests of economy both for the Court and the Commission, that the Court arrange to have any necessary copies of these documents made, and the Commission will reimburse the costs. Alternatively, upon notice from the Court, the Commission will arrange to make and ship the additional copies.

Please note that the judicial case file prepared by the Government was transmitted to the Commission with a number of pages missing, and with a number of pages out of order.

Professor Claudio Grossman will act as the Commission's Delegate in this case. The Commission's Attorneys are: Edith Márquez-Rodríguez, Executive Secretary; David J. Padilla, Assistant Executive Secretary; Elizabeth Abi-Mershed, Secretariat Attorney and Osvaldo Kreimer, Secretariat Attorney. The following have been appointed as assistants to the Commission, after having served as legal counsel to the original claimants: Attorney Mark Martel, Attorneys Viviana Krsticevic, Ariel Dulitsky, and Marcela Matamoros on behalf of the Center for Justice and International Law (CEJIL), and Attorneys Juan E. Méndez and José Miguel Vivanco for Human Rights Watch/Americas.

I take this opportunity to express my highest regards.

Edith Márquez-Rodríguez
Executive Secretary

Dr. Manuel E. Ventura
Secretary
Inter-American Court of Human Rights
San José, Costa Rica

APPENDIX XXI

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

May 29, 1995

Dear Mr. Secretary:

On the instructions of the Inter-American Commission on Human Rights I am pleased to send you 10 copies of the complaint submitted by this Commission to the Inter-American Court of Human Rights against the State of Argentina regarding the events that occurred on April 28, 1990, the date that Adolfo Garrido and Raúl Baigorria were detained by the Provincial Police of Mendoza. There whereabouts are unknown since that date. These events led to the submission of Case Nº 11.009.

Pursuant to the provisions of Article 26 of the Rules of Procedure of the Court I am including the Commission's Report Nº 26/94, to which Article 50 of the American Convention on Human Rights refers.

The Inter-American Commission has decided to designate Professor Michael Reisman to act as its Delegate and that he will be advised by David Padilla, Deputy Executive Secretary, and Isabel Ricupero, an attorney of the Secretariat. Additionally the Commission designated Juan Méndez and José Miguel Vivanco of Human Rights Watch/Americas, Viviana Krsticevic and Ariel Dulitzky for the Center for Justice and International Law (CEJIL), Martín Abregú for the Center for Legal and Social Studies of Buenos Aires (C.E.L.S.) and Diego Lavado and Carlos Varela-Alvarez of the Mendozan Law Firm Lavado-Varela Alvarez, as Assistants.

Please process the included complaint for consideration in accordance with the provisions of the American Convention, keeping this Commission informed about the measures and decisions adopted, at its official address: 1889 F Street, 8th fl., Washington, D.C., 20006, United States of America. It is relevant to point out that the following persons are petitioners in this case: the Center for Justice and International Law (CEJIL), Mr. Esteban Garrido, Diego Jorge Lavado and Carlos Varela-Alvarez, whose address for these purposes is at Calle Montevideo 127, 5 piso, of. 4ta, C.P. 5500, Mendoza, Argentina, I take this opportunity to renew the assurances of my highest esteem.

Edith Márquez-Rodríguez
Executive Secretary

Dr. Manuel Ventura-Robles, Secretary
Inter-American Court of Human Rights
Apartado 6906-1000
San José, Costa Rica

APPENDIX XXII

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

August 3, 1995

Dear Mr. Secretary:

I have the honor to submit to you 10 copies of the complaint, with their respective annexes, submitted by the Inter-American Commission on Human Rights to the Inter-American Court of Human Rights against the Republic of Guatemala, in regards to Case Nº 11.219 concerning Nicholas Chapman Blake.

The Commission has decided to designate Professor Claudio Grossman and Ambassador John Donaldson as its Delegates and that they will be advised by Dr. Edith Márquez, Executive Secretary; Dr. David J. Padilla, Deputy Executive Secretary; and Dr. Domingo E. Acevedo, Legal Advisor.

In conformity with that established in Article 22(2) of the Rules of Procedure of the Court, the Commission has also designated the following professionals, who at the same time represent the victim's family, as Assistants: Janelle M. Diller, Margarita Gutiérrez, Joanne M. Hoeper, Felipe González, Diego Rodríguez, Arturo González and A. James Vázquez-Azpiri.

I take this opportunity to renew the assurances of my highest esteem.

Edith Márquez-Rodríguez
Executive Secretary

Lic. Manuel E. Ventura
Secretary
Inter-American Court of Human Rights
San José, Costa Rica

APPENDIX XXIII

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

December 22, 1995

Dear Mr. Secretary:

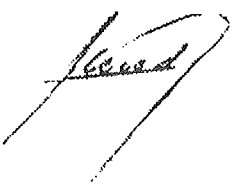
I have the honor to submit a copy of the application, presented by the Inter-American Commission on Human Rights to the Inter-American Court of Human Rights against the Republic of Ecuador, in regards to Case Nº 11.273, concerning Rafael Iván Suárez-Rosero. Additionally, allow me to inform you that ten copies of the application and its respective annexes have been sent by certified mail, today.

The Commission has decided to designate Dr. Leo Valladares as its Delegate and will be assisted by Dr. David J. Padilla, Deputy Executive Secretary, and Elizabeth H. Abi-Mershed, attorney of the Secretariat.

In conformity with that established in Article 22(2) of the Rules of Procedure of the Court, the Commission will also be assisted by the following attorneys, who represent the victim's family: Alejandro Ponce-Villacís, William Clark Harrel, Richard Wilson and Karen Musalo.

In accordance with that established in Article 26(1) of the Rules of Procedure of the Inter-American Court, modified and approved on July 16, 1993, this application is submitted in English, one of the working languages of the Court. The Commission will submit the Spanish translation within 45 days.

I take this opportunity to renew the assurances of my highest esteem.



Domingo E. Acevedo
Legal Adviser in charge of the
Executive Secretariat

Lic. Manuel E. Ventura-Robles
Secretary
Inter-American Court of Human Rights
San José, Costa Rica

APPENDIX XXIV

STATUS OF RATIFICATIONS AND ACCESSIONS

AMERICAN CONVENTION ON HUMAN RIGHTS "PACT OF SAN JOSE, COSTA RICA"

Signed at San José, Costa Rica, on November 22, 1969,
at the Inter-American Specialized Conference on Human Rights

ENTRY INTO FORCE: 18 July 1978, in accordance with Article 74(2) of the Convention

DEPOSITORY: OAS General Secretariat (Original instrument and ratifications)

TEXT: OAS Treaty Series, No. 36

UN REGISTRATION: 27 August 1979, No. 17955

Signatory Countries	**Date of Signature**	**Date of Deposit of Instrument of Ratification or Adherence**	**Date of Acceptance of the Jurisdiction of the Court**
Argentina	02/II/84	05/IX/84	05/IX/84
Barbados	20/VI/78	27/XI/82	
Bolivia		19/VII/79	27/VII/93
Brazil		25/IX/92	
Chile	22/XI/69	21/VIII/90	21/VIII/90
Colombia	22/XI/69	31/VII/73	21/VI/85
Costa Rica	22/XI/69	08/IV/70	02/VII/80
Dominica		10/VI/93	
Dominican Rep.	07/IX/77	19/IV/78	
Ecuador	22/XI/69	28/XII/77	24/VII/84
El Salvador	22/XI/69	23/VI/78	06/VI/95
Grenada	14/VII/78	18/VII/78	
Guatemala	22/XI/69	25/V/78	09/III/87
Haiti		27/IX/77	
Honduras	22/XI/69	08/IX/77	09/IX/81
Jamaica	16/IX/77	07/VIII/78	
Mexico		03/IV/82	
Nicaragua	22/XI/69	25/IX/79	12/II/91
Panama	22/XI/69	22/VI/78	09/V/90
Paraguay	22/XI/69	24/VIII/89	26/III/93

Signatory Countries	Date of Signature	Date of Deposit of Instrument of Ratification or Adherence	Date of Acceptance of the Jurisdiction of the Court
Peru	27/VII/77	28/VII/78	21/I/81
Suriname		12/XI/87	12/XI/87
Trinidad and Tobago		29/V/91	29/V/91
United States	01/VI/77		
Uruguay	22/XI/69	19/IV/85	19/IV/85
Venezuela	22/XI/69	09/VIII/77	24/VI/81

ADDITIONAL PROTOCOL TO THE AMERICAN CONVENTION ON HUMAN RIGHTS IN THE AREA OF ECONOMIC SOCIAL, AND CULTURAL RIGHTS "PROTOCOL OF SAN SALVADOR"

Signed at San Salvador, El Salvador, on November 17, 1988,
at the Eighteenth Regular Session of the General Assembly

ENTRY INTO FORCE: When eleven States have deposited their respective instrument of ratification or accession

DEPOSITORY: OAS General Secretariat (Original instrument and ratifications)

TEXT: OAS Treaty Series, No. 69.

UN REGISTRATION:

SIGNATORY COUNTRIES	DATE OF SIGNATURE	DATE OF DEPOSIT OF INSTRUMENT OF RATIFICATION OR ADHERENCE
Argentina	17/XI/88	
Bolivia	17/XI/88	
Costa Rica	17/XI/88	
Dominican Rep.	17/XI/88	
Ecuador	17/XI/88	25/III/93
El Salvador	17/XI/88	
Guatemala	17/XI/88	
Haiti	17/XI/88	
Mexico	17/XI/88	
Nicaragua	17/XI/88	
Panama	17/XI/88	18/II/93
Peru	17/XI/88	04/VI/95
Suriname		10/VII/90
Uruguay	17/XI/88	
Venezuela	27/I/89	

PROTOCOL TO THE AMERICAN CONVENTION ON HUMAN RIGHTS TO ABOLISH THE DEATH PENALTY

Signed at Asunción, Paraguay, on June 8, 1990,
at the Twentieth Regular Session of the
General Assembly

ENTRY INTO FORCE: For the States which ratify or adhere to it, upon the deposit of the respective instrument of ratification or accession

DEPOSITORY: OAS General Secretariat (Original instrument and ratifications)

TEXT: OAS, Treaty Series, No. 73

UN REGISTRATION:

SIGNATORY COUNTRIES	DATE OF SIGNATURE	DATE OF DEPOSIT OF INSTRUMENT OF RATIFICATION OR ADHRENCE
Brazil	07/VI/94	
Costa Rica	28/X/91	
Ecuador	27/VIII/90	
Nicaragua	30/VIII/90	
Panama	26/XI/90	28/VIII/91
Uruguay	02/X/90	04/IV/94
Venezuela	25/IX/90	06/X/93