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TABLE OF CONTENTS

APENDIXES

I. ORIGIN, STRUCTURE AND JURISDICTIONS OF THE COURT

A. Creation of the Court

The Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court" or "the Tribunal") was brought into being by the entry into force of the American Convention on Human Rights or the "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 has as its purpose 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 and 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,* [that judge] *shall retain* [the] *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 as many regular sessions a year as may be necessary for the proper discharge of their functions. 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 shall render his services on a permanent basis (Article 16 of the Statute and Articles 11 and 12 of the Rules of Procedure).

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, the 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 (Brazil)

The Secretary of the Court is Manuel E. Ventura-Robles (Costa Rica) and the Interim Deputy Secretary is Víctor Manuel Rodríguez-Rescia (Costa Rica), who on August 28, 1996, replaced the incumbent, Ana María Reina (Argentina), after she was granted leave by the Court.

D. Jurisdictions of the Court

The Convention confers contentious and advisory functions on the Court. 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 of the Member States to request that the Court interpret the Convention or *"other treaties concerning the protection of human rights in the American states."* Within their spheres of competence, the organs listed in the Charter of the OAS may in like manner consult the Court.

1. The Contentious Jurisdiction of the Court

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, a State may be invited 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 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 its 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.) The States Parties *"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 the General Assembly at each regular session, and it *"[s]hall specify, in particular, the cases in which a state has not complied with its judgments."* (Article 65 of the Convention.)

2. The Advisory Jurisdiction of the Court

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 from the application of the Convention, for it enables the organs of the OAS to consult

the Court within their spheres of competence.

3. Recognition of the Contentious 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.

The status of ratifications and accessions to the Convention may be found at the end of this report (Appendix XLIII).

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 Similar 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. The Court also maintains institutional ties with the European Court of Human Rights, which was established by the Council of Europe and has functions similar to those of the Inter-American Court.

II. ACTIVITIES OF THE COURT

A. XXXIII Regular Session of the Court

The Court held its XXXIII Regular Session from January 22 to February 3, 1997, 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) and Antônio A. Cançado Trindade (Brazil). Also sitting were Edgar Enrique Larraondo-Salguero, Judge *ad hoc* for the Paniagua Morales *et al.* Case against Guatemala; Julio A. Barberis, Judge *ad hoc* for the Garrido and Baigorria case against Argentina; Alfonso Novales-Aguirre, Judge *ad hoc* for the Blake Case against Guatemala, and Jorge E. Orihuela-Iberico, Judge *ad hoc* for the Neira Alegría *et al.* Case against Peru. Also present were Manuel E. Ventura-Robles, Secretary, and Ana María Reina, Deputy Secretary.

The following matters were considered during this session:

1. Paniagua Morales *et al.* Case

On January 25, 1996 the Tribunal rendered a judgment on preliminary objections in the Paniagua Morales *et al.* Case. The objections raised by the Republic of Guatemala and contested by the Inter-American Commission on Human Rights were: prescription of the right of the Commission to submit this case for a decision of the Court, and absolute legal invalidity of the application in the case.

On January 26, 1996 the Court read at a public session this judgment, in which it decided by six votes to one to reject the preliminary objections presented by Guatemala and to proceed with consideration of

the case. Judge *ad hoc* Larraondo Salguero issued a dissenting opinion (Appendix I).

2. Castillo Páez Case

On January 30, 1996 the Court rendered a judgment on the following preliminary objections: failure to exhaust domestic remedies, and inadmissibility of the petition. On February 2, 1996 the Tribunal read at a public session the judgment on preliminary objections, in which it unanimously decided to dismiss the preliminary objections raised by Guatemala, and to proceed with the consideration of the merits of the case (Appendix II). Judge Antônio A. Cançado Trindade presented a Separate Opinion.

3. Loayza Tamayo Case

On January 31, 1996 the Court delivered a judgment on the preliminary objections in this case. The preliminary objection raised by the Peru was failure to exhaust all domestic remedies. In that judgment the Court unanimously decided to dismiss the preliminary objection filed by the Government of Peru and proceed with consideration of the case (Appendix III). Judge Antônio Cançado Trindade issued a Separate Opinion.

The judgment was read at a public session held on February 2, 1996.

4. Garrido and Baigorria Case

On February 1, 1996 the Court held a public hearing to consider the merits of the case, and on Friday, February 2 it read the judgment at a public session in which it unanimously decided to take note of Argentina's recognition of the acts set forth in the application and its international responsibility for those acts. The Court granted the Parties a period of six months from the date of the Judgment to reach an agreement on reparations and compensation, and reserved the right to review and approve that agreement and, should no agreement be reached, to continue the proceedings on reparations and compensation (Appendix IV).

5. Colotenango and Carpio Nicolle Cases. Provisional Measures in the Matter of Guatemala

The Court reviewed the reports submitted by the Republic of Guatemala and the Inter-American Commission on the provisional measures ordered by the Tribunal in the Colotenango and Carpio Nicolle Cases, before the Commission. Through Orders of February 1, 1996, the Court decided to extend the provisional measures for a period of six months in both cases (Appendixes V and VI respectively).

6. Alemán Lacayo Case. Provisional Measures in the Matter of Nicaragua

On February 2, 1996 the Commission submitted to the Court a request for provisional measures in the Alemán Lacayo Case (No.11.281) before the Commission, to protect the life and personal integrity of Mr. Arnoldo Alemán-Lacayo, a then candidate for the Presidency of the Republic of Nicaragua. The Court unanimously called upon the Government of Nicaragua to adopt, forthwith, such measures as were necessary to protect the life and personal integrity of Mr. Alemán-Lacayo and to avoid irreparable damage to him; to investigate the events and punish those responsible for them, and to submit a monthly report concerning the provisional measures which it had taken. It called up the Inter-American Commission to forward to the Court its observations on such report within fifteen days of its receipt, and to include that matter on the agenda of the next regular session of the Court in order to analyze the results of the measures adopted by the Government of Nicaragua (Appendix VII).

7. Public Hearings on Reparations

Pursuant to its Judgment of January 19, 1995, the Court held a public hearing on January 26, 1996 to allow the Republic of Peru and the Inter-American Commission to voice their opinions on the reparations and costs in the Neira Alegría *et al.* Case.

On January 27, the Court heard the views of the Republic of Venezuela and of the Inter-American Commission on the reparations in the El Amparo Case, as a result of the Tribunal's Judgment of January 18, 1995, in which it had unanimously decided to take note of the recognition of responsibility expressed by the Republic of Venezuela.

8. Other Matters

On February 2, 1996 the Court issued an Order for the purpose of regulating the proceedings in regard to the admission of evidence during the processing of cases submitted to it, in which it decided that *"evidence shall be admissible only if it is indicated in the application and the reply thereto, and in the communication setting out the preliminary objections."* That Order also stated that in cases of *force majeure*, serious impediment or the emergence of supervening events as grounds for producing an item of evidence *"the Court may, in that particular instance, admit such evidence at a time other than those indicated above, provided that the other party is guaranteed the right of defense"* (Appendix VIII).

The Tribunal reviewed and approved the Annual Report of the activities of the Court for 1995 which was due to be presented to the General Assembly of the OAS in Panama City, Panama, at its XXVI Regular Session. It also reviewed and approved the external audit of the Court ordered by its President, Judge Héctor Fix-Zamudio, for the period from January 1 to December 31, 1995, which was later delivered to the OAS General Secretariat. The Court also considered administrative and budgetary matters.

B. 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 March 18 to 26, 1996 Judges Héctor Fix-Zamudio, President, and Hernán Salgado-Pesantes, Vice President, accompanied by the Secretary of the Court, Manuel E. Ventura-Robles, visited the headquarters of the OAS in Washington, D.C. in order to present the Court's 1995 Annual Report to the Committee on Juridical and Political Matters of the Permanent Council of the OAS, and the Court's 1997 draft budget to the Committee on Administrative and Budgetary Matters.

The Committee on Juridical and Political Matters presented its recommendations on the Annual Report of the Court; those recommendations were endorsed by the Permanent Council of the OAS and approved by the General Assembly in the terms indicated below.

During this visit to Washington, D.C. the Judges of the Inter-American Court were received by the Committee on Juridical and Political Matters, to which the President of the Court explained the projected budget for the year 1997. He also answered a number of questions about the proposed budget from the representatives of the Member States, who considered that the visit had been very important for their full understanding of the functioning and needs of the Tribunal.

C. XXVI Regular Session of the General Assembly of the OAS

At the XXVI Regular Session of the General Assembly of the OAS, which took place in Panama City, Panama, from June 3 to 6, 1996, the Court was represented by its President, Judge Héctor Fix-Zamudio, and its Vice President, Judge Hernán Salgado-Pesantes. The Secretary of the Court, Manuel E. Ventura-Robles, also attended.

1. Annual Report of the Court for the year 1995

Through Resolution AG/RES.1394 (XXVI-O/96) adopted at the eighth plenary meeting on June 7, 1996, the Assembly approved the Annual Report of the activities of the Court for the year 1995:

1. To note with satisfaction the work of the Inter-American Court of Human Rights the period covered by this report and to urge it to continue fulfilling its important function.

2. To thank the European Union for its contribution to enable the Court to execute the project entitled "Support for the Inter-American Court of Human Rights, Second Stage."

3. To thank the Government of the Netherlands for its donation to the Documentation Center and Joint Library of the Inter-American Court of Human Rights and the Inter-American Institute of Human Rights of 246 volumes of the "Recueil des Cours - Collected Courses" published by the Hague Academy of International Law, as well as of volumes of the discussions of workshops held by the same institution.

4. To support the Inter-American Court of Human Rights in its requests for funds to continue fulfilling the important functions entrusted to it by the American Convention on Human Rights and to formulate the corresponding recommendations.

5. To appeal to the member states of the OAS that have not yet done so to ratify or accede to the American Convention on Human Rights, "Pact of San José," and to consider accepting the compulsory jurisdiction of the Inter-American Court of Human Rights.

6. To receive and transmit to the Inter-American Court of Human Rights the observations and recommendations of the Permanent Council of the Organization of the annual report.

7. To recommend to the Inter-American Court of Human Rights that, in its annual report, in addition to the purpose of its periodic meetings with the Inter-American Commission on Human Rights, it include a detailed account of the results of those meetings.

2. Approval of the Budget of the Court for 1997

The Assembly approved the budget of the Court for 1997 in the amount of US$1,035,700 (one million thirty-five thousand and seven hundred United States dollars.)

D. XIX Special Session of the Court

The XIX Regular Session of the Court was held from June 26 to July 3, 1996 at the seat of the Court 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); Oliver Jackman (Barbados); Antônio A. Cançado Trindade (Brazil), and Alfonso Novales-Aguirre, Judge *ad hoc* in the Blake case. For reasons beyond his control, Judge Máximo Pacheco-Gómez (Chile) was unable to attend. Also in attendance were Manuel E. Ventura-Robles, Secretary, and Víctor Manuel Rodríguez-Rescia, Interim Deputy Secretary.

The following matters were considered during that session of the Court:

1. Blake Case

On July 2, 1996 the Court rendered a judgment rejecting the following preliminary objections raised by the Government of Guatemala and refuted by the Inter-American Commission: incompetence of the Court to try the case; incompetence of the Court to deal with the application by reason of its subject, and violation by the Commission of Article 29(d) of the American Convention. Judge Cançado Trindade and Judge Novales-Aguirre presented separate concurring opinions (Appendix IX).

2. Loayza Tamayo Case

On June 27, 1996 the Court decided to reject as unlawful the appeal for "nullification" lodged by the Government of Peru against the Judgment on Preliminary Objections rendered in this case on January 31, 1996, in which the Court unanimously decided to reject the preliminary objection of failure to exhaust domestic remedies, raised by the Government of the Republic of Peru, and to continue to hear the case (Appendix X).

On July 2, 1996, the Court decided to reject the motion for disqualification of witnesses raised by the Government of Peru in this case.

On the same date, the Court adopted provisional measures on behalf of María Elena Loayza-Tamayo. In endorsing the Order of the President of June 12, 1996 (Appendix XI), the Court ordered that the Government adopt forthwith such measures as were necessary to effectively ensure the physical, psychological and moral integrity of Ms. María Elena Loayza-Tamayo (Appendix XII).

3. Vogt Case. Provisional Measures in the Matter of Guatemala

On June 26, 1996 the Court held a public hearing at its seat, at which it heard the pleadings of the Government of Guatemala and the Inter-American Commission in regard to the provisional measures in the Vogt Case before the Commission. The Commission itself requested the public hearing on March 28, 1996 in order to protect the life and physical integrity of Father Daniel Joseph Vogt, a Catholic priest carrying out his evangelical work in Guatemala. On April 12, 1996 the President of the Court decided to request that the Government of the Republic of Guatemala adopt forthwith such measures as were needed to protect the life and physical integrity of Father Vogt to avoid him suffering any irreparable damage, and that it investigate the events and punish those responsible (Appendix XIII). On June 27, 1996 the Court decided to ratify all the terms of the Order delivered by the President on April 12, 1996 (Appendix XIV).

4. Serech and Saquic Case. Provisional Measures in the Matter of Guatemala

On June 27, 1996 a public hearing was held so the Government of Guatemala and the Inter-American Commission could state their pleadings with regard to the provisional measures in the Serech and Saquic Case, requested by the Commission on April 12, 1996 to protect the lives and physical integrity of Blanca Margarita Valiente de Similox, Vitalino and Sotero Similox, María Francisca Ventura-Sicán, Lucio Martínez, Maximiliano Solís, Bartolo Solís, Julio Solís-Hernández, María Magdalena Sunún-González, Héctor Solís, José Solís, Gregoria Gómez, Juan García, Eliseo Calel and Víctor Tuctuc; all in connection with the investigation of the events relating to the murders of Reverends Pascual Serech and Manuel Saquic.

On June 28, 1996 the Court decided to ratify all the terms (Appendix XVI) of the Order delivered by the President on April 24, 1996, in which he called upon the Government of Guatemala to adopt forthwith such measures as might be necessary to protect the lives and physical integrity of the above-named persons and to avoid irreparable damage to them, to investigate the acts perpetrated against them, and to punish those responsible (Appendix XV).

5. Suárez Rosero Case. Provisional Measures in the Matter of Ecuador

Through Order of June 28, 1996 (Appendix XIX), the Court decided to revoke the urgent measures issued by the President of the Court on April 12, 1996 in this case (Appendix XVII) and expanded by Order of the President of April 24 (Appendix XVIII), inasmuch as the Government of Ecuador had on March 26, 1996 submitted documentation regarding the release of Mr. Suárez-Rosero, and the Commission had on June 10, 1996 presented a communication declaring that it was desisting from its request for provisional measures.

6. Consideration of a New Case

The Court began hearing the Benavides Cevallos Case against Ecuador, submitted by the Commission on March 21, 1996.

7. Other Matters

In order to resolve problems relating to quorum, the Tribunal decided by Order of June 26, 1996 "[t]*hat the receipt of testimonial and expert evidence in the proceedings before it may be verified by the*

presence of one or more of its members at a public hearing at the seat of the Court or in situ" (Appendix XX).

In view of the leave of absence granted to Ana María Reina, Deputy Secretary of the Court, Víctor Manuel Rodríguez-Rescia was appointed Interim Deputy Secretary for the period from August 28, 1996 to August 27, 1997. Some administrative matters and proposed revisions of the Rules of Procedure of the Court were also discussed.

E. XX Special Session of the Court

From September 5 to 7, 1996 the XX Special Session of the Court was held at its seat in San José, Costa Rica, to hear the testimonial evidence in the Genie Lacayo Case. Since a quorum had not been attained, the Order of the Court of July 8, 1996 was invoked and the judges present at this Special Session were authorized to take the evidence on the merits of the case (Appendix XXI). The public hearing was held at the seat of the Court on September 5 and 6, 1996 and the testimony of a number of witnesses produced by the Commission were heard on the merits of the case. On September 6, the Court also heard the oral pleadings made by the Government of Nicaragua and the Commission with regard to the testimonies on merits thus far received.

The Judges present to hear the evidence in this case were as follows: Héctor Fix-Zamudio (Mexico), President; Hernán Salgado-Pesantes (Ecuador), Vice President; Rafael Nieto-Navia (Colombia), and Alejandro Montiel-Argüello (Nicaragua.) Judge Máximo Pacheco-Gómez (Chile) was unable to attend for reasons beyond his control. Also in attendance were Manuel E. Ventura-Robles, Secretary, and Víctor Manuel Rodríguez-Rescia, Interim Deputy Secretary.

F. XXXIV Regular Session of the Court

The XXXIV Regular Session of the Tribunal was held at its seat in San José, Costa Rica, from September 7 to 20, 1996. The composition of the Court was as follows: Héctor Fix-Zamudio (Mexico), President; Hernán Salgado-Pesantes (Ecuador), Vice President; Alejandro Montiel-Argüello (Nicaragua); Oliver Jackman (Barbados); Alirio Abreu-Burelli (Venezuela), and Antônio A. Cançado Trindade (Brazil). Judge Máximo Pacheco-Gómez (Chile) was unable to attend for reasons beyond his control. Also present were Rafael Nieto-Navia, Judge *ad hoc* designated by the Government of the Republic of Colombia for the Caballero Delgado and Santana Case, and Jorge E. Orihuela-Iberico, Judge *ad hoc* designated by the Government of Peru for the Neira Alegría *et al.* Case. Also in attendance were Manuel E. Ventura-Robles, Secretary, and Víctor Manuel Rodríguez-Rescia, Interim Deputy Secretary.

At this regular session the Court considered the following matters:

1. Caballero Delgado and Santana Case

The Court held a public hearing at its seat on September 7, 1996 to hear the pleas brought by the Inter-American Commission and the Government of Colombia on the reparations in the Caballero Delgado and Santana Case. The above hinged on the fact that on December 8, 1995 the Court had rendered a Judgment on the Merits and decided, by four votes to one, that the Government of Colombia was obligated to pay fair compensation to the relatives of the victims and that the manner and amount of the compensation would be fixed by the Court.

2. El Amparo Case

On September 20, 1996 the Court read at a public session the Judgment on Reparations of September 14, 1996 in the El Amparo Case against Venezuela (Appendix XXII). In that judgment the Court set the total reparations at US$722,332.20 to be paid to the next of kin and the surviving victims by the State of Venezuela within six months from the date of notification of that judgment.

Judge Antônio A. Cançado Trindade issued a dissenting opinion on the fifth operative paragraph of the judgment.

3. Neira Alegría *et al.* Case

On September 20, 1996 the Court read at a public session the Judgment of September 19, 1996 on Reparations in the Neira Alegría *et al.* Case against Peru (Appendix XXIII). In that judgment the Court set the total reparations at US$154,040.74 to be paid to the next of kin of the victims by the State of Peru within six months from the date of notification of the that judgment.

Judge *ad hoc* Jorge E. Orihuela-Iberico issued a dissenting opinion on the first operative paragraph of the judgment, which determined the amount of the compensation and the manner in which it was to be paid.

4. Colotenango Case. Provisional Measures in the Matter of Guatemala

On September 10, 1996 the Court decided to maintain for six months as of that date the provisional measures granted in this case (Appendix XXIV).

5. Carpio Nicolle Case. Provisional Measures in the Matter of Guatemala

On September 10, 1996 the Court decided to maintain the provisional measures set forth in the Order of September 19, 1995 and extended by the Order of February 1, 1996. The Court also decided to call upon the Government of Guatemala to report to the Court every two months from the date of notification of this Order, on the measures it had taken in the case and upon the Inter-American Commission on Human Rights to dispatch its comments on that information to the Court no later than one month from the date of its receipt (Appendix XXV).

6. Loayza Tamayo Case. Provisional Measures in the Matter of Peru

On September 13, 1996 the Court decided to call upon the Government of Peru to alter the situation in which Ms. María Elena Loayza-Tamayo was imprisoned, particularly as regards to the conditions of solitary confinement to which she was subjected, in order to comply with Article 5 of the American Convention on Human Rights and the Order of the Court of July 2, 1996. The Court also called upon the Government of Peru to provide appropriate medical treatment to Ms. Loayza Tamayo (Appendix XXVI).

7. Closure of the Velásquez Rodríguez and Godínez Cruz Cases

On September 10, 1996 the Court decided to close the Velásquez Rodríguez and Godínez Cruz Cases and to communicate that decision to the General Assembly of the Organization of American States inasmuch as both the Government of the Republic of Honduras and the Inter-American Commission had deemed the Judgments on the Compensatory Damages and on the Interpretations rendered by the Inter-American Court on July 12, 1989 and August 17, 1990 respectively to have been fulfilled (Appendixes XXVII and XXVIII respectively).

8. Castillo Páez Case

On September 10, 1996 the Court decided to dismiss as unlawful an appeal for "nullification" of the Judgment on Preliminary Objections rendered in this case on January 30, 1996, in which the Tribunal unanimously decided to dismiss the objections of the Government of Peru and to proceed with the consideration of the merits of the case (Appendix XXIX).

On that same day the Court decided to dismiss the motion brought by the Government of Peru for the disqualification of witnesses in this case.

9. Amendment of the Rules of Procedure of the Court

During this Regular Session the Court approved a sweeping reform of its Rules of Procedure, to take

effect on January 1, 1997. The amendments contained in these new Rules included authorizing the victims or their representatives to act independently only during the reparations phase of a case, and improved the order in which the various topics are set out in the Rules of Procedure (Appendix XXX).

10. Draft Cooperation Agreement between the Supreme Court of Justice of Costa Rica and the Inter-American Court of Human Rights

On July 10, 1996, by authorization of the President, the Secretary of the Court met with the Commission for Modernization of Costa Rica's Judiciary to seek its cooperation in computerization and systematizing case files. The purpose was to computerize the processing of cases before the Court -currently numbering 26- so that the Judges, Secretaries and Attorneys of the Secretariat could enjoy immediate access to the up-to-date information they may need on each specific case. The Supreme Court of Justice of Costa Rica has accumulated valuable experience in this field.

The Secretariat of the Court prepared a draft cooperation agreement which was approved by this Tribunal and dispatched to the Supreme Court of Justice of Costa Rica for its approval and, if possible, it would be signed by both parties during the first session of the Court in January 1997.

G. Visit by the Court to Washington, D.C. from December 2 to 6, 1996- Fulfillment of the Mandates of the OAS General Assembly

The seven Judges who sit on the Inter-American Court of Human Rights and its two Secretaries visited Washington, D.C. from December 2 to 6, 1996 at the invitation of the Inter-American Commission on Human Rights, in order to:

a. Take part in the Seminar on the Inter-American System of Promotion and Protection of Human Rights, organized by the Inter-American Commission, which took place at OAS Headquarters from December 2 to 4, 1996. The Judges participated in the seminar in compliance with the mandate of the General Assembly referred to below (see point 4 of this paragraph.)

b. Meet with the OAS Secretary General, Dr. César Gaviria Trujillo, on December 4 (see point 5 of this paragraph.)

c. To meet with the Inter-American Commission on Human Rights on December 5, pursuant to a number of resolutions of the OAS General Assembly, as explained below (see points 1, 3 and 4 of this paragraph.)

d. To attend a meeting of the OAS Permanent Council's Committee on Juridical and Political Matters, likewise pursuant to a mandate from the General Assembly (see point 2 of this paragraph.)

e. To hold a private meeting of the Court on December 6 to approve the Tribunal's work program for 1997.

Meeting with the Inter-American Commission on Human Rights in 1996 in compliance with a number of mandates from the General Assembly

1. Fulfillment of the Mandates of the General Assembly AG/RES.1330 (XXXV-O/95) and AG/RES.1041 (XX-O/90)

In the above resolution the General Assembly decided:

> 7. To recommend to the Inter-American Court of Human Rights that, in its annual report, in addition to the purpose of its periodic meetings with the Inter-American Commission on Human Rights, it include a detailed account of the results of those meetings.

In compliance of operative paragraph 7 of the Resolution, the following is the report of that meeting:

Meeting with the Inter-American Commission in 1996

On Thursday, December 5 the Court and the Inter-American Commission on Human Rights met for the purpose, *inter alia,* of establishing a mechanism whereby both organs could cooperate with each other, within their spheres of competence, to better protect human rights. This meeting fulfilled, for 1996, the General Assembly's mandate contained in AG/RES. 1041 (XX-O/90.)
The agenda of that meeting was as follows:

A) Topics proposed by the Inter-American Court of Human Rights

a. Fulfillment of the Mandate of the General Assembly contained in AG/RES. 1041 (XX-O/90) in which it was decided:

> To request that the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights establish coordinating mechanisms conducive to mutual cooperation within their areas of competence for the further protection of human rights.

b. Fulfillment of the General Assembly mandate contained in AG/RES. 1333 (XXV-O/95) entitled "Draft Regulations on Incompatibilities of the Members of the Inter-American Commission on Human Rights, External Advisers to the Commission, and Students Rendering Services Free of Charge as Part of their Training at the Inter-American Commission on Human Rights," reiterated in AG/RES. 1417 (XXVI-O/96.)

c. Fulfillment of the Mandates of the General Assembly contained in AG/RES. 1330 (XXXV-O/95) and AG/RES. 1394 (XXVI-O/96).

> To recommend to the Inter-American Court of Human Rights that, in its annual report, in addition to the purpose of its periodic meetings with the Inter-American Commission on Human Rights, it include a detailed account of the results of those meetings.

d. Fulfillment of the Mandate of the General Assembly AG/RES. 1404 (XXVI-O/96).

> 13. To instruct the Permanent Council to evaluate the workings of the inter-American system for the protection and promotion of human rights so as to initiate a process leading to its improvement, possibly by modifying the respective legal instruments as well as the methods and working procedures of the Inter-American Commission on Human Rights, for which it shall request the cooperation of the Commission and the Inter-American Court of Human Rights; and to instruct it to report to the General Assembly at its next regular session.
>
> ....
>
> 15. To promote dialogue between member states, between those states and the Inter-American Commission on and Court of Human Rights, and with experts in the field, so as to contribute to a process of reflection leading to improvement of the inter-American human rights system.

e. Information on the new Rules of Procedure of the Inter-American Court to take effect from January 1, 1997. Main changes. Individual participation at the reparations phase, extension of time periods for presentation of briefs, etc.

f. Date of the next meeting of the Court and the Commission in San José, Costa Rica.

B. Topics proposed by the Inter-American Commission on Human Rights

a. Cases in general, especially the following aspects:

- Ex-parte communications.
- Presentation of the Commission's evidence.
- Duration of the Proceeding.

- Representation of the Victims.

- Content of the Reparation.

- Compliance of the Judgments of the Court.

b. Presence of the Commission and the Court regarding follow-up of the themes of the Summit of the Americas.

C. Agreements reached at the meeting

At the meeting with the Inter-American Commission on December 5, 1996 the following agreements were reached:

- To hold an annual meeting for the purpose of taking joint administrative initiatives on budgetary measures to enhance their individual and shared functions.

- Pursuant to the decisions taken at the annual meetings, to bring together the governing bodies of both organs when they both present their annual reports to the OAS Permanent Council.

- To establish a mechanism for exchanging information to coordinate partial or total reforms of the regulations of both organs or amendments to the system's human rights instruments.

- To entrust the Secretaries of the Court and the Commission with the task of providing offices at their headquarters to provide the parties to a cases with a place they can use for their own business during working session and public hearings.

- That the Secretaries of both organs maintain on-going dialogue and be invited to plenary sessions.

- To exchange non-confidential agreements, decisions and resolutions the content of which can improve coordination.

- The Commission will contemplate the possibility of reforming its Regulations so that it may gather testimonial and expert evidence from both Parties in order to avoid that the Court be obliged to do so at public hearings, thus expediting a final ruling.

2. Mandate of the Permanent Council of the OAS to reform the Juridical Instruments for the Protection of Human Rights - Meeting with the Commission on Juridical and Political Matters

Through resolution AG/RES.1404 (XXVI-O/96), the General Assembly of the OAS decided:

> 13. To instruct the Permanent Council to evaluate the workings of the inter-American system for the protection and promotion of human rights so as to initiate a process leading to its improvement, possibly by modifying the respective legal instruments as well as the methods and working procedures of the Inter-American Commission on Human Rights, for which it shall request the cooperation of the Commission and the Inter-American Court of Human Rights; and to instruct it to report to the General Assembly at its next regular session.

The Commission on Juridical and Political Matters, in compliance with the mandate of the General Assembly, requested the Secretary General of the OAS, the Court, and the Inter-American Commission on Human Rights to submit papers including the practices and procedures of the organs of the system so that they could be evaluated and reforms suggested. The President of the Court instructed the Secretariat to prepare the paper insofar as it refered to the Court. Once concluded, it was presented to the Commission on Juridical and Political Matters with the title: "The Court and the Inter-American System of Human Rights, Projections and Goals," and was received with satisfaction by the Commission.

On December 5, 1996 the Commission on Juridical and Political Matters of the Organization received the full Court and its Secretaries. The purpose of the meeting was the hear the Commission members'

observations on the document. Several members of the Commission took the floor and praised the Tribunal's document for its high professional and technical quality, but they expressed concern that some Member States of the Organization had not ratified the American Convention or accepted the contentious jurisdiction of the Court. The President of the Commission on Juridical and Political Matters, Ambassador Beatriz Ramacciotti, suggested that the Court should address some concerns expressed during the working meeting and that they would be put into writing in due course.

Lastly, the Court presented the Commission with the book "Systematization of the Contentious Jurisprudence of the Inter-American Court of Human Rights, 1981-1991", prepared by the Secretariat of the Court, which constitutes a practical instrument for studying and analyzing the contentious judgments delivered by the Tribunal.

The President of the Commission further informed the President and Secretary of the Court that a meeting of governmental experts would be held next March, 1997, to provide her Commission with more information for complying with the mandate handed down by the General Assembly.

On December 12, 1996 Ambassador Ramacciotti sent a note to the President of the Court stating, in regards to the Court's visit to the Committee on Juridical and Political Matters, that:

> As agreed at the meeting, it would be of great interest for the Commission to receive individual comments from the illustrious Judges of the Court on the various aspects raised by the delegations, in particular on the subject of promotion of human rights in the new hemispheric context.

This matter will be discussed by the Court at its XXXV Regular Session.

3. Fulfillment of Resolutions AG/RES. 1333 (XXV-O/95) and AG/RES. 1417 (XXVI-O/96)

The General Assembly, through resolution AG.RES. 1333 (XXV-O/95), reiterated in resolution AG/RES. 1417 (XXVI-O/96). entitled "Draft Regulation on Incompatibilities of the Members of the Inter-American Commission on Human Rights, External Advisers of the Commission and Students rendering Free Services as Part of their Training at the Inter-American Commission on Human Rights," requested the Inter-American Commission to propose amendments to its Statute with regard to its members' incompatibilities with the persons indicated above, and asked the Court and the Commission to meet in order to harmonize the appropriate statutory texts.

This matter was discussed at the meeting between the Court and the Commission on December 5, 1996. The Commission's view was that since it had no external advisers among its staff there was no need to amend its Stature and Regulations. Inasmuch as the Commission had chose not to amend them, the Court decided not to amend its Regulations either.

4. Meeting of Experts to Discuss Improvement of the Inter-American System on Human Rights

Through resolution AG/RES. 1404 (XXVI-O/96) the General Assembly decided:

> 15. To promote dialogue between member states, between those states and the Inter-American Commission on and Court of Human Rights, and with experts in the field, so as to contribute to a process of reflection leading to improvement of the inter-American human rights system.

In fulfillment of this mandate, the Court attended the Seminar on the Inter-American System for the Promotion and Protection of Human Rights, held in Washington, D.C. from December 2 to 4, 1996.

5. Visit to the Secretary General of the OAS

On December 4, 1996 the full Court met the Secretary General of the OAS, Dr. César Gaviria Trujillo. At the meeting they discussed the difficulties encountered by the Court in complying with the mandates of

the Convention, owing to its volume of work and the large number of witnesses and experts it was obliged to hear at its public hearings. The Secretary General felt that most of the testimonies could be heard by the Inter-American Commission with the parties present. With regard to the Court's lack of funds to pay its staff adequately, the Secretary General, who had to be away from headquarters, arranged a meeting with the Chief of Cabinet, the OAS Subsecretary for Administration, and the President and Secretary of the Court. At this meeting it was decided that, before the Court signed an agreement according it administrative autonomy, it would propose in its 1998 budget that it be allocated the funds needed for such autonomy.

Also discussed with the Secretary General was the future of the inter-American system for the protection of human rights, as proposed by him in the document "Towards a New Vision of the Inter-American System of Human Rights."

H. Submission of New Contentious Cases to the Court

During 1996 four new contentious cases were submitted to the Court. They are:

1. Benavides Cevallos Case Against Ecuador

On March 21, 1996 the Commission submitted an application concerning events that occurred as of December 4, 1985, when agents of the Ecuadorian State are alleged to have arbitrarily and unlawfully detained Professor Consuelo Benavides-Cevallos and kept her incommunicado for several days before torturing and finally murdering her. The application also alleges that the State of Ecuador did not provide effective judicial remedies, that it denied Professor Benavides access to judicial protection and that investigation of the case continued to be hindered by the actions of the State. The Commission further requested the Court to order the State of Ecuador to take such measures as may be necessary to investigate the crimes denounced and punish those responsible; that the State publicly accept responsibility in the case and compensate the victims of the violations committed, including payment of due compensation to any persons who suffered as a result of the events. The Inter-American Commission asked the Court to declare that Ecuador had violated Article 1(1) (Obligation to Respect Rights), 3 (Right to Juridical Personality), 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) of the American Convention on Human Rights, to the detriment of Ms. Consuelo Benavides-Cevallos (Appendix XXXI).

Once the President had made a preliminary study of the application, he ordered that the Government be notified and the processing of the case began.

2. Cantoral Benavides Case Against Peru

This case was submitted to the Court on August 8, 1996. According to the Commission, Mr. Luis Alberto Cantoral-Benavides was unlawfully deprived of his liberty and subjected to cruel, inhuman and degrading treatment. The application also claimed that Mr. Cantoral-Benavides was tried twice for the same acts and his right to a fair trial violated. The petition claims that the Government of Peru is responsible for violating Articles 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), 25 (Right to Judicial Protection) of the American Convention on Human Rights, to the detriment of Mr. Cantoral-Benavides, all of them in relation to Article 1(1) of the Convention, which establishes the obligation to respect those rights. The Commission likewise considers that the Government of Peru is also responsible for violating Article 2 (Domestic Legal Effects) of the American Convention (Appendix XXXII).

Once the President had made a preliminary study of the application, he ordered that the Government be notified and the processing of the case began.

3. Durand and Ugarte Case Against Peru

This case, submitted for the consideration of the Court on August 8, 1996, was brought by the Commission in connection with events that occurred as of February 14 and 15, 1986 when, according to

the application, Norberto Durand-Ugarte and Gabriel Ugarte-Rivera were detained on suspicion of taking part in terrorist activities and imprisoned in the San Juan (El Frontón) Penitentiary. A riot at the penitentiary was crushed in June, 1986. Since that date, Mr. Durand-Ugarte and Mr. Ugarte-Rivera have been disappeared. However, the application adds that on July 17, 1987, the Sixth Correctional Tribunal of Lima declared the two men innocent and ordered their immediate release. According to the application, the Government of Peru is responsible for violating Articles 4 (Right to Life), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), 25 (Right to Judicial Protection) and 27 (Suspension of Guarantees) of the American Convention on Human Rights, to the detriment of those two citizens, all of them in connection with Article 1(1) of the Convention, which establishes the obligation to respect those rights. The Commission also deems the Government to responsible for violating Article 2 (Domestic Legal Effects) of the American Convention (Appendix XXXIII).

Once the President had made a preliminary study of the application, he ordered that the Government be notified and the processing of the case began.

4. Bámaca Velásquez Case Against Guatemala

This case was submitted to the Court through an application from the Inter-American Commission on Human Rights on August 30, 1996 against the State of Guatemala for the alleged disappearance, torture and summary execution of Efraín Bámaca-Velásquez in violation of the American Convention on Human Rights. The petition refers to events alleged to have occurred as of March 12, 1992, when members of Guatemala's Armed Forces captured Mr. Efraín Bámaca-Velázquez following an armed confrontation, kept him alive at various military facilities where Mr. Bámaca was tortured, then murdered, by members of the Guatemalan Armed Forces. The Commission further asks the Court to declare that Guatemala violated the Inter-American Convention to Prevent and Punish Torture, that it must investigate the events and punish those responsible; inform the relatives of Mr. Bámaca's whereabouts and return his remains to them; reform the training given to the Guatemalan Armed Forces, and pay fair compensation to the victims' relatives, as well as paying the costs. The Commission asks the Court to declare that the State of Guatemala has violated the following rights: Article 3 (Right to Juridical Personality), Article 4 (Right to Life), Article 5 (Right to Humane Treatment), Article 7 (Right to Personal Liberty), Article 8 (Right to a Fair Trial) and Article 25 (Right to Judicial Protection), all in connection with Article 1 (Obligation to Respect Rights) (Appendix XXXIV).

Once the President had made a preliminary study of the application, he ordered that the Government be notified, and the processing of the case began.

I. Cases Before the Court

To date the Court has before it sixteen contentious cases, at varying procedural stages. They are:

1. Aloeboetoe *et al.* Case against Suriname - phase of execution of judgment
2. Gangaram Panday Case against Suriname - phase of execution of judgment
3. Neira Alegría *et al.* Case against Peru - phase of execution of judgment
4. Caballero Delgado and Santana Case against Colombia - Reparations
5. Genie Lacayo Case against Nicaragua - Merits
6. El Amparo Case against Venezuela - phase of execution of judgment
7. Loayza Tamayo Case against Peru - Merits
8. Castillo Páez Case against Peru - Merits
9. Paniagua Morales *et al.* Case against Guatemala - Merits
10. Garrido and Baigorria Case against Argentina -Reparations
11. Blake Case against Guatemala - Merits
12. Suárez Rosero Case against Ecuador - Merits
13. Benavides Cevallos Case against Ecuador - Merits
14. Cantoral Benavides Case against Peru - Preliminary Objections
15. Durand and Ugarte Case against Peru - Preliminary Objections
16. Bámaca Velásquez Case against Guatemala - Merits

J. Submission of New Provisional Measures to the Court

During the period covered by this report, six new requests for provisional measures were made to the Court:

1. Alemán Lacayo Case in the Matter of Nicaragua (Appendix XXXV)
2. Suárez Rosero Case in the Matter of Ecuador (Appendix XXXVI)
3. Vogt Case in the Matter of Guatemala (Appendix XXXVII)
4. Serech and Saquic Case in the Matter of Guatemala (Appendix XXXVIII)
5. Loayza Tamayo Case in the Matter of Peru (Appendix XXXIX)
6. Giraldo Cardona Case in the Matter of Colombia (Appendix XL)

K. Provisional Measures Before the Court

Nine requests for provisional measures are currently before the Court. They are:

1. Colotenango Case in the Matter of Guatemala
2. Caballero Delgado and Santana Case in the Matter of Colombia (case before the Court)
3. Carpio Nicolle Case in the Matter of Guatemala
4. Blake Case in the Matter of Guatemala (case before the Court)
5. Vogt Case in the Matter of Guatemala
6. Serech and Saquic Case in the Matter of Guatemala
7. Alemán Lacayo Case in the Matter of Nicaragua
8. Loayza Tamayo Case in the Matter of Peru (Case before the Court)
9. Giraldo Cardona Case in the Matter of Colombia

L. Submission of the Request from the Government of Chile for Advisory Opinion OC-15

On November 13, 1996 the Government of Chile submitted, in accordance with Article 64(1) of the American Convention, a request for an advisory opinion to the Court. In that request the Government of Chile asked the Court to render its opinion as to whether the Inter-American Commission on Human Rights is empowered by Articles 50 and 51 of the American Convention to alter its report which had previously been unanimously approved, and publication of which had been ordered and the parties notified (Appendix XLI).

M. Transmittal by the Commission of a Brief from the Relatives of the Victims in the El Amparo Case

On December 12, 1996 the Inter-American Commission transmitted a brief, indicated as coming from the relatives of the victims, on the interpretation of the Judgment on Reparations delivered by the Court in this case on September 20, 1996. The document would be considered by the Court at its Regular Session to be held from January 27 to February 7, 1997 (Appendix XLII).

N. Compliance with the Judgments of the Court

The Court ordered the closing of the Velásquez Rodríguez and Godínez Cruz Cases against Honduras at the request of the Parties, who considered that the Judgments on Compensatory Damages and their Interpretations had been complied with (Appendixes XXVII and XVIII respectively).

To date the Court has not received any official communication from the Government of Suriname on the current status of compliance with the judgments on reparations in the Aloeboetoe *et al.* and Gangaram Panday Cases, which the Tribunal must receive in order to decide whether to close those cases.

O. Academic Activities of the Judges

1. Judge Antônio A. Cançado Trindade carried out the following activities:

a) He delivered the inaugural lecture at the Faculty of Law of the La Salle University in San José, Costa Rica, on January 26, on the topic "Evolution of International Environmental Law." He represented the Inter-American Court of Human Rights at the Ceremony for Presentation of the National Plan of Human Rights of Brazil, in Brasilia on May 13, 1996. From July 8 to 12, he taught a course on the Inter-American System for the Protection of Human Rights at the XXVII Course of the International Institute of Human Rights in Strasbourg, France.

b) Judge Antônio A. Cançado Trindade delivered three lectures on the European and Inter-American Courts of Human Rights from August 28 to 30 at the XXIII Course on International Law of the OAS Inter-American Juridical Committee, held in Rio de Janeiro, Brazil. He was also General Rapporteur on "Universalism and Regionalism in the International Protection of Human Rights" at the XIX Congress of the Hispano-Luso-American Institute of International Law (IHLADI), held in Lisbon, Portugal, on September 25

c) As a guest of the International Committee of the Red Cross (Geneva), Judge Antônio A. Cançado Trindade delivered four lectures, from November 7 to 14, in Hong Kong and Macau, South of China, on "The Current Status and Prospects of International Humanitarian Law", and "The Right to Due Legal Process in International Human Rights Law."

2. Judge Alirio Abreu-Burelli represented the Inter-American Court of Human Rights at the Specialized Conference on the Draft American Convention against Corruption, held in Caracas, Venezuela, from March 27 to 29, 1996, organized by the General Secretariat of the Organization of American States.

3. Judge Alejandro Montiel-Argüello attended the XIX Congress of the Hispano-Luso-American Institute of International Law, held in Lisbon, Portugal, in September 1996.

4. The Judges of the Court attended the Seminar on "The Inter-American System for the Promotion and Protection of Human Rights" held in Washington, D.C. from December 2 to 4, 1996. Judges Fix-Zamudio, Salgado-Pesantes and Montiel-Argüello sat on Panel VI on the Inter-American Court - Contentious and Advisory Jurisdiction, while Judge Cançado Trindade chaired Panel II on "Individual Cases-Admissibility."

P. Academic Activities of the Secretary, Interim Deputy Secretary, and the Attorneys of the Court

The Secretary was invited by the Catholic Pontifical University of Chile, Program of Postgraduate Studies in Constitutional Law, to deliver two lectures on May 7 and 14, 1996. The topic of the first was "The

Contentious Function of the Inter-American Court of Human Rights" and the second on "The Advisory Function of the Inter-American Court of Human Rights." On May 10, 1996, at the invitation of the Faculty of Law of the University of Chile, he also delivered a lecture on the Inter-American Court of Human Rights. He was also received in special audience by the Full Illustrious Supreme Court of Chile.

Ms. Tathiana Flores-Acuña, an attorney of the Court, attended the Central American Human Rights Forum organized by the Central American Commission on Human Rights (CODEHUCA) in May 1996; the Workshop on the United Nations Human Rights Committee organized by the Central American Commission on Human Rights (CODEHUCA) in June 1996, and the Conference on Civilian-Military Relations organized by the Arias Foundation from August 1 to 3 in San José, Costa Rica.

At the XIV Interdisciplinary Course on Human Rights, organized by the Inter-American Institute of Human Rights in June 1996, the officials of the Court, at the Institute's request, led a workshop on the Inter-American Court, which included an analysis of its contentious and advisory functions and its provisional measures in the light of the Court's jurisprudence.

In July 1996, Mr. Víctor Rodríguez-Rescia was awarded a fellowship by the Inter-American Institute of Human Rights to attend the XXVII session of the International Institute of Human Rights in Strasbourg.

On July 23, 1996 Mr. William Cartwright, an attorney of the Court, led a seminar at its seat on the jurisprudence of the Court and the inter-American system for the protection of human rights for 30 students from Loyola University, California, United States and various representatives of the American Bar Association.

Mr. Víctor Hugo Madrigal-Borloz, an attorney of the Court, was awarded a fellowship by the Danish Center for Human Rights to attend the "Human Rights Course" organized by the Center from August 4 to 22 in Denmark, at which he delivered a lecture on the Court's activities and the inter-American system of human rights.

In October of 1996 Secretariat attorneys William Cartwright and Derek Strain gave a course at the seat of the Court to nine North American students from Friends University on the Inter-American System for the Protection of Human Rights.

From October 7 to 11, 1996, at the invitation of the academic authorities of the University of San José, the Secretary and attorneys of the Court led a seminar on the Inter-American System for the Protection of Human Rights at the University in San José, Costa Rica.

The Secretary, Mr. Manuel E. Ventura-Robles, was invited by the Central American Commission on Human Rights (CODEHUCA) to deliver a lecture in Guatemala on the inter-American human rights system and the proceedings of the Inter-American Court from September 30 to October 2, 1996

From December 2 to 4, 1996 the Secretary of the Court, Mr. Manuel E. Ventura-Robles presented the topic "The Experience of the Court in regard to the Protection of Human Rights. Challenges for the Future" at the seminar on "The Inter-American System for the Promotion and Protection of Human Rights" held in Washington, D.C. and organized by the Inter-American Commission on Human Rights.

APPENDIX I

THE INTER-AMERICAN COURT OF HUMAN RIGHTS

PANIAGUA MORALES *ET AL.* CASE

PRELIMINARY OBJECTIONS

JUDGMENT OF JANUARY 25, 1996

In the Paniagua Morales *et al.* 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
Alirio Abreu-Burelli, Judge
Antônio A. Cançado Trindade, Judge
Edgar E. Larraondo-Salguero, Judge *ad hoc*

also present:

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

pursuant to Article 31(6) of the Rules of Procedure of the Inter-American Court of Human Rights (hereinafter "the Rules of Procedure"), renders the following judgment on preliminary objections interposed by the Government of the Republic of Guatemala (hereinafter "the Government" or "Guatemala").

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* Judge Oliver Jackman recused himself in this case because he had participated in several stages of the case during its consideration by the Inter-American Commission on Human Rights when he was a member of the Commission.

I

1. This case was submitted to the Inter-American Court of Human Rights (hereinafter "the Court") by the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") by note of January 18, 1995, which was received the following day. The case originated with a petition (No. 10.154) against Guatemala lodged with the Secretariat of the Commission on February 10, 1988.

2. In referring 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 Article 26 *et seq.* of the Rules of Procedure. The Inter-American Commission submitted this case to the Court for a decision as to whether Guatemala was responsible for alleged "*acts of kidnapping, arbitrary detention, inhumane treatment, torture, and murder committed by agents of the State of Guatemala against eleven victims*" during 1987 and 1988 (the case is also known as the "White Van Case" owing to the use of a vehicle of this type as part of the *modus operandi*), and for a declaration that Guatemala had violated the following norms:

> Article 4 of the American Convention (Right to Life) of the following victims: Ana Elizabeth Paniagua Morales, Julián Salomón Gómez Ayala, William Otilio González Rivera, Pablo Corado Barrientos, Manuel de Jesús González López, and Erik Leonardo Chinchilla.
>
> Articles 5 (Right to Humane Treatment), and 7 (Right to Personal Liberty) of the American Convention, and the obligations set forth in Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Ana Elizabeth Paniagua Morales, Julián Salomón Gómez Ayala, William Otilio González Rivera, Pablo Corado Barrientos, Manuel de Jesús González López, Augusto Angárita Ramírez, Doris Torres Gil, José Antonio Montenegro, Oscar Vásquez, and Marco Antonio Montes Letona.
>
> Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the Convention, which have been violated and continue to be violated to the detriment of all of the victims in this case.
>
> Article 1(1) (Obligation to Respect Rights) as a result of the failure to fulfill the rights set forth in the Convention, as described above.

Additionally, the Commission asked the Court to demand that the Government identify and punish those responsible for the violations described above, compensate the victims of those violations in accordance with Article 63(1) of the Convention, and pay the costs and expenses incurred by the victims and their families in processing this case before the Commission and the Court, as well as reasonable honoraria to their lawyers.

3. The Inter-American Commission named as its Delegate, Claudio Grossman, and as its Attorneys, Edith Márquez-Rodríguez, David Padilla, Elizabeth Abi-Mershed, and Osvaldo Kreimer. In addition, the Commission named as Assistants the following persons who are the legal representatives of the original petitioners: Mark Martel, Viviana Krsticevic, Ariel E. Dulitzky, Marcela Matamoros, Juan Méndez, and José Miguel Vivanco.

4. On January 19, 1995, the Secretariat of the Court (hereinafter "the Secretariat") acknowledged receipt of the fax from the Commission on the same date on which the Commission submitted the case to the Court. On that date, the Commission acknowledged receipt of the Secretariat's letter and stated that, only for the purpose of registration, the transmission of the application was initiated in its offices before midnight on January 18, 1995 (Costa Rican time, location of the seat of the Court). In a note of January 20 of the same year, the Secretariat of the Commission ratified the terms of the earlier letter and stated that the first page of the application had been received at the Court at "*1:52 hours and the last at 3:17 hours (Costa Rican time) on the day of January 19, 1995.*" In a letter of January 25, 1995, the Commission clarified that "*the time indicated on the cover page of the fax was that registered by the fax machine of the Commission and not that of the Court*" and that, moreover, this time was an hour ahead of the actual time because the Department of Material Resources of the Organization of American States (hereinafter the "OAS") generally does not adjust those machines during the winter schedule. For

that reason "*as the hour of Costa Rica was one hour earlier than that of Washington, D.C.* [the seat of the Commission], *it meant that the Court began to receive the application at 11:52 (Costa Rican time).*" Submitted as an attachment to this letter was a memorandum from the Director of the Department of Human Resources of the O.A.S. certifying the change of hour of the fax of the Commission.

5. The President of the Court (hereinafter "the President"), after making a preliminary review of the application and once the Commission had corrected the deficiencies listed in the Secretariat's letter of February 9, 1995, authorized the processing of the case. By note of March 6, 1995, the Government was officially notified of the application and was granted a period of two weeks to appoint an Agent and Alternate Agent; a period of three months to answer the application; and a period of thirty days to present preliminary objections. In another communication of the same date the Government was invited to appoint a Judge *ad hoc.*

6. By note of March 20, 1995, the Government appointed Acisclo Valledares-Molina and Vicente Arranz-Sanz as Agent and Alternate Agent respectively. On April 19 of the same year it named Edgar Enrique Larraondo-Salguero as Judge *ad hoc.* On August 29, 1995, the Government named Alfonso Novales-Aguirre as Judge *ad hoc* in substitution of Larraondo-Salguero. The Court, by Order of September 11, 1995, decided "[n]*ot to admit the attempted replacement of Judge ad hoc Edgar Enrique Larraondo-Salguero by Attorney Alfonso Novales-Aguirre.*"

7. On April 3, 1995, in accordance with Article 31 of the Rules of Procedure, the Government submitted a brief containing its preliminary objections. (see *infra* para. 23)

8. In that same writing the Government asked the Court to decide expressly, as it may at the stage of preliminary objections, on the suspension of the proceedings on the merits. The Court, by Order of May 17, 1995, declared this request to be inadmissible and continued processing the case in its distinct procedural stages, since the requested suspension was not in response to an "exceptional situation," and no arguments were presented to justify it.

9. The Secretariat, in accordance with Article 31(3) of the Rules of Procedure, transmitted the preliminary objections to the Commission and granted it a period of thirty days to submit its arguments. The Commission submitted them on May 4, 1995, in a brief in which it refuted the objections "as factually and legally completely groundless."

10. The President, by Order of May 20, 1995, and in accordance with Article 31(6) of the Rules of Procedure, summoned the parties to a public hearing to be held on September 14, 1995, for the presentation of oral arguments on the preliminary objections. The Commission requested a postponement of the hearing, and the President, by means of an Order of June 30, 1995 granted the request and set September 16, 1995, as the date for the hearing.

11. On June 2, 1995 the Government submitted its reply to the application.

12. The public hearing took place at the seat of the Court on September 16, 1995, at which there appeared,

for the Government of the Republic of Guatemala:

Acisclo Valladares-Molina, Agent
Vicente Arranz-Sanz, Alternate Agent
Denis Alonzo-Mazariegos, Assistant
Ramiro Ordóñez-Jonama, Assistant
Alfonso Novales-Aguirre, Assistant
Cruz Munguía-Sosa, Assistant

for the Inter-American Commission on Human Rights:

Claudio Grossman, Delegate
David J. Padilla, Attorney
Elizabeth Abi-Mershed, Attorney
Mark Martel, Assistant
Ariel Dulitzky, Assistant
Marcela Matamoros, Assistant

II

13. The following paragraphs summarize the events, circumstances and processing of this case before the Commission as they were set forth in the application and its attachments submitted to the Court.

14. According to the application, in every one of the crimes alleged therein the "*modus operandi*" was the following: heavily armed members of the Treasury Police of Guatemala forcibly detained persons and forced them into a white van. These kidnappings took place in Guatemala City at the end of December 1987 and February 1988, with the exception of one kidnapping and execution which occurred in June 1987. In all the alleged cases, agents of the Treasury Police detained the persons without any judicial order. Some of those detained were taken to the facilities of the Treasury Police and tortured. Others were killed after being tortured, and their bodies were left in the streets or outskirts of Guatemala City a few days after the detentions.

15. On February 11, 1988, the Commission transmitted to the Government the pertinent parts of the petition, which denounced the kidnapping of Ana Elizabeth Paniagua Morales, and the Commission requested information from the Government. On February 16 of the same year, the Government answered, confirming the disappearance of the victim and the discovery of her body, stating that the competent authorities were investigating the case, but that the family had refused to provide information to contribute to the apprehension of those responsible for the crime.

16. On February 13, 1989, the petitioners sent the Commission additional information concerning the circumstances of the kidnapping of Ana Elizabeth Paniagua Morales. They also denounced the assassination of a young student, Erik Leonardo Chinchilla, which occurred on February 17, 1988. Subsequently they requested that the Commission include that victim in the case.

17. On September 28, 1990, during its 78th regular session and on September 23, 1991, in its 80th regular session, the Commission held hearings on the case at which both parties were represented.

18. The petitioners, in a letter of December 30, 1991, forwarded an expanded list of victims in accordance with the position taken earlier, that the case involved an undetermined number of victims. The letter stated that another five persons had been kidnapped and killed, and five more had been kidnapped and illegally detained. All of them had previously been identified as victims in the political and judicial investigation in Guatemala.

19. Oscar Vásquez, who was a victim and witness in this case, and his son were murdered on September 11, 1994, five days before the final public hearing on the case was to be held before the Commission. On December 13, 1994, the petitioners sent a request for precautionary measures to protect seven members of the family of Oscar Vásquez. That same day, the Commission requested that the Government take all the necessary measures to protect the life, physical integrity, and liberty of the members of the family named in the request.

20. On September 16, 1994, during the 87th regular session of the Commission, another hearing was held on the case at the request of the petitioners. It was attended by representatives of both parties. On

September 23, 1994, the Commission approved Report 23/94, in the dispositive part of which it decided the following:

> 1. To admit the present case.
>
> 2. To declare that the Government of Guatemala has not complied with its duties to respect the rights and freedoms recognized in the American Convention on Human Rights, and to ensure their exercise, according to Article 1 of the Convention.
>
> 3. To declare that the Government of Guatemala violated the human rights of the victims in the instant case as provided for in Articles 4(1), 5(1) and 5(2), 7, 24, and 25 of the American Convention.
>
> 4. To recommend to the Government of Guatemala that it adopt the following measures:
>
> a. investigate the violations which took place in the present case, and judge and punish those responsible;
>
> b. adopt the necessary measures to avoid the reoccurrence of these violations in the future.
>
> c. pay just compensation to the victims' next of kin.
>
> 5. To transmit this report to the Government of Guatemala and grant the Government a period of 60 days to implement the recommendations contained herein. The 60 day period shall begin as of the date of remission of this report. During this period, in keeping with the mandate of Article 47(6) of the Regulations of the Commission, the Government is not authorized to publish this report.
>
> 6. To submit this case to the Inter-American Court of Human Rights should the Government of Guatemala not undertake to comply with all the recommendations contained in the present report.

21. This report was transmitted by the Commission to the Government on October 20, 1994. The Commission requested that the Government, within a period of sixty days, inform it of the measures adopted to resolve the denounced situation. The Government did not respond to this request or send its observations on Report 23/94, nor did it request reconsideration of the Report.

III

22. The Court has jurisdiction to hear the instant case. Guatemala has been a State Party to the Convention since May 25, 1978, and accepted the contentious jurisdiction of the Court on March 9, 1987.

IV

23. The Government presented the following preliminary objections:

> 1) Objection of the prescription of the right of the Commission to submit this case for a decision of the Court, as provided by Article 61(1) of the American Convention on Human Rights, because this right was not exercised within the period of three months set forth in Article 51(1) of the Convention.
>
> 2) Objection of the absolute legal invalidity of the application in the present case submitted to the Court by the Commission against the Republic of Guatemala on January 19, 1995, for obvious and material violations,
>
> 2.1- of Article 51(1) of the American Convention on Human Rights, for filing the application when the period fixed by the Convention had expired, which is to say, that the application was filed out of time,
>
> 2.2- of Article 26 of the Rules of Procedure of the Court, for not fulfilling the requirements listed therein for a case to be referred to the Court under Article 61(1) of the Convention.

V

24. The Court will now begin examining the first of these preliminary objections. The Government maintains that, in accordance with Article 51 of the American Convention, the Commission had a period of three months from the date of the transmittal of the report referred to in Article 51(1) of the Convention to exercise its right to submit the present case for a decision of the Court. The Government adds that the period began to run on October 20, 1994, the date on which the Commission remitted the report to the Minister of Foreign Relations of Guatemala, and that the period of three months is the equivalent of ninety calendar days. Consequently, it concludes that the period within which the Commission could submit the application to the Court, expired on January 17, 1995, at midnight. The Government alleges that, as the Commission did not submit the case to the Court within this period, this right was extinguished.

25. The Commission submits, in relation to this preliminary objection, that the application was submitted within the three months, calculated from the date of transmission of Report 23/94 to Guatemala, which was October 20, 1994. The Commission maintains that the term "month" refers to a calendar month, and that to interpret the expression three months from Article 51(1) of the Convention as ninety days would be inconsistent with the text and ordinary meaning of the terms of that provision.

According to the Commission, Article 51(1) should be interpreted in harmony with the spirit of the provision, which is to offer the State the opportunity to resolve the matter by complying with the recommendations of the Commission. The Commission concludes that the period of three months which began on October 20, 1994, expired on January 20, 1995. Consequently, the application which was transmitted to the Court on January 18, 1995, was submitted within that period.

26. The Court will not analyze whether the application was submitted within ninety days of October 20, 1994, since it is of the opinion that, in accordance with Article 51(1) of the American Convention, the period of three months should be based on the Gregorian calendar month, which is to say, from date to date.

27. Although the question argued in this case has not been raised previously, it has been the regular practice of the Court to compute the period of three months referred to in Article 51(1) of the Convention from date to date. (*Aloeboetoe et al. Case*, Judgment of December 4, 1991. Series C No. 11; *Gangaram Panday Case*, Judgment of January 21, 1994. Series C No 16; *Genie Lacayo Case, Preliminary Objections*, Judgment of January 27, 1995. Series C No. 21; *Caballero Delgado and Santana Case*, Judgment of December 8, 1995. Series C No. 22; *Neira Alegría et al. Case*, Judgment of January 19, 1995. Series C No. 20; *Maqueda Case*, Resolution of January 17, 1995. Series C No. 18; *El Amparo Case*, Judgment of January 18, 1995. Series C No. 19).

28. In the *Caballero Delgado and Santana Case* (*Preliminary Objections*, Judgment of January 21, 1994. Series C No. 17), the Court inadvertently used the expression "90 days" as the equivalent of "three months" (paragraph 39) when referring to an argument of the Commission, and applied the two expressions synonymously (paragraph 43). Nevertheless, in that same case, the Court applied the criteria of three calendar months, as it is in paragraph 39 of that judgment, which applied a period of three months from October 17, 1991 to January 17, 1992. (if the period had been computed in days and not by the Gregorian calendar, ninety-three days would have transpired). Also in the *Neira Alegría et al. Case* (*Preliminary Objections*, Judgment of December 11, 1991. Series C No. 13, paras. 32-34, the Court applied the period of three months from June 11, 1990 to September 11, 1990. (three calendar months made up of ninety-three days)

29. The Court decides that, in accordance with Article 51(1) of the American Convention, the Inter-American Commission has a period of three months from the transmission of the Report referred to in Article 50(1) of the Convention, to submit the case to the Court. The expression *"period of three months"* should be understood in its ordinary meaning. According to the Dictionary of the Royal

Academy of the Spanish Language, "*period*" "[is the] *term or time indicated for something*" and "*month*" "[is the] *number of consecutive days from the one indicated to another of the same date in the following month.*" Additionally, the Vienna Convention on the Law of Treaties (Article 31(1)) considers in its rules of interpretation, the ordinary meaning of the words, as well as the context, and the object and purpose of the treaty (see *infra* para. 40).

30. In the majority of the legislation of Latin American countries, it is established that the first and last day of a period of months or years should have the same numbering in the respective months. The period of a month could, therefore, be of 28, 29, 30, or 31 days. The Law of the Judiciary of Guatemala, approved by Decree 2.89 of January 10, 1989, establishes in Chapter V, Article 45, letter c) that "*months and years are calculated by the number of days which correspond to them in the Gregorian calendar. Years and months end on the eve of the date on which they began to be counted.*"

In view of the foregoing, the Court rejects the first preliminary objection interposed by the Government.

VII

31. The Government maintains in its second preliminary objection, that the introduction of the application via fax and without the transmittal of the ten copies referred to in Article 26 of the Rules of Procedure, constitutes an omission "*of the legal requirements that must be fulfilled to refer a case to the Court.*"

32. In respect to the first of the arguments of this preliminary objection, the Court, having made a preliminary study of the files on this point, makes the following observations: in the cases involving Honduras, the applications were received on April 24, 1986 by telex; in the *Aloeboetoe et al. Case* and the *Gangaram Panday Case* both applications were received by fax on August 27, 1990, and on April 1, 1991, the memoranda together with the original documentation was received via courier; the *Neira Alegría et al. Case* was received on October 10, 1990, when the application was submitted together with Report 43/90 of May 14, 1990 and the memorial was submitted by fax on March 28, 1991; the *Cayara Case* was received on June 3, 1991, via fax and on June 7, 1991, the original documents were received by courier, and on February 14, 1992, the Court received via courier a second application together with the original documentation.

33. In the *Caballero Delgado and Santana Case,* the proceedings were initiated in accordance with the current Rules of Procedure. In that case, the application was received by fax on December 24, 1992, and on January 4, 1993, ten copies of the original application with their attachments were received; the *Genie Lacayo Case* was submitted on January 6, 1994, by fax, and on January 12, 1994, the ten copies of the original application and the attachments were delivered by courier; the *El Amparo Case* was received on January 16, 1994, by fax, and on January 21, 1994, the ten copies of the original application and the attachments were received; the *Maqueda Case* was submitted by fax on May 25, 1994, and on June 2, 1994, ten copies of the original application and its attachments were received; the *Castillo Páez Case* came in by fax on January 13, 1995, and on January 17, 1995, ten copies of the original application with attachments were received by courier; the *Loayza Tamayo* Case was submitted by fax on January 12, 1995, and on January 17, 1995, ten copies of the original application and the attachments were delivered by courier; the *Garrido and Baigorria Case* was filed on May 29, 1995, by fax and on June 5, 1995, the original application and its attachments were received by courier; the *Blake Case* was received on August 3, 1995, via fax, and on August 11, 1995, the original application and its attachments were received by courier; and the *Suárez Rosero Case* was filed by fax on December 22, 1995, and on January 5, 1996, the original documents together with the attachments were received.

34. From the foregoing, it can be determined that it has been a constant practice, not objected to by the Governments, to file the application with the Court initially by telex or fax, followed by the submission, a few days later, of the original documents and the ten copies referred to in Article 26 of the Rules of Procedure. In none of the cases listed did the lapse of time between the filing of the

application by fax and the reception of the original documents together with ten copies, exceed fourteen calendar days.

35. The Court does not find sufficient cause to modify this practice, inasmuch as every court should keep pace with contemporary life and make use of technological advances and modern electronic means to facilitate their communications with the parties to the proceedings, so that these communications may be made with due ease and speed. This is applicable, *a fortiori*, to an international human rights tribunal, as it allows the Court to act with security and with normal precautions in the context of the difficulties created by the distance between the tribunal and the parties. Taken together with the fact that the document originally sent by fax is forwarded within a few days of the fax, no valid grounds exist for a claim that the procedural rights of the parties are harmed in such a way as to rule out the fax as a means of communication.

36. For these reasons, the Court considers that the filing of the application by fax is valid, and, therefore, the objection of untimeliness cannot be grounded on that fact.

37. With respect to the second argument of this preliminary objection, that the failure to file the application in ten copies represents non-fulfillment of a "basic requirement," in violation of Article 26 of the Rules of Procedure, which should lead to the rejection of the application, this Court considers that, although the Commission did not literally fulfill this regulatory requirement, this fact should be analyzed in the light of Article 26, in conjunction with Article 27 of the Rules of Procedure. According to Article 27, the President shall, during the preliminary review of the application, request the applicant to correct any deficiencies derived from the omission of "basic requirements." If the President is granted the authority to order the correction of "basic requirements" which have been omitted, as has actually happened in this case, then there are better grounds, within certain limits of reasonableness and timeliness, for subsequent acceptance of the ten copies of the application. Moreover, this is a formal requirement, breach of which does not necessarily leave a party defenseless or lead to procedural unbalance or inequality as between the parties.

38. It is appropriate in this case to recall the criteria laid down by the Court to the effect that:

> ... the procedural system is a means of attaining justice and that the latter cannot be sacrificed for the sake of mere formalities. Keeping within certain timely and reasonable limits, some omissions or delays in complying with procedure may be excused, provided that a suitable balance between justice and legal certainty is preserved. (*Cayara Case, Preliminary Objections*, Judgment of February 3, 1993. Series C No. 14, para. 42)

39. This Court determines that there is no reason to alter the practice by which the party bringing the case submits the ten copies of the application subsequent to its filing by fax, but always within the above-mentioned limits of timeliness and reasonableness. The submission of the copies a few days after the filing of the application allows a reasonable minimum of time for the President to undertake a preliminary review of the application and even to take procedural measures to correct any defects which may come to light.

40. As was stated earlier (see *supra* para. 29), the ordinary meaning of the terms, the context, and the object and purpose, in the interpretation of treaties, are the elements to be taken into account. These elements are inter-connected in Article 31(1) of the Vienna Convention of the Law of Treaties, indicating that the process of interpretation should be taken as a whole. It would be contrary to the object and purpose of the Convention, and would fail to take into account its context, to apply the regulatory norms without the criterion of reasonableness, resulting in an imbalance between the parties and compromising the realization of justice.

41. As the Court has stated:

> "Reasonableness" implies a value judgment and, when applied to a law, conformity to the principles of common sense. It is also used in reference to the parameters of interpretation of treaties and, therefore,

> of the Convention. Reasonable means just, proportionate and equitable, in opposition to unjust, absurd and arbitrary. It is a qualifier with an axiological content which implies opinion but, in another sense, may be employed juridically as, in fact, the courts frequently do, in that any state activity should be not only valid but reasonable. (*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, para. 33).

42. It is not possible to apply the procedural rules of the American Convention without giving their proper weight to its context, object, and purpose, as a basis for the interpretation of all the applicable provisions in a given case. "*What is essential*," as the Court has pointed out, "*is that the conditions necessary for the preservation of the procedural rights of the parties not be diminished or unbalanced, and that the objectives of the different procedures be met.*" (*Velásquez Rodríguez Case, Preliminary Objections*, Judgment of June 26, 1987. Series C No. 1, para. 33; *Fairén Garbi and Solís Corrales Case, Preliminary Objections*, Judgment of June 26, 1987. Series C No. 2, para. 38 and the *Godinez Cruz Case, Preliminary Objections*, Judgment of June 26, 1987. Series C No. 3, para. 36). The formal defects raised by the Government do not constitute a procedural injury to the State, in this case, of a kind that would justify according to the purely literal meaning of a regulatory norm preference over the superior interest of the realization of justice in the application of the American Convention.

For the reasons stated, the Court rejects, as groundless, the second preliminary objection.

VII

Now, therefore,

THE COURT,

DECIDES:

by six votes to one,

1. To reject the preliminary objections presented by the Government of the Republic of Guatemala.

2. To proceed with the consideration of the instant case.

Dissenting Vote of Judge *ad hoc* Edgar E. Larraondo-Salguero.

Done in Spanish and English, the Spanish text being authentic in San José, Costa Rica, January 25, 1996.

Héctor Fix-Zamudio
President

Hernán Salgado-Pesantes

Alejandro Montiel-Argüello

Máximo Pacheco-Gómez

Alirio Abreu-Burelli

Antônio A. Cançado Trindade

Edgar E. Larraondo-Salguero

Judge *ad hoc*

Manuel E. Ventura-Robles
Secretary

Read at a public session at the seat of the Court in San Jose, Costa Rica on January 26, 1996.

So ordered,

Héctor Fix-Zamudio
President

Manuel E. Ventura-Robles
Secretary

Dissenting Opinion of Judge *ad hoc*

Dr. Edgar Enrique Larraondo-Salguero

Case: The White Van
(Ana Elizabeth Paniagua Morales *et al.*)
File: 10.154

I DISSENT from the respectable judgment of the majority of Judges for reasons which I will explain below:

In procedural law the legality of forms is based on the manner and way in which the acts that make up the proceedings must be set forth, which is, in the time, place and order prescribed by law.

This is valid for all types of proceedings, whatever their nature and jurisdiction, so as to avoid falling into procedural anarchy; for law lacking certainty ceases to be law. In the present case the applicable laws: the American Convention of Human Rights, the Rules of Procedure of the Inter-American Commission on Human Rights, and the Rules of Procedure and the Statute of the Inter-American Court of Human Rights contain provisions that invest the proceedings before the Court with solemn formalities. These formalities tend to assure respect for the principles of procedural equality and legal certainty. In this respect the Court in the *Judgment of January 21, 1994,* in the *Caballero Delgado and Santana Case*, paragraph 52, page 24 stated:

> Nevertheless, the Court must point out that there is no reason why the Commission should not **faithfully** follow the procedural rules. As it has said before and repeats today, although it is true that the object and purpose of the Convention can never be sacrificed to procedure, the latter is, in the interests of legal certainty binding on the Commission. (emphasis by the Judge *ad hoc*)

In the instant case, the State of Guatemala submitted as preliminary objections, extinguishment of the right to file. Both objections arise from the same causes: the passage of time, and the Commission's failure to comply with the three month period starting from the date of transmission of its report to the State of Guatemala, which it is granted by Article 51(1) of the American Convention on Human Rights, in order to submit the case for a decision of the Court. As a result, the Commission's right to file was extinguished, due to its delay in taking that procedural action.

In view of the fact that the rule establishing limitations is applicable to substantive law, this objection applies equally when the right that the Commission attempts to assert has terminated in accordance with the Convention, due to the Commission's negligence in submitting a matter of merit for a decision of the Court during the period prescribed, a period of three months, according to the article cited above.

On October 20, 1994, the report referred to in Article 51(1) was remitted to the Government. The application was filed with the Court by the Commission out of time and in an anomalous manner,

inasmuch as it was sent in the early hours of January 19, 1995, when the period, which ended on January 17, 1995, had already expired.

It seems extreme to think that in international justice two days delay in the filing of an application is irrelevant when it is for the purpose of the protection of human rights. Nevertheless this does not correspond to reality. The Commission itself in the public hearing which took place on September 16, 1995, presented a photocopy of the Judgment of September 22, 1993, rendered by the European Court of Human Rights, in the Instituto Di Vigilanza Case, in which it decided that the request to send the case to the (European) Court was inadmissible because it was made out of time, given that the Commission exceeded **by only one day** the period permitted. The Inter-American Court of Human Rights in the *Cayara Case, Preliminary Objections, Judgment of February 3, 1993,* stated in paragraph 38:

> Nevertheless, legal certainty requires that States know what norms they are to follow. The Commission cannot be permitted to apply the time limits in arbitrary fashion, particularly when these are spelled out in the Convention.

There is, thus, jurisprudence in support of the thesis maintained, without implying excessive formalism.

The Commission argues that the period of three months referred to in Article 51(1) of the Convention should be computed in conformity with the number of days that correspond to the calendar month. This is not the case, since, for the sake of legal certainty, the legally accepted meaning of the expression MONTH is the equivalent of 30 days. Therefore, the period of three months is equal to 90 days. The Inter-American Commission on Human Rights itself recognized it as such in approving Resolution 43/90 (contained in the Judgment of December 11, 1991), Neira Alegría et al. Case, which reads verbatim:

> 6. To transmit the present report to the Government of Peru so that the latter may make any observations it deems appropriate **within ninety 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.** (emphasis by the Judge *ad hoc*)

For its part, the Court has also recognized that the period of three months as mentioned in Article 51(1) of the Convention, is composed of 90 days, as is demonstrated repeatedly *in paragraphs 35-39-43-47(a), and 54, among others, in the Judgment of January 21, 1994. (Caballero Delgado and Santana Case).* Notwithstanding the above, the Court on this occasion departs from its own case law.

Consequently, both the objection of extinguishment and that of the bar of the rule of limitations should be admitted pursuant to Article 31(6) of the Rules of Procedure of the Court.

The State of Guatemala also submitted the preliminary objection that the application filed against the State by the Commission is null and void for obvious and material violations. One violation is that the period fixed by Article 51(1) of the Convention had expired; and the other that the Commission did not fulfill the requirements of Article 26 of the Rules of Procedure of the Court, for the referral of a case to the Court under Article 61(1) of the Convention, which mandates that the application be filed with the Secretariat of the Court accompanied by ten (10) copies of the application.

The Commission, on filing the application against the State of Guatemala, in the early hours of January 19, 1995, acted irregularly for the following reasons:

a) The Commission transmitted the application by fax, and subsequently, (seven days later) it sent the ten (10) copies of the application via "courier." Article 26 of the Rules of Procedure of

the Court states that to refer a case, the application shall be filed with the Secretariat of the Court in ten (10) copies in the working languages of the Court. The filing of the application in one of the working languages does not suspend the prescribed proceedings, but the translation from one language to the others should be submitted within the following 45 days. That legal norm requires the material and physical filing of the application accompanied at that time by ten (10) copies. In the present case the law does not consider the possibility of filing the application by fax and much less the *a posteriori* transmittal of the copies, since these are filed with the application in or rather by means of the submission of the copies and without which the filing is not perfected. The previous legal requisite only governs the extension of the period to which the filing of the application in the case is subjected if the filing has been made in only one of the working languages. The translation to the other languages can be made within the following forty-five days.

I also disagree with the legal reasoning of this judgment in drawing an analogy to Article 27 of the Rules of Procedure of the Court. Article 27 establishes that if during a preliminary review of the application the President finds that the basic requirements have not been met, he shall request that the applicant correct them within a period of twenty (20) days. The defects referred to, however, are the failure to observe the requirements contained in sub-sections 1 to 5 of Article 26 of the Rules of Procedure. If the intent of the law were to grant a longer period to send the copies it would have expressly stated as much and granted forty-five (45) days (Article 26) and not twenty (20) as is provided in Article 27 in question. An analogous interpretation is, therefore, not possible in that respect; and

b) The Commission also filed the application after the Court's office hours, as is recorded on the fax, since the transmission began at 1:52 and terminated at 3:17 a.m. (Court time) on January 19 of last year, which is in an untimely manner, particularly as there is no legal provision within the rules governing the activity of the Court which establishes every day and all hours as working times of the Court, or a provision that the dispositions contained in the rules should be interpreted broadly, to bring about the adequate protection of Human Rights (principle of broad interpretation).

Article 31(2) of the Rules of Procedure of the Court requires that preliminary objections, be filed with the Secretariat of the Court by means of a brief in ten (10) copies, etc. I cite this legal norm to demonstrate the congruence in the Rules of Procedure regarding the treatment that should be given both to the filing of an application and to the submission of objections, or to what is equivalent, the rights of the applicant and the rights of the respondent, thereby ensuring respect for the equality of the parties.

The Court in the Cayara Case, paragraph 63, page 29, stated:

> The Court must preserve a fair balance between the protection of human rights, which is the ultimate purpose of the system, and the legal certainty and procedural equity that will ensure the stability and reliability of the international protection mechanism. In the instant case, to continue with a proceeding aimed at ensuring the protection of the interests of the alleged victims in the face of manifest violations of the procedural norms established by the Convention itself would result in a loss of the authority and credibility that are indispensable to organs charged with administering the system for the protection of human rights.

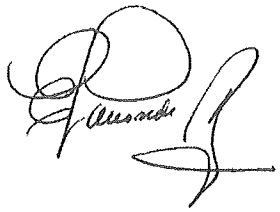
In this respect the fact that non-compliance with basic requirements of time, place and form in the initial filing of applications has been, to date "a constant practice, not objected to by the Governments" does not indicate, from any point of view, that the actions have been legal, since error is not a source of law.

For that reason it is not possible to proceed in a manner different from that required by the Convention and the Rules of Procedure of the Court, given that would be the equivalent of "gravely altering the balance and procedural equality of the parties." This is precisely the "procedural injury" which provokes the respondent State, in this case, Guatemala.

For the reasons expressed, I dissent from the judgment approved by the majority of the Honorable Judges, and I decide, consequently, that the preliminary objections raised by the State of

Guatemala should be admitted, and the Court should declare that the application of January 19, 1995, was submitted by the Commission in an anomalous manner and after the period set forth in Article 51(1) of the Convention.

San José, Costa Rica, January 25, 1996.



Edgar Enrique Larraondo-Salguero
Judge *ad hoc*

Manuel E. Ventura-Robles
Secretary

APPENDIX II

INTER-AMERICAN COURT OF HUMAN RIGHTS

CASTILLO PAEZ CASE

PRELIMINARY OBJECTIONS

JUDGMENT OF JANUARY 30, 1996

In the Castillo Páez Case,

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

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

also present:

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

pursuant to Article 31(6) of the Rules of Procedure of the Inter-American Court of Human Rights (hereinafter "the Rules of Procedure"), renders the following judgment on the preliminary objections presented by the Government of the Republic of Peru (hereinafter "the Government" or "Peru").

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* Judge Oliver Jackman recused himself in this case because he had participated in several stages of the case during its consideration by the Inter-American Commission on Human Rights when he was a member of the Commission.

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 on Human Rights (hereinafter "the Commission" or the "Inter-American Commission") by petition of January 12, 1995, which was received the following day at the Secretariat of the Court (hereinafter "the Secretariat"). The case originated in a complaint (No. 10.733) against Peru lodged with the Secretariat of the Commission on November 16, 1990.

2. In referring the case to the Court, the Commission invoked Articles 50 and 51 of the American Convention on Human Rights (hereinafter "the Convention" or "the Inter-American Convention") and Articles 26 *et seq.* of the Rules of Procedure. The Commission submitted this case to the Court for a decision as to whether, with the alleged *"abduction and subsequent disappearance of Ernesto Rafael Castillo-Páez by the Peruvian National Police in violation of the Convention"*, the Government had violated the following articles of the Convention: 7 (Right to Personal Liberty), 5 (Right to Humane Treatment), 4 (Right to Life), 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection), all these in relation to Article 1(1) (Obligation to Respect Rights).

Additionally, the Commission asked the Court:

> 2. To order the Government of Peru to conduct the necessary investigations to identify, prosecute and punish those responsible for the forced disappearance of Ernesto Rafael Castillo-Páez.
>
> 3. To request the Government of Peru to report on the location of the remains of Ernesto Rafael Castillo-Páez to the victim's next of kin and deliver up such remains to them.
>
> 4. To order the Peruvian State to provide full material and moral compensation to the family of Ernesto Rafael Castillo-Páez for the grievous suffering they have endured as a result of the numerous violations of rights protected by the Convention. Also, that it declare the State liable to make such material and moral reparations to Dr. Augusto Zúñiga-Paz for the damage he sustained for his defense of the young Castillo-Páez.
>
> 5. To order the Government of Peru to pay the costs of these proceedings, including the fees of the professionals who represented the victim both in the petition filed with the Commission and in the case filed with the Court.

3. The Inter-American Commission named as its Delegate, Patrick Robinson, member, and as its Attorneys, Edith Márquez-Rodríguez, Executive Secretary, and Domingo E. Acevedo, Special Advisor to the Secretariat. In addition, the Commission named as Assistants the following persons: Juan Méndez, José Miguel Vivanco, Ronald Gamarra, Kathia Salazar, Viviana Krsticevic, Verónica Gómez and Ariel E. Dulitzky, who represented the plaintiff as petitioners before the Commission.

4. On February 9, 1995, after the President of the Court (hereinafter "the President") had made the preliminary review of the application, the Secretariat notified the Government of the application and informed the State that it had a period of three months in which to answer, two weeks to name an Agent and Alternate Agent and thirty days to present preliminary objections. The Government was also invited to designate a Judge *ad hoc* and received the notification on February 13, 1995.

5. In a brief of March 23, 1995, the Government appointed Mario Cavagnaro-Basile as Agent and on the following day it reported that it had appointed Julio Mazuelos-Coello as Alternate Agent. On September 23, 1995, the Government appointed Iván Fernández-López as Advisor.

6. By communication of March 15, 1995, received at the Secretariat on March 24, 1995, in accordance with Article 31(1) of the Rules of Procedure, the Government submitted a brief containing its preliminary objections; they included *"failure to exhaust domestic remedies"* (in capitals in the original) and *"inadmissibility of the petition"* (in capitals in the original). By note of March 24, 1995, received on April 3, 1995, the Government submitted a brief supporting the preliminary objections.

7. In the same brief the Government, pursuant to Article 31(4) of the Rules of Procedure, asked the Court *"to declare the suspension of the proceedings on the merits until such time as the objections presented are resolved."* By Order of May 17, 1995, the Court declared *"the request from the Government of Peru to suspend the proceedings on the merits of the case to be inadmissible and that it would continue processing the case in its distinct procedural stages"* since the suspension sought did not correspond to an *"exceptional situation"* and no arguments had been presented in justification.

8. On April 27, 1995, the Commission submitted an application to the Court, in which it asked that the preliminary objections raised by the Government be declared inadmissible; on the following day it submitted its answer to the Government's preliminary objections. For its part, Peru submitted to the Court another brief dated June 13, 1995, concerning the aforementioned objections.

9. On May 8, 1995, the Government submitted its answer to the brief.

10. By Order of May 20, 1995, the President decided to summon the parties to a public hearing to be held at the seat of the Court on September 12, 1995. The Commission orally requested a postponement of the hearing, and the President, by Order of June 30, 1995, changed the original date of the public hearing, setting it for September 23 to hear the parties' comments on the preliminary objections presented by the Government.

11. On June 13, 1995, the Government submitted another brief, received on June 27, concerning *"the allegedly extemporaneous filing of the preliminary objections."* By note of August 23, 1995, the Commission requested that the Court consider that brief from the Government *"not to have been presented and decide to expunge it from the records."* By letter of September 18, 1995, the President declared that the Government's brief of June 27 *"has been consider*[ed] *by the Court and it was decided that the Tribunal would evaluate it in due course."*

12. The public hearing took place at the seat of the Court on September 23, 1995, at which there appeared

for the Government of Peru:

Mario Cavagnaro-Basile, Agent
Iván Fernández-López, Advisor;

for the Inter-American Commission on Human Rights:

Patrick Robinson, Delegate
Edith Márquez-Rodríguez, Attorney
Domingo E. Acevedo, Attorney
José Miguel Vivanco, Assistant
Viviana Krsticevic, Assistant
Ariel E. Dulitsky, Assistant

II

13. The following paragraphs summarize the events, circumstances and processing of this case before the Commission as they were set forth in the application and its attachments submitted to the Court.

14. According to the application, on October 21, 1990, Mr. Ernesto Rafael Castillo-Páez, a university student and teacher, aged 22, was detained by officers of the Peruvian National Police near the Central

Park of Group 17, Sector Two, Zone Two, of the Villa El Salvador district, Lima, Peru. According to witnesses to the events, when the agents detained him, *"they stripped him of his glasses, beat him, handcuffed him and put him in the trunk of a police car, which then headed towards an unknown destination."* The arrest took place after members of the subversive group *"Sendero Luminoso* [Shining Path]" (hereinafter PCP-SL) had detonated explosives near the "Monumento a la Mujer" in the Villa El Salvador district. Mr. Castillo-Páez had apparently left home early that morning to study with a friend when he disappeared.

15. Mr. Castillo-Páez's parents received an anonymous telephone call informing them that their son had been detained by the National Police. They immediately began to search for him and, not finding him at the various police stations, instituted judicial proceedings in order to locate him.

16. On October 25, 1990, a petition of *habeas corpus* was filed on behalf of the alleged victim with the presiding Examining Magistrate on duty in the Lima District Court, who, on October 31, 1990, upheld the petition. That decision was appealed by the Public Prosecutor for Terrorism before the Court of Appeal. On November 27, 1990, that Court declared the Prosecutor's appeal inadmissible, upheld the Examining Magistrate's ruling and ordered that all the documents needed for bringing *"the appropriate criminal charges"* be submitted.

17. The Commission also contends that, under Law No. 23.506 -governing *habeas corpus* and *amparo* in Peru- such a decision by the appellate court is final and constitutes *res judicata.* The above notwithstanding, the State Prosecutor filed a petition for nullification with the Court of Appeal, which did not grant the petition, whereupon the Prosecutor filed a complaint directly with the Supreme Court. The Supreme Court upheld the application and *"ordered that the Court of Appeals grant the petition for nullification filed, as a result of which the case was brought before the Supreme Court of Justice."* On February 7, 1991, the Second Criminal Chamber of the Supreme Court issued a decision to *"overturn the ruling and declare the protective remedy inadmissible."*

18. Based on evidence in the *habeas corpus* proceedings, a case was brought before Lima's Fourteenth District Criminal Court against several officials involved in the disappearance of Mr. Castillo-Páez for the crime of abuse of power. On August 19, 1991, that Court found *"that the disappearance of student Ernesto Rafael Castillo-Páez occurred after he had been arrested by members of the National Police."* However, it also found that there was no evidence that the accused bore any responsibility and therefore declared the case closed. That ruling was appealed before the First Criminal Court, which upheld it and closed the case without punishing anyone.

19. The Commission stated in its petition that it had received the complaint on this case on November 16, 1990, and that on November 19 it had first sought information from the Government as to Mr. Castillo-Páez's whereabouts. After a number of requests to the Government on the part of the Commission for information on the case, the Government replied on October 3, 1991, stating that there was no evidence that National Police agents had detained Mr. Ernesto Rafael Castillo-Páez. On December 18, 1992, Peru dispatched to the Commission a copy of the ruling of the Second Criminal Chamber of the Supreme Court of February 7, 1991, which stated that *"the case concerning the detention and subsequent disappearance of Mr. Castillo-Páez is closed."*

20. On September 26, 1994, the Commission approved Report 19/94, submitted to the Government on October 13, 1995, inviting it to report within a period of forty-five days on the measures taken in compliance with the following recommendations contained therein:

> 1. To declare that the Peruvian State is responsible for the violation of Ernesto Rafael Castillo-Páez's rights to personal liberty, to humane treatment, to life and to judicial protection, as well as the judicial guarantees of due process of law embodied, respectively, in Articles 7, 5, 4, 25 and 8 of the American Convention.
>
> 2. To declare, further, that in the instant case the Peruvian State has not fulfilled the obligation to respect the rights and guarantees established in Article 1(1) of the American Convention.

3. To recommend to the Peruvian State that, in consideration of the review made by the Commission in the instant case, within forty-five days it conduct a new investigation of the events denounced, determine the whereabouts of the victim and identify and punish those responsible for the disappearance of Ernesto Castillo-Páez.

4. Likewise, to recommend that the Peruvian State pay fair compensation to the victim's next of kin.

5. To inform the Government of Peru that it is not authorized to publish this Report.

6. To request the Government of Peru that it inform the Inter-American Commission on Human Rights, within a period of sixty days, of the results of the recommendations contained in paragraphs 3 and 4 above.

21. On January 3, 1995, the Government dispatched to the Commission a copy of a report prepared by a task force, which the Commission considered as the answer to Report 19/94. On January 13, 1995, the Commission referred this case to the Court for its consideration.

III

22. The Court has jurisdiction to hear the instant case. Peru has been a State Party to the Convention since July 28, 1978, and accepted the contentious jurisdiction of the Court on January 21, 1981.

IV

23. Before examining the preliminary objections filed by the Government, it is appropriate to consider a previous matter raised by both parties, both in writing and at the hearing, concerning the admissibility of the filing of those objections.

24. The Government, in its brief dated March 24, 1995, received at this Tribunal on April 3, 1995, claims to have presented the preliminary objections in good time. In support of this claim, it argued that there was a distinction between the deadline established in the Rules of Procedure of this Court for answering to the application (Article 29(1)), set at three months, and the deadline for filing preliminary objections (Article 31(1)), set at thirty days, proving that there was a difference, well supported by procedural doctrine, between dates established in days and those established in months or years; whereas the former include only working days, the latter are reckoned in calendar days.

25. The Government adds that this difference is consistent with Peru's legislation and jurisprudence whereby procedural periods established in days are reckoned excluding non-working days; however, when the reference is to months or years those days are included; in other words, they are calendar days. The Government concluded that in the Rules of Procedure of this Court a clear distinction is drawn between the period for answering the application and the period for filing preliminary objections, with the deliberate intention of following the generally accepted procedure that when a period is indicated in months it includes all the days in the Gregorian calendar, holidays and working days alike, but that when it is established in days -as is the case with preliminary objections- only working days are taken into account. According to that hypothesis, the brief of preliminary objections had been presented on time.

26. The Inter-American Commission, for its part, in its brief received by the Court on April 27, 1995, requested that the brief presented by Peru on March 24 be declared inadmissible, on the grounds that it had not been presented within the deadline established by the Rules of Procedure of this Court. The Commission maintains that the Government received notification of the application on February 13, 1995, so that when the preliminary objection was presented on March 24, 1995, -without any request for a

deferment or extension of the deadline- the period of thirty days established in Article 31(1) of the Rules of Procedure had long expired, and, consequently, Peru's right to file the objection had been extinguished.

27. The Commission invoked the thesis sustained by the Court in the Cayara case, to the effect that the Court "*must preserve a fair balance between the protection of human rights, which is the ultimate purpose of the system, and the legal certainty and procedural equity that will ensure the stability and reliability of the international protection mechanism*" *(Cayara Case, Preliminary Objections,* Judgment of February 3, 1993. Series C, No. 14, para. 63). Hence, should the brief of preliminary objection presented extemporaneously be admitted, those principles would be violated.

28. As far as the above allegations are concerned, the Court considers those made by the Government regarding the presentation of their preliminary objections to be unfounded, on the ground that although the period established in Article 31(1) of the Rules of Procedure is thirty days, whereas the deadline for answering the application is three months, the difference is not one of reckoning as Peru maintains, for the simple reason that time limits set in international and national proceedings are not based on the same criteria.

29. It is true that a distinction is drawn between judicial periods established in days and those established in months or years in some national procedural rules and in the practice of many domestic tribunals. The former are reckoned excluding non-working days and the latter in calendar days. However, this distinction cannot be applied to international tribunals, there being no standard regulation for determining which days are non-working, unless these are expressly stated in the rules of procedure of the international organizations.

30. This situation is more evident in the case of this Court, since it is a jurisdictional body that does not function on a permanent basis and holds its sessions, without need of authorization, on days that may be non-working by the rules established for national tribunals and those of the host country of the Court itself. For this reason, the criteria used in domestic legislation cannot be applied.

31. As the Government maintains, the Rules of Procedure of this Court make no provision similar to that established in Article 77 of the Regulations of the Inter-American Commission, to the effect that all time periods in days, indicated in those Regulations, *"shall be understood to be counted as calendar days."* Nonetheless, this provision must be regarded as implicit in the proceedings before this Tribunal since, as stated earlier, the differentiation criterion invoked by Peru cannot be accepted, there being no point of reference -such as that established in domestic procedural legislation- to determine which days are non-working. It is therefore not feasible to use any reckoning other than natural days to establish periods in days, months or years.

32. Two examples corroborate this point: first, the provisions of Article 80(1)(b) of the Rules of Procedure of the Court of Justice of the European Communities, amended on May 15, 1991, which provides that:

> A period expressed in weeks, months or in years shall end with the expiry of whichever day in the last week, month or year is the same day of the week, or falls on the date, as the day during which the event or action from which the period is to be calculated occurred or took place. If, in a period expressed in months or years, the day on which it should expire does not occur in the last month, the period shall end with the expiry of the last day of that month.

Secondly, mention may be made of Articles 46 and 49 of the Rules of Procedure of the Court of Justice of the Cartagena Agreement (Andean Agreement) of March 15, 1984. Whereas the former clearly establishes the working days and hours of the Tribunal, as well as its holidays, Article 49 establishes in its first paragraph that: *"*[t]*he periods shall be reckoned in continuous days and calculated excluding the day of the date on which it begins...."* Let it be said, however, that both those Tribunals function on a permanent basis.

33. Consequently, if the period of thirty days indicated in Article 31(1) of the Rules of Procedure of this Court should be considered in calendar terms, and the notification of the application was made on

February 13, 1995, the date on which it was received by the Government, the deadline was March 13, 1995, whereas the preliminary objection brief reached the Secretariat of the Court on March 24, 1995.

34. The Court has declared that:

> [i]t is a commonly accepted principle that the procedural system is a means of attaining justice and that the latter cannot be sacrificed for the sake of mere formalities. Keeping within certain timely and reasonable limits, some omissions or delays in complying with procedure may be excused, provided that a suitable balance between justice and legal certainty is preserved *(Cayara Case, Preliminary Objections, supra* 27, para.42; *Paniagua Morales et al. Case, Preliminary Objections,* Judgment of January 25, 1996. Series C No. 23, para. 38).

35. The Court observes that the brief in which the Government filed its preliminary objections was presented a few days after expiration of the period of thirty days set by Article 31(1) of its Rules of Procedure, but that this delay cannot be considered excessive within the limits of timeliness and reasonableness considered by this Tribunal as necessary for excusing a delay in meeting a deadline (see *supra* 34, *Paniagua Morales et al. Case,* paras. 37 and 39). Further, that this very Court has been flexible about the periods established in the Convention and in its Rules of Procedure, including that indicated in Article 31(1) of the Rules of Procedure, and has often granted extensions requested by the parties when they have shown reasonable cause.

36. In the instant case, the Court considers that, even though the Government did not expressly request an extension, this omission was possibly due to its mistaken computation of the period, excluding the non-working days in accordance with its procedural rules. For the reasons adduced, the review of the preliminary objections presented by Peru should proceed.

V

37. The Government filed preliminary objections on two grounds: the failure to exhaust the remedies of domestic law and the inadmissibility of the application. The Government's position on these two points is summarized in a. and b. below.

a. The former is based essentially on the charge that the complaint before the Inter-American Commission was filed in parallel with the procedures of domestic remedies, thereby contravening the provisions of Articles 46(1)(a) and (b) of the American Convention and Article 37(1) of the Regulations of the Commission. The Government also considers that there has been a contravention of Article 305 of the 1979 Constitution of Peru, in force at the time at which the complaint was lodged with the Commission, in particular the principle whereby only after domestic remedies have been exhausted may persons who consider that their constitutional rights have been violated have recourse to the international courts or organizations established under the treaties to which Peru is a signatory. According to the Government, the foregoing is all the more serious since, as shown in the text of the application, the Peruvian courts had already ruled in the plaintiff's favor at the time the petition was lodged with the Inter-American Commission.

The Government also maintains that there was simultaneity in the presentation of the national and international remedies, recalling that on October 25, 1990 Mr. Cromwell Pierre Castillo-Castillo, father of Mr. Castillo-Páez, filed an appeal of *habeas corpus* against several officials with the Twenty-fourth Criminal Court of Lima under Judge Minaya Calle; once the appeal had been processed it culminated in the judgment of October 31, 1990 which upheld the appeal in favor of Ernesto Rafael Castillo-Páez for arbitrary arrest and ordered his immediate release. Although he had obtained this favorable ruling, Mr. Castillo-Castillo had still appealed to the international authority, the complaint in question having been lodged with the Commission on November 16, 1990, before completion of the *habeas corpus* proceedings. The ruling of the Examining Magistrate was appealed before the Eighth Criminal Chamber, which admitted the appeal on November 27 of that year and ordered that a certified copy of all the events be sent to the

presiding Provincial Prosecutor for the purpose of bringing a criminal case against the Director of the National Police Force and the Head of the Anti-Terrorism Bureau and identifying those responsible.

The Government further contends that in connection with that judgment of the appeal, a criminal process was initiated against those officers in the Fourteenth Criminal Court of Lima for abuse of authority, and that the case was expanded to include members of the police force for the use of violence and refusal to obey orders. The writ of *habeas corpus* was later granted by the Second Criminal Chamber of the Supreme Court of Justice of the Republic for serious irregularities committed in the court of first instance.

In view of the foregoing, the Government declares that the Commission, in admitting the complaint and formulating recommendations on it, infringed the provisions of the Convention and of its own Regulations concerning the exhaustion of domestic remedies, since the action of *habeas corpus* which was in full process before the First Criminal Chamber of the Lima Court of Appeals, to establish the whereabouts of Mr. Ernesto Rafael Castillo-Páez and identify those responsible for his alleged detention by members of the police force had not ended.

Peru concludes that Mr. Castillo-Castillo should have filed a petition of cassation with the former Tribunal of Constitutional Guarantees which, in accordance with the constitutional provisions in force at that time, had jurisdiction to take up, on appeal, rulings that denied petitions of *habeas corpus*.

b. The second objection brought by Peru concerns the inadmissibility of the Commission's application to the Court, on the grounds that this Court may not admit an application that originated in a case irregularly processed by the Inter-American Commission. It claims not only that the petitioner turned to the Commission without exhausting the domestic remedies, but that the complaint was lodged even though the subject had been awarded national judgments that protected his right, and a criminal case that originated with the appeal of *habeas corpus* presented on his behalf was still in process. The Commission did not duly verify, as it is called upon to do under Article 47(1) of its Regulations, whether the motives for the petition still existed, once it had received Peru's answer to Commission Report 19/94 of September 26, 1994, transmitted through a diplomatic note from the office of that country's Permanent Representative to the OAS.

38. In the Commission's comments on the brief of preliminary objections, it requests that those objections be rejected for the following reasons:

a. That Peru did not file the objection alleging non-exhaustion of domestic remedies at the proper time; that is to say that when the Commission instituted its proceedings four years had elapsed between the filing of the complaint and the date on which the Government first raised that objection in the Task Force Report which was transmitted to the Commission on January 3, 1995, in response to the considerations and recommendations contained in Report 19/94. The Commission invokes the criterion laid down by this Tribunal in the Velásquez Rodríguez Case, judgment of June 26, 1987, whereby the objection of non-exhaustion of internal remedies, to be timely, must be made at an early stage of the proceedings by the State entitled to make it, lest a waiver of the requirement be presumed.

b. That the proceeding being conducted in the First Criminal Chamber of the Superior Court against two police officers on charges of abuse of power, violence and resisting arrest is not a criminal proceeding to ascertain who is responsible for the alleged detention and subsequent disappearance of Mr. Ernesto Rafael Castillo-Páez and, consequently, is not a remedy that must be exhausted before international protection may be sought.

c. Nor is it possible to accept the Government's assertion that the petitioner had not exhausted the domestic remedies by failing to file a petition of cassation with the Tribunal of Constitutional Guarantees. On the contrary, the Commission considers that the petitioner had no

obligation to resort to that tribunal, inasmuch as the petition of *habeas corpus* in favor of the alleged victim had been granted in the courts of both first and second instance. Furthermore, the remedy was ineffective owing to the fact that the Supreme Court of Justice of Peru had irregularly admitted the hearing of that petition when it overturned the judgment of the Eighth Court of Appeals upholding the lower court's decision to grant the petition of *habeas corpus* filed on behalf of Mr. Ernesto Rafael Castillo-Páez. It was not competent to rule on the writ of *habeas corpus* in view of the specific legal prohibition contained in Article 21 of Law 23.506, "*Habeas Corpus* and *Amparo Law*," whereby that court could only take up, on appeal, lower court rulings that denied petitions of *habeas corpus*. In this case, the petition had been granted.

d. That the Government's objection of inadmissibility of the Commission's application to the Court is based on non-exhaustion of domestic remedies; it is therefore not an objection filed in a timely manner, but rather a recapitulation of arguments that add nothing to the first objection.

VI

39. The Court considers that both objections must be examined jointly, inasmuch as they are mutually supporting and are based solely on the failure to exhaust domestic remedies, in the terms of Article 46(1)(a) of the Convention and Article 37 of the Regulations of the Commission.

40. The Court wishes to state that, in connection with this matter, it has established criteria that must be taken into consideration in this case. Indeed, the generally accepted principles of international law to which the rule of exhaustion of domestic remedies refers indicate, firstly, that this is a rule that may be waived, either expressly or by implication, by the party having the right to invoke it, as this Court has already recognized (*see, Viviana Gallardo et al.* [Judgment of November 13, 1981], No. G 101/81. Series A, para. 26). Secondly, the objection asserting non-exhaustion of domestic remedies, to be timely, must be made at an early stage of the proceedings by the State entitled to make it, lest a waiver of the requirement be presumed. Thirdly, the State claiming non-exhaustion has an obligation to prove that domestic remedies remain to be exhausted and that they are effective (*Velásquez Rodríguez Case, Preliminary Objections,* Judgment of June 26, 1987. Series C No. 1, para. 88: *Fairén Garbi and Solís Corrales Case, Preliminary Objections,* Judgment of June 26, 1987. Series C No 1, para. 87; *Godínez Cruz Case, Preliminary Objections,* Judgment of June 26, 1987. Series C No. 2, para. 87; *Gangaram Panday Case, Preliminary Objections,* Judgment of December 4, 1991. Series C No. 12, para. 38 and *Neira Alegría et al. Case, Preliminary Objections,* Judgment of December 11, 1991. Series C No. 13, para. 30).

41. In accordance with the aforementioned criteria, the Court further considers that the Government had the obligation to invoke explicitly and in a timely manner the rule of non-exhaustion of domestic remedies if it wished to challenge appropriately the admissibility of the complaint before the Inter-American Commission, presented on November 16, 1990, on the disappearance of Mr. Ernesto Rafael Castillo-Páez.

42. The briefs that the Government presented to the Commission during the processing of the case showed *inter alia* the evolution of the *habeas corpus* proceedings and the criminal aspect of Mr. Ernesto Rafael Castillo-Páez's disappearance. However, the Government did not clearly state its objection of non-exhaustion of domestic remedies at an early stage of the proceedings before the Commission. It was only expressly invoked in the Task Force Report presented to the Commission by the Government on January 3, 1995, in answer to Report 19/94 approved by the Commission itself on September 26, 1994, which served to support the application before this Court.

43. It may be concluded from the foregoing that, since the Government extemporaneously claimed the non-exhaustion of domestic remedies required by Article 46(1)(a) of the Convention to preclude admission of the complaint on behalf of Mr. Ernesto Rafael Castillo-Páez, it is understood to have tacitly waived the requirement.

44. At the public hearings on preliminary objections held by this Court on September 23, 1995, in reply to a question from Judge Antônio A. Cançado Trindade, the Peruvian Agent clearly stated that only at a later stage in the case before the Commission had the question of exhaustion of domestic remedies been explicitly raised. Indeed, in the previous briefs (including the brief of October 3, 1991) submitted to the Commission, reference had been made solely to the evolution of the aforementioned proceedings, which in the view of this Court is insufficient to consider the objection to have been presented. The reason, as explained, is that the Government may expressly, or by implication, waive the requirement. Since it had done so by implication, the Commission could not later properly take the objection into consideration.

45. For the reasons stated above, the first of the objections brought must be dismissed. The second objection must also be rejected for the same reasons, since they were both founded on the same premise, as stated above (see *supra* 39).

VII

46. Now, therefore,

THE COURT,

DECIDES:

unanimously,

1. To dismiss the preliminary objections of the Government of the Republic of Peru.

2. To proceed with the consideration of the merits of the case.

Judge Antônio A. Cançado Trindade informed the Court of his Separate Opinion, which is attached hereto.

Done in English and Spanish, the Spanish being authentic, in San José, Costa Rica, on this thirtieth day of January, 1996.

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

Read at a public session at the seat of the Court in San José, Costa Rica, on February 2, 1996.

So ordered,

Héctor Fix-Zamudio
President

Manuel E. Ventura-Robles
Secretary

SEPARATE OPINION OF JUDGE A. A. CANÇADO TRINDADE

1. I subscribe to the decision of the Court to reject the preliminary objection raised by the respondent Government, and to continue to hear the instant case on its merits. I feel obliged to add this Separate Opinion in order to leave on record the basis of my reasoning and my position on the central point of the preliminary objection presented by the Government of Peru, that is, the objection raised before the Court of non-exhaustion of domestic remedies in the circumstances of the present *Castillo Páez* Case.

2. May I, first of all, reiterate my understanding, expressed in my Dissenting Opinion in the Resolution of the Court of 18 May 1995 in the case of *Genie Lacayo* concerning Nicaragua, to the extent that, in the context of the international protection of human rights, the preliminary objection of non-exhaustion of domestic remedies is one of *pure admissibility* (and not of competence), and, as such, in the current system of the American Convention on Human Rights, should be resolved in a well-founded and *definitive* manner by the Inter-American Commission on Human Rights.

3. Contrary to what may be inferred, the extensive interpretation of the Court's own faculties, which it advanced in the *cases concerning Honduras*[1], so as to comprise also issues related to preliminary objections of admissibility (based on a question of fact), does not always necessarily contribute to a more effective protection of the guaranteed human rights. In reality, such a conception leads to the undesirable reopening and reexamination of an objection of pure admissibility, which obstruct the procedure and thereby perpetuate a procedural imbalance which favors the respondent party. This is not a question of "restricting" the powers of the Court in particular, but rather of strengthening the system of protection *as a whole*, in its current stage of historical evolution, remedying such imbalance, and thus contributing to the full realization of the object and purpose of the American Convention on Human Rights.

4. The *preliminary* objections, if and when interposed, should be, by their very definition, *in limine litis*, at the stage of admissibility of the petition and before any and all consideration of the merits. This applies even more forcefully when dealing with a preliminary objection of pure admissibility, as is that of non-exhaustion of domestic remedies in the present context of protection. If this objection is not raised *in limine litis*, it is tacitly waived (as the Court has already admitted, for example, in the *Gangaram Panday* case, concerning Suriname[2]).

5. Therefore, the respondent Government cannot subsequently raise that preliminary objection before the Court, as it failed to raise it, in a timely manner, for the decision of the Commission. If, as in the present case, the respondent Government waived that objection by not raising it *in limine litis* in the prior procedure before the Commission, it is inconceivable that the respondent Government may freely withdraw that waiver in the subsequent procedure before the Court (*estoppel/forclusion*).

6. The grounds of my position, which I reiterate here with conviction, are expounded in detail in my Separate Opinion in the Judgment of the Court of 4 December 1991, in the *Gangaram Panday* case (Preliminary Objections). There is no need to repeat them here *ipsis literis*, but rather to single out and develop some aspects which I deem especially relevant in relation to the present case of *Castillo Páez*.

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1 Judgments of 1987 on Preliminary Objections, in the cases of *Velásquez Rodríguez*, paragraph 29; *Godínez Cruz*, paragraph 32; and *Fairén Garbi and Solís Corrales*, paragraph 34.

2 Judgment of 1991 on Preliminary Objections, *Gangaram Panday* case, paragraphs 39-40; see also the Judgment on Preliminary Objections, *Neira Alegría et al.* case concerning Peru, of the same year, paragraphs 30-31; and the judgments cited *supra* (Note 1) in the *three cases concerning Honduras*, paragraphs 88-90 (*Velásquez Rodríguez*), 90-92 (*Godínez Cruz*), and 87-89 (*Fairén Garbi and Solís Corrales*); and earlier, Decision of the Court of 1981 in the matter of *Viviana Gallardo et al.*, paragraph 26.

7. Just as the Commission's decisions on the inadmissibility of petitions or communications are considered definitive and non-appealable, its decisions of admissibility should be treated likewise, also considered definitive and unsusceptible to reopening by the respondent Government in the subsequent procedure before the Court. Why is it that the respondent Government is allowed to attempt to reopen a decision on admissibility by the Commission before the Court and an individual complainant does not have the same faculty to question a decision on inadmissibility of the Commission before the Court?

8. Such reopening of review by the Court of a decision on admissibility by the Commission creates an imbalance between the parties, in favor of the respondent governments (all the more so since individuals currently do not even have *locus standi* before the Court). This being so, the decisions of inadmissibility by the Commission should also be allowed to be reopened by the alleged victims and submitted to the Court. Either all decisions -of admissibility or not- of the Commission are allowed to be reopened before the Court, or they are all kept exclusive to the Commission.

9. This understanding is the one that is best suited to the basic notion of *collective guarantee* underlying the American Convention on Human Rights, as well as all treaties of international protection of human rights. Instead of reviewing the decisions on admissibility by the Commission, the Court should be able to concentrate more on the examination of questions of substance in order to fulfill with more speed and security its role of interpreting and applying of the American Convention, determining the occurrence or not of violations of the Convention and its juridical consequences. The Court is not, in my view, a tribunal of appeals of decisions of the Commission on admissibility.

10. The alleged reopening of questions of pure admissibility before the Court surrounds the process with uncertainties, prejudicial to both parties. It further generates the possibility of divergent or conflicting decisions on the matter by the Commission and the Court, thus fragmenting the unity inherent in a decision of admissibility. This in no way contributes to the perfecting of the system of guarantees of the American Convention. The principal concern of both the Court and the Commission should lie, not in the zealous internal distribution of attributions and competences in the jurisdictional mechanism of the American Convention, but rather in the adequate coordination between the two organs of international supervision so as to assure the most effective protection possible of the guaranteed human rights.

11. In the instant case of *Castillo Páez*, the Commission had pointed out the prior exhaustion of domestic remedies and declared the petition or communication admissible (case No. 10.733, *Report 19/94*, of 26 September 1994, pp. 13 and 24). As the dossier of the case reveals[3] and the public hearing before the Court of 23 September 1995 confirms, the question was only brought up by the Government of Peru in an advanced stage of the proceedings before the Commission[4], in the period of the consideration of the preparation of the Commission's Report on the case[5] (above mentioned document), beyond the time limit (and not *in limine litis*), and, even so, not as a preliminary objection of admissibility proper but rather as *de facto* information on proceedings pending in the domestic jurisdiction.[6]

12. The act of pointing out, as a fact and in an extemporaneous manner, the existence of judicial proceedings pending in the domestic courts is not the same as expressly objecting to, on the basis of this fact, the admissibility and examination of the case by the Commission on the international level. Moreover, as the present judgment rightly sets forth, there is no way to prolong indefinitely in time the

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3 E.g., writings of the Government of 3 October 1991, 3 January 1995, and 15 March 1995; writings of the Commission of 27 April 1995 and 28 April 1995.

4 Hearing of 16 September 1994, before the Commission.

5 The previous writing of the Government of 3 October 1991, limited itself to transmitting to the Commission information on investigations carried out on the national level on the *Castillo Páez* case.

6 The Government only raised the preliminary objection as such before the Commission in its writing of 3 January 1995 (Report prepared by a Working Group) when the Commission's Report containing its decision on the case had already been adopted.

opportunity granted to the respondent Government to raise a preliminary objection of non-exhaustion of domestic remedies, which exists primarily for its benefit at the stage of admissibility of the petition.

13. The decision of the Commission regarding the admissibility should be considered definitive, impeding the Government to reopen it, and the Court to review it, since, in the present case, the preliminary objection in question was not even raised by the respondent Government in due time (*in limine litis*) for the decision of the Commission. This basis alone is sufficient to reject the preliminary objection interposed by the respondent Government. Given the circumstances of the present case of *Castillo Páez*, the objection (of the same content) of the alleged non-exhaustion of domestic remedies should be rejected on the basis of its extemporaneous nature and the tacit waiver before the Commission, and the *estoppel* (*forclusion*) before the Court[7].

14. The *rationale* of my position, such as I have manifested it in the work of the Court[8], ultimately lays in the aim of assuring the necessary balance or procedural equality of the parties before the Court -- that is, between the petitioning plaintiffs and the respondent governments-- essential to all jurisdictional systems of international protection of human rights. Without the *locus standi in judicio* of both parties[9] any system of protection finds itself irremediably mitigated, as it is not reasonable to conceive rights without the procedural capacity to vindicate them directly.

15. In the universe of the international law of human rights, it is the individual who alleges violations of his human rights, who alleges having suffered damages, who has to comply with the requirement of prior exhaustion of domestic remedies, who actively participates in an eventual friendly settlement, and who is the beneficiary (he or his relatives) of eventual reparations and indemnities. In the examination of the questions of admissibility before the Commission, the individual complainants and the respondent Governments are *parties*[10]. The reopening of such questions before the Court, without the presence of one of the parties (the petitioning plaintiffs), militates against the principle of procedural equality (*equality of arms/égalité des armes*).

16. In our regional system of protection[11], the spectre of the persistent denial of the procedural capacity of the individual petitioner before the Inter-American Court, a true *capitis diminutio*, arose

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7 Under the European Convention on Human Rights, according to the *jurisprudence constante* of the European Court of Human Rights, the respondent Government who failed to raise an objection of non-exhaustion of domestic remedies previously before the Commission, is prevented from raising it before the Court (*estoppel*). The European Court has ruled to this effect, *inter alia*, in the cases of *Artico* (1980), *Corigliano* (1982), *Foti* (1982) and *Ciulla* (1989), concerning Italy; *Granger* (1990), concerning the United Kingdom; *Bozano* (1986), concerning France; *De Jong, Blajet and Van der Brink* (1984), concerning Holland; and *Bricmont* (1989), concerning Belgium. In its Judgment of 22 May 1984, in the *Van der Sluijs, Zuiderveld and Klappe* case, concerning Holland, the European Court went even further. In that case, the respondent Government had initially raised an objection of non-exhaustion of domestic remedies before the European Commission, but failed to mention it in its "preliminary" arguments (hearing of November 1983) before the European Court. The delegate of the Commission deduced, in his reply, that the respondent Government appeared no longer to insist upon that objection. Since the Government did not question the Commission's analysis, the Court took formal notice of the Government's "withdrawal" of the objection of non-exhaustion, thus putting an end to the question (Judgment *cit. supra*, paragraphs 38-39 and 52).

8 E.g., in the public hearing of the Court of 17 January 1996, in the *El Amparo* case, concerning Venezuela.

9 It cannot go unnoticed that the question of *locus standi in judicio* of individuals before the Court (in cases already submitted to it by the Commission) is distinct from the right to submit a concrete case for decision by the Court, which Article 61(1) of the American Convention currently reserves only to the Commission and the States Parties to the Convention.

10 Regarding the admissibility stage of a petition or communication before the Commission, the American Convention refers to *"the party alleging violation of his rights"* (Articles 46(1)(b) and 46(2)(b), to the *"petitioner"* himself and the State (Article 47(c)), and to the *"parties concerned"* before the Commission (Article 48(1)(f) having clearly in mind the individual complainants and the respondent Governments. *Cf.* also, in the same sense, Articles 32(a) and (c); 33; 34(4) and (7); 36; 37(2)(b) and (3); and 43(1) and (2) of the Rules of Procedure of the Commission.

11 In the framework of this latter, to the Inter-American Commission, in its turn, is reserved the role of defender of the "public interests" of the system, as guardian of the correct application of the American Convention. If to this role one continues to add the additional function of defender of the interests of the alleged victims, as an "intermediary" between these latter and the Court, an undesirable ambiguity which should be avoided.

from dogmatic considerations, belonging to another historical era, which tended to avoid his direct access to the international judicial organ. Such considerations, in my view, in our time lack support or meaning, even more so when referring to an international tribunal *of human rights.*

17. In the inter-American system of protection, *de lege ferenda* one gradually ought to overcome the paternalistic and anachronistic conception of the total intermediation of the Commission between the individual (the true complaining party) and the Court, according to clear and precise criteria and rules, previously and carefully defined. In the present domain of protection, every international jurist, faithful to the historical origins of his discipline, will know to contribute to the rescue of the position of the human being as a subject of international law (*droit des gens*), endowed with international legal personality and full capacity.

A.A. Cançado Trindade

Antônio Augusto Cançado Trindade
Judge

Manuel E. Ventura-Robles
Secretary

APPENDIX III

INTER-AMERICAN COURT OF HUMAN RIGHTS

LOAYZA TAMAYO CASE

PRELIMINARY OBJECTIONS

JUDGMENT OF JANUARY 31, 1996

In the Loayza-Tamayo 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,
Ana María Reina, Assistant Secretary,

pursuant to Article 31(6) of the Rules of Procedure of the Inter-American Court of Human Rights (hereinafter "the Rules of Procedure"), renders the following judgment on the preliminary objection interposed by the Government of the Republic of Peru (hereinafter "the Government" or "Peru").

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 on Human Rights (hereinafter "the Commission" or the "Inter-American Commission") by petition of January 12, 1995. The case originated in a complaint (No. 11.154) received at the Secretariat of the Commission on May 6, 1993.

2. In referring the case to the Court, the Commission invoked Articles 50 and 51 of the American Convention on Human Rights (hereinafter "the Convention" or "the Inter-American Convention") and Articles 26 *et seq.* of the Rules of Procedure. The Commission submitted this case to the Court for a decision as to whether, with the alleged *"unlawful deprivation of liberty, torture, cruel and inhuman treatment, violation of the judicial guarantees, and double jeopardy to María Elena Loayza-Tamayo for the same cause, in violation of the Convention,"* and of Article 51(2) of the Convention for failing to *"implement the Commission's recommendations,"* the Government had violated the following articles of the Convention: 7 (Right to Personal Liberty), 5 (Right to Humane Treatment), 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection), all these in relation to Article 1(1) (Obligation to Respect Rights). It also asked the Court to declare that the Government *"must pay full compensation to María Elena Loayza-Tamayo for the grave damage -material and moral- she has suffered and, consequently, to instruct the Peruvian State to order her immediate release and make her appropriate reparation"* and *"pay the costs incurred in processing this case."*

3. The Inter-American Commission named Oscar Luján-Fappiano as its Delegate and Edith Márquez-Rodríguez, Executive Secretary, and Domingo E. Acevedo as its Attorneys. The Commission named the following persons as their Assistants: Juan Méndez, José Miguel Vivanco, Carolina Loayza, Viviana Krsticevic, Verónica Gómez and Ariel E. Dulitzky, the legal representatives of the plaintiff as petitioners before the Commission.

4. After the President of the Court (hereinafter "the President") had made the preliminary review of the application, the Secretariat of the Court (hereinafter "the Secretariat") notified the State of the application in a note of February 9, 1995 -received on February 13- and informed it that it had a period of three months in which to reply, two weeks to name an Agent and Alternate Agent and thirty days to present preliminary objections, all of those periods to commence on the date of notification of the application. In a communication of the same date, the Government was invited to designate a Judge *ad hoc*.

5. On March 23, 1995, the Government communicated to the Court that it had appointed Mario Cavagnaro-Basile to act as its Agent and on the following day it reported that it had appointed Iván Paredes-Yataco to act as Alternate Agent.

6. By communication of March 22, 1995, the Delegate of the Commission indicated that the thirty-day deadline for the Government to present preliminary objections had expired on March 13.

7. On March 24, 1995 Peru filed a preliminary objection alleging *"non-exhaustion of all domestic remedies"* (capitals in original) and on April 3, 1995, it submitted a brief containing arguments to obviate interpretations contrary to its interests regarding the time limits established in the Regulations. In a brief of April 24, 1995, the Commission urged that the brief of preliminary objections submitted by the Government be declared inadmissible, and on April 27, 1995, it submitted another brief contesting the preliminary objection filed by the Government.

8. In the brief of preliminary objections the Government requested, in accordance with Article 31(4) of the Rules of Procedure, suspension of the *"proceedings on the merits until such time as the preliminary objection is resolved."* The Court, by Order of May 17, 1995, declared the request inadmissible and decided to proceed with the case at its various judicial stages on the grounds that the suspension sought did not meet the requirement of *"exceptional situation"* and could not be justified on any grounds.

9. On May 5, 1995, the Government submitted its answer to the application.

10. By Order of the President of May 20, 1995, the parties were summoned to a public hearing on preliminary objections to be held at the seat of the Court on September 13 of that year. The Commission orally requested a postponement of the hearing, and the President, by Order of June 30, 1995, acceded to the request and set the hearing for September 23.

11. On May 23, 1995, the Government submitted a brief in which it refuted *"the alleged extinguishment of* [its] *right to file this preliminary objection,"* and on August 24, 1995, the Commission requested that the Court deem the brief not to have been filed and to expunge it definitively from the records. On September 18, the President declared that the brief would be evaluated in due course.

12. In a brief of December 29, 1995, the Commission, for its part, presented a copy of the judgment of October 6, 1995, rendered by the Supreme Court of Justice upholding the sentence passed on María Elena Loayza-Tamayo *et al.* for the crime of terrorism, and on January 22, 1996, the Government requested that the Commission's brief be rejected and considered not to have been filed. On January 30, 1996, the President declared that the brief would be evaluated in due course.

13. The public hearing took place at the seat of the Court on September 23, 1995.

There appeared

for the Government of Peru:

Mario Cavagnaro-Basile, Agent
Iván Carluis Fernández-López, Advisor;

for the Inter-American Commission on Human Rights:

Oscar Luján-Fappiano, Delegate
Edith Márquez-Rodríguez, Attorney
Domingo E. Acevedo, Attorney
José Miguel Vivanco, Assistant
Ariel E. Dulitzky, Assistant

II

14. The Commission claims in its application that:

a. On February 6, 1993, María Elena Loayza-Tamayo, a Peruvian citizen and a professor at the Universidad San Martín de Porres, was arrested together with a relative, Ladislao Alberto Huamán-Loayza, by officers of the National Anti-Terrorism Bureau (DINCOTE) of the Peruvian National Police, while visiting the construction site of a property she owned on Mitobamba Street, Block D, Lot 18, Urbanización Los Naranjos, Distrito de los Olivos, Lima, Peru. The police officers did not produce an arrest warrant issued by a court or any order from a competent authority. The arrest was based on a charge made to the police authorities by Angélica Torres García, alias "Mirtha," that María Elena Loayza-Tamayo was a collaborator of the subversive group Shining Path [Sendero Luminoso]. The Supreme Court of Military Justice acquitted Ladislao Alberto Huamán-Loayza of the crime of treason and he was released in November 1993.

b. María Elena Loayza-Tamayo was detained by the DINCOTE from February 6 to 26, 1993. During that period she was held *incommunicado* for ten days and subjected to torture, inhuman and degrading treatment and unlawful pressure. All this was done for the purpose of forcing her to incriminate herself and confess that she was a member of the Peruvian Communist Party-Shining Path (PCP-SL). Despite this, the victim not only declared her innocence, denying membership of the PCP-SL, but *"criticized its methods: the violence and the human rights violations committed by that subversive group."* On March 3, she was transferred to the Chorrillos Women's Maximum Security Prison and, according to the Commission, was still incarcerated in Peru on the date the application was filed.

c. During those ten days she was allowed no contact with her family or her attorney, nor were they informed of her arrest. María Elena Loayza-Tamayo's family learned of her arrest through an anonymous telephone call on February 8, 1993. No protective remedy could be filed on her behalf because Decree Law No. 25.659 (Counter-Insurgency Law) prohibited the filing of *"a petition of habeas corpus when the acts in question concern the crime of terrorism."*

d. On February 26, 1993, María Elena Loayza-Tamayo was exhibited to the press, dressed in a striped gown, and accused of the crime of treason against her country. The Police Report specified that the crime was treason and the next day her case was brought before the Special Naval Court for trial. A number of judicial proceedings were instituted before the organs of the Peruvian domestic jurisdiction. She was tried by the Military Court for the crime of treason against her country: the Special Naval Court composed of *"faceless military judges"* acquitted her; the Special Naval War Council found her guilty on appeal; a petition for nullification was filed and the Supreme Council of Military Justice acquitted her of that crime and ordered that the records be forwarded to the regular courts. In that jurisdiction she was tried for the crime of terrorism: the Forty-third Criminal Court of Lima bound her over for trial; the *"faceless Special Tribunal of the regular court system,"* on the basis of the very same facts and charges, sentenced her to 20 years imprisonment. A petition was filed with the Supreme Court of Justice seeking nullification of the court's ruling, but was rejected.

15. On May 6, 1993, the complaint concerning the detention of María Elena Loayza-Tamayo was received by the Inter-American Commission, which forwarded it to the Government six days later. On August 23, 1993, the Commission received the Government's reply together with the documentation on the case and the information that the Prosecutor's Office had instituted proceedings against María Elena Loayza-Tamayo in the special military court system under Decree Law No. 25.659.

16. On July 13, 1994, in response to a request from the Commission on November 17, 1993, the Government declared the existence of *"file No. 41-93 before the fortieth criminal court of Lima against* [María Elena Loayza-Tamayo] *for the crime of terrorism, and* [that] *the file had been sent to the President of the Superior Court of Lima ... for the oral proceedings to be initiated."*

17. On September 16, 1994, the parties attended a hearing held at the seat of the Commission.

18. On September 26, 1994, the Commission approved Report 20/94, in the resolutory part of which it was decided:

> 1. To declare that the Peruvian State is responsible for the violation, against María Elena Loayza, of the rights to personal liberty, humane treatment and judicial protection enshrined in Articles 7, 5 and 25 respectively of the American Convention on Human Rights.
>
> 2. To recommend to the Peruvian State that, in consideration of the analysis of the events and of the right invoked by the Commission, it immediately release María Elena Loayza-Tamayo once it receives notification of this Report.
>
> 3. To recommend to the Peruvian State that it pay compensation to the plaintiff in the instant case, for the damage caused as a result of her unlawful deprivation of liberty from February 6, 1993 until such time as it orders her release.

4. To inform the Government of Peru that it is not at liberty to publish this Report.

5. To request that the Government of Peru inform the Inter-American Commission on Human Rights, within thirty days, of any measures it has taken in the instant case, in accordance with the recommendations contained in paragraphs 2 and 3 above.

19. On October 13, 1994, Report 20/94 was transmitted to Peru by the Commission. In response, the Government deemed that it could accept neither the analysis nor the conclusions and recommendations and attached a brief prepared by a Task Force composed of government officials, stating that:

> [d]omestic remedies have not been exhausted inasmuch as María Elena Loayza-Tamayo's legal situation should be defined at the end of the judicial proceeding for the CRIME OF TERRORISM in the common court system [and that] the recommendations made by IACHR [Inter-American Commission on Human Rights] in the instant case would involve deciding on a case still pending in the Peruvian justice administration. This is not possible, since, under Peru's Political Constitution in force, no authority could arrogate that power. It is for the Judicial Branch to rule on Maria Elena Loayza-Tamayo's legal situation through the proper criminal process.

20. On January 12, 1995, the Commission, not having reached agreement with the Government, submitted this case for the consideration and decision of the Court.

III

21. The Court is competent to hear the instant case. Peru ratified the Convention on July 28, 1978, and accepted the jurisdiction of the Court on January 21, 1981.

IV

22. Before examining the preliminary objection brought by the Government, it is appropriate to consider a previous matter raised by both parties, in writing and at the hearing, concerning the admissibility of the filing of the objection.

23. On March 22, 1995, the Commission requested the Court to rule that the Government's right to file preliminary objections had been extinguished, on the grounds that the period of thirty days for filing them had already expired. In its brief of March 24, 1995, received at this Court on April 3, the Government alleged that it had presented the preliminary objection on time. In support of this claim, it argued that there was a distinction between the deadline established in the Rules of Procedure of this Court for answering to the application (Article 29(1)), set at three months, and the deadline for filing preliminary objections (Article 31(1)), set at thirty days, proving that there was a difference, well supported by procedural doctrine, between dates established in days and those established in months or years; whereas the former include only working days, the latter are reckoned in calendar days.

24. The Government also contends that this difference is consistent with Peru's legislation and jurisprudence whereby procedural periods established in days are reckoned excluding non-working days; however, when the reference is to months or years those days are included; in other words, they are calendar days. The Government concluded that in the Rules of Procedure of this Court a clear distinction is drawn between the period for answering the application and the period for filing preliminary objections, with the deliberate intention of following the generally accepted procedure that when a period is indicated in months it includes all the days in the Gregorian calendar, holidays and working days alike, but that when it is established in days -as is the case with preliminary objections- only

working days are taken into account. According to that hypothesis, the brief of preliminary objections had been presented on time.

25. On April 24, 1995, the Inter-American Commission, for its part, reiterated its request of March 22, 1995, and also asked that the brief presented by Peru on March 24 be declared inadmissible, on the grounds that it had not been presented within the deadline established by the Rules of Procedure of this Court. The Commission maintains that the Government received notification of the application on February 13, 1995, so that when the preliminary objection was presented on March 24, 1995, -without any request for a deferment or extension of the deadline- the period of thirty days established in Article 31(1) of the Rules of Procedure had long expired, and, consequently, Peru's right to file the objection had been extinguished.

26. The Commission invoked the thesis sustained by the Court in the Cayara case, to the effect that "*there must be a fair balance between the protection of human rights, which is the ultimate purpose of the system, and the legal certainty and procedural equity that will ensure the certainty and reliability of the international protection mechanism*" *(Cayara Case, Preliminary Objections,* Judgment of February 3, 1993. Series C, No. 14, para. 63). Hence, admission of the brief on preliminary objections presented extemporaneously would violate those principles.

27. As far as the above allegations are concerned, the Court considers those brought by the Government regarding the filing of its preliminary objection to be unfounded, on the ground that although the time limit established in Article 31(1) of the Rules of Procedure is thirty days, whereas the deadline for answering the application is three months, the difference is not one of reckoning as Peru maintains, for the simple reason that time limits set in international and national proceedings are not based on the same criteria.

28. It is true that a distinction is drawn between judicial periods established in days and those established in months or years in some national procedural rules and in the practice of many domestic tribunals. The former are reckoned excluding non-working days and the latter in calendar days. However, this distinction cannot be applied to international tribunals, there being no standard regulation for determining which days are non-working, unless these are expressly stated in the rules of procedure of the international organizations.

29. This situation is more evident in the case of this Court, which is a jurisdictional body that does not function on a permanent basis and holds its sessions, without need of authorization, on days that may be non-working by the rules established for national tribunals and those of the host country of the Court itself. For this reason, the criteria used in domestic legislation cannot be applied.

30. The Rules of Procedure of this Court make no provision similar to that established in Article 77 of the Regulations of the Inter-American Commission, whereby all periods indicated in days in those Regulations *"shall be understood to be calculated as calendar days."* Nonetheless, this provision must be regarded as implicit in the proceedings before this Tribunal since, as stated above, the differentiation criterion invoked by Peru is unacceptable, there being no point of reference -such as that established in domestic procedural legislation- to determine which days are non-working. It is therefore not feasible to use any reckoning other than natural days to establish periods in days, months or years.

31. Two examples corroborate this point: first, the provisions of Article 80(1)(b) of the Rules of Procedure of the Court of Justice of the European Communities, amended on May 15, 1991, which provides that:

> [a] period expressed in weeks, months or in years shall end with the expiry of whichever day in the last week, month or year is the same day of the week, or falls on the date, as the day during which the event or action from which the period is to be calculated occurred or took place. If, in a period expressed in months or years, the day on which it should expire does not occur in the last month, the period shall end with the expiry of the last day of that month.

Secondly, mention may be made of Articles 46 and 49 of the Rules of Procedure of the Court of Justice of the Cartagena Agreement (Andean Agreement) of March 15, 1984. Whereas the former clearly establishes the working days and hours of the Tribunal, as well as its holidays, Article 49 establishes in its first paragraph that: "[t]*he periods shall be reckoned in continuous days and calculated excluding the day of the date on which it begins...*" Let it be said, however, that both the Tribunals cited function on a permanent basis.

32. Consequently, if the period of thirty days indicated in Article 31(1) of the Rules of Procedure of this Court should be considered in calendar terms, and the notification of the application was made on February 13, 1995, the date on which it was received by the Government, the deadline was March 13, 1995, whereas the preliminary objection brief reached the Secretariat of the Court on March 24, 1995.

33. The Court has declared that:

> [i]t is a commonly accepted principle that the procedural system is a means of attaining justice and that the latter cannot be sacrificed for the sake of mere formalities. Keeping within certain timely and reasonable limits, some omissions or delays in complying with procedure may be excused, provided that a suitable balance between justice and legal certainty is preserved *(Cayara Case, Preliminary Objections, supra* 26, para. 42; *Paniagua Morales et al Case, Preliminary Objections,* Judgment of January 25, 1996. Series C No. 23, para. 38).

34. The Court observes that the brief in which the Government filed its preliminary objections was presented a few days after expiration of the period of thirty days set by Article 31(1) of its Rules of Procedure, but that this delay cannot be considered excessive within the limits of timeliness and reasonableness considered by this Tribunal to be necessary for excusing a delay in meeting a deadline (see *supra* 33, *Paniagua Morales et al Case*, paras. 37 and 39). Further, that this very Court has exercised flexibility *vis-à-vis* the periods established in the Convention and in its Rules of Procedure, including that indicated in Article 31(1) of the Rules of Procedure, and has often granted extensions requested by the parties when they have shown reasonable cause.

35. In the instant case, the Court considers that, although the Government did not expressly request an extension, this omission was possibly due to its mistaken reckoning of the period, excluding the non-working days in accordance with its procedural rules. For the reasons adduced, the review of the preliminary objection presented by Peru should proceed.

V

36. The Government filed the preliminary objection of non-exhaustion of domestic remedies on the ground that the Inter-American Commission lodged the petition against it without fulfilling the provisions of Article 46(2) of the Convention, inasmuch as the case against María Elena Loayza-Tamayo for the crime of terrorism was still pending in the Supreme Court of Justice with the number 950-94.

37. This objection is based essentially on the charge that:

> a. The exceptions to the rule of exhaustion of domestic remedies, governed by Article 46(2) of the Convention, do not apply in the instant case, inasmuch as María Elena Loayza-Tamayo was not denied access to those domestic remedies. While it is true that at the time of the alleged victim's arrest the remedy of *habeas corpus* which, according to the Commission was in process against the deprivation of liberty, had been suspended under Decree Law No. 25.659 as it pertains to the crimes of treason and terrorism, owing to the State of Emergency, Mrs. Loayza-Tamayo did have access to other effective remedies before the competent authority, including the possibility of appealing to the Ministry of the Interior ["Ministerio Público"] to secure its approval of the remedy to protect the fundamental rights enshrined in the American Convention and the

1979 Political Constitution in force at the time. Under Article 250 of the Constitution, the Ministry of the Interior is an autonomous State organ with official responsibility to promote, in its own right or acting upon a petition of one of the parties, the protective remedy to defend the legitimacy of civic rights and public interests protected by the law.

b. María Elena Loayza-Tamayo's right to due process of law was respected under Article 25 of the Convention, inasmuch as she had the time and appropriate means to prepare her defense, since she made her declaration before the military jurisdiction in the presence of her defense attorney and the Special Military Prosecutor. Moreover, the representative of the Ministry of the Interior was present at the police action that led to her arrest.

c. Although the Government did not indeed file the objection of non-exhaustion of the domestic remedies until the presentation of its Report of November 23, 1994, it had repeatedly declared before the Commission that the requirement of admissibility had not been fulfilled and that, in any event, there was nothing to prevent Peru from filing that objection with this Court, pursuant to Article 31 of the Rules of Procedure.

d. Furthermore, it had sent to the Commission on three occasions the documentation relating to Mrs. Loayza-Tamayo's arrest, trial on the charge of treason in the military court and acquittal by the Supreme Court of Military Justice of August 11, 1993, and the transfer of the case to the regular courts, which had then tried Mrs. Loayza-Tamayo for the crime of terrorism, a case that had not been concluded. The Government had dispatched this documentation to the Commission with its briefs of August 23 and September 30, 1993, as well as its brief of July 13, 1994.

38. The Inter-American Commission, in its brief of comments on the Government's preliminary objections, maintains that:

a. Peru expressly admits that it did not formally interpose the objection of non-exhaustion of domestic remedies in a timely manner and that this admission constitutes in itself sufficient reason for the Court to declare the objection inadmissible.

b. The Government's assertion that it repeatedly told the Commission that the domestic remedies had not been exhausted is not accurate, since it only did so at the time it presented its report prepared by the Government Task Force. Although at the hearing held by the Commission on September 16, 1994, the Government's representative did refer to the failure to exhaust domestic remedies because the lawsuit against María Elena Loayza-Tamayo was still being tried in the regular courts, he did so in a very general manner and did not supply any proof in support of his statement, having at no time indicated the remedy to be exhausted or given proof of its effectiveness.

c. The Government's argument that, although the remedy of *habeas corpus* was suspended in regard to the crimes of treason and terrorism under Article 6 of Decree Law 25.659, María Elena Loayza-Tamayo had access to other effective remedies before the competent authority for protection of her rights, including the Ministry of the Interior, is unacceptable. The Commission maintains that no reference is made in any part of the brief to such remedies before the competent authority and that the Ministry of the Interior is merely mentioned as an example. Therefore, in keeping with the obligation of probity and good faith that must prevail in international proceedings, any evasive or ambiguous statement such as that made by the Government in this regard must be disallowed.

d. The effective remedy referred to in Article 25 of the Convention must be exercised before judges and courts; it is jurisdictional in nature, inasmuch as it may not be lodged with the Ministry of the Interior since that would make it a petition before an organ outside the judicial system.

e. Moreover, María Elena Loayza-Tamayo raised the *res judicata* objection before the court, which had dismissed it after hearing the opinion of the Ministry of the Interior. This means that the latter was aware of the objection and ignored it, so that there would be no point in a further request to the same Ministry of the Interior if its representative did not take the first one into consideration.

f. Also, if under the State of Emergency, protective remedies were not allowed on behalf of those arrested on charges of treason and terrorism, there would be no point in appealing to the Ministry of the Interior in such circumstances, since any petition on that score would be doomed to failure.

39. The Commission dispatched to this Court, together with its brief of December 29, 1995, a photocopy of the October 6, 1995 judgment delivered by the Supreme Court of Justice confirming the sentence passed on María Elena Loayza-Tamayo for the crime of terrorism. For this reason, the Commission maintains that this ruling shows that *"the preliminary objection of non-exhaustion of domestic remedies is unfounded."*

VI

40. The Court wishes to stress that it has established criteria that must be taken into consideration in this case. Indeed, the generally accepted principles of international law, to which the rule of exhaustion of domestic remedies refers, indicate, first, that this a rule that may be waived, either expressly or by implication, by the State having the right to invoke it, as this Court has already recognized (see *Viviana Gallardo et al.* [Judgment of November 13, 1981], No. G 101/81. Series A, para. 26). Second, the objection asserting non-exhaustion of domestic remedies, to be timely, must be made at an early stage of the proceedings by the State entitled to make it, lest a waiver of the requirement be presumed. Third, the State claiming non-exhaustion has an obligation to prove that domestic remedies remain to be exhausted and that they are effective (*Velásquez Rodríguez Case, Preliminary Objections,* Judgment of June 26, 1987. Series C No. 1, para. 88; *Fairén Garbi and Solís Corrales Case,* Judgment of June 26, 1987. Series C No. 2, para. 87; *Godínez Cruz Case, Preliminary Objections,* Judgment of June 26, 1987. Series C No. 3, para. 90; *Gangaram Panday Case, Preliminary Objections,* Judgment of December 4, 1991. Series C No. 12, para. 38; *Neira Alegría et al., Preliminary Objections,* Judgment of December 11, 1991. Series C No. 13, para. 30 and *Castillo Páez Case, Preliminary Objections,* Judgment of January 30, 1996. Series C No. 24, para. 40).

41. The Court further considers, in accordance with the aforementioned criteria, that the Government had the obligation to invoke, expressly and in a timely manner, the rule of non-exhaustion of domestic remedies if it wished to challenge appropriately the admissibility of the complaint before the Inter-American Commission, presented on May 6, 1993, concerning María Elena Loayza-Tamayo's detention and trial.

42. The briefs that the Government presented to the Commission during the processing of the case did show *inter alia* the way in which the *habeas corpus* trials developed in the military and regular court systems. However, the Government did not clearly state its objection of non-exhaustion of domestic remedies during the early stages of the proceedings before the Commission, since it was only expressly invoked in the Task Force report presented to the Commission by the Government on December 7, 1994, in answer to Report 20/94 approved by the Commission on September 26, 1994, which served to support the application before this Court.

43. It may be concluded from the foregoing that, since the Government extemporaneously alleged the non-exhaustion of domestic remedies required by Article 46(1)(a) of the Convention to preclude admission of the complaint on behalf of María Elena Loayza-Tamayo, it is understood to have tacitly waived that right.

44. At the public hearing on preliminary objections held by this Court on September 23, 1995, in reply to a question from Judge Antônio A. Cançado Trindade, the Peruvian Agent and Advisor clearly stated that only at a later stage in the case before the Commission had the question of exhaustion of domestic remedies been explicitly raised. Indeed, in the previous briefs submitted to the Commission, reference had been made solely to the development of the aforementioned proceedings. In its preliminary objection brief, Peru explicitly stated that it had not formally filed the objection of non-exhaustion of domestic remedies to the Commission. In the view of this Court, this is sufficient to consider the objection not to have been presented. Accordingly, since the Government waived by implication the right to file, the Commission could not later properly take the objection into consideration.

45. The preliminary objection should be dismissed for the reasons stated above.

VII

46. Now, therefore,

THE COURT,

DECIDES:

unanimously,

1. To dismiss the preliminary objection filed by the Government of the Republic of Peru.

2. To proceed with the consideration of the merits of the case.

Judge Antônio A. Cançado Trindade informed the Court of his Separate Opinion, which is attached hereto.

Done in English and Spanish, the Spanish text being authentic, in San José, Costa Rica, on this thirty-first day of January, 1996.

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

Read at a public session at the seat of the Court in San José, Costa Rica, on February 2, 1996.

So ordered,

Héctor Fix-Zamudio
President

Manuel E. Ventura-Robles
Secretary

SEPARATE OPINION OF JUDGE A. A. CANÇADO TRINDADE

1. I subscribe to the decision of the Court to reject the preliminary objection raised by the respondent Government, and to continue to hear the instant case on its merits. I feel obliged to add this Separate Opinion in order to leave on record the basis of my reasoning and my position on the central point of the preliminary objection presented by the Government of Peru, that is, the objection raised before the Court of non-exhaustion of domestic remedies in the circumstances of the present case of *Loayza Tamayo*.

2. May I, first of all, reiterate my understanding, expressed in my Dissenting Opinion in the Resolution of the Court of 18 May 1995 in the case of *Genie Lacayo* concerning Nicaragua, to the extent that, in the context of the international protection of human rights, the preliminary objection of non-exhaustion of domestic remedies is one of *pure admissibility* (and not of competence), and, as such, in the current system of the American Convention on Human Rights, should be resolved in a well-founded and *definitive* manner by the Inter-American Commission on Human Rights.

3. Contrary to what may be inferred, the extensive interpretation of the Court's own faculties, which it advanced in the *cases concerning Honduras*[1] , so as to comprise also issues related to preliminary objections of admissibility (based on a question of fact), does not always necessarily contribute to a more effective protection of the guaranteed human rights. In reality, such a conception leads to the undesirable reopening and reexamination of an objection of pure admissibility, which obstruct the procedure and thereby perpetuate a procedural imbalance which favors the respondent party. This is not a question of "restricting" the powers of the Court in particular, but rather of strengthening the system of protection *as a whole*, in its current stage of historical evolution, remedying such imbalance, and thus contributing to the full realization of the object and purpose of the American Convention on Human Rights.

4. The *preliminary* objections, if and when interposed, should be, by their very definition, *in limine litis*, at the stage of admissibility of the petition and before any and all consideration of the merits. This applies even more forcefully when dealing with a preliminary objection of pure admissibility, as is that of non-exhaustion of domestic remedies in the present context of protection. If this objection is not raised *in limine litis*, it is tacitly waived (as the Court has already admitted, for example, in the *Gangaram Panday* case, concerning Suriname[2]) , and, more recently, in the *Castillo Páez* case, concerning Peru[3].

5. Therefore, the respondent Government cannot subsequently raise that preliminary objection before the Court, as it failed to raise it, in a timely manner, for the decision of the Commission. If, as in the present case, the respondent Government waived that objection by not raising it *in limine litis* in

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1 Judgments of 1987 on Preliminary Objections, in the cases of *Velásquez Rodríguez*, paragraph 29; *Godínez Cruz*, paragraph 32; and *Fairén Garbi and Solís Corrales*, paragraph 34.

2 Judgment of 1991 on Preliminary Objections, *Gangaram Panday* case, paragraphs 39-40; see also the Judgment on Preliminary Objections, *Neira Alegría et al.* case concerning Peru, of the same year, paragraphs 30-31; and the judgments cited *supra* (Note 1) in the *three cases concerning Honduras*, paragraphs 88-90 (*Velásquez Rodríguez*), 90-92 (*Godínez Cruz*), and 87-89 (*Fairén Garbi and Solís Corrales*); and earlier, Decision of the Court of 1981 in the matter of *Viviana Gallardo et al.*, paragraph 26.

3 The 1996 Judgment on the Preliminary Objections in the *Castillo Páez* case, paras. 41-45.

the prior procedure before the Commission, it is inconceivable that the respondent Government may freely withdraw that waiver in the subsequent procedure before the Court (*estoppel/forclusion*).

6. The grounds of my position, which I reiterate here with conviction, are expounded in detail in my Separate Opinion in the Judgment of the Court of 4 December 1991, in the *Gangaram Panday* case (Preliminary Objections). There is no need to repeat them here *ipsis literis*, but rather to single out and develop some aspects which I deem especially relevant in relation to the present case of *Loayza-Tamayo*, just as I did in my Separate Opinion in the Judgment of the Court of 30 January 1996 in the *Castillo Páez* case (Preliminary Objections).

7. Just as the Commission's decisions on the inadmissibility of petitions or communications are considered definitive and non-appealable, its decisions of admissibility should be treated likewise, also considered definitive and unsusceptible to reopening by the respondent Government in the subsequent procedure before the Court. Why is it that the respondent Government is allowed to attempt to reopen a decision on admissibility by the Commission before the Court and an individual complainant does not have the same faculty to question a decision on inadmissibility of the Commission before the Court?

8. Such reopening of review by the Court of a decision on admissibility by the Commission creates an imbalance between the parties, in favor of the respondent governments (all the more so since individuals currently do not even have *locus standi* before the Court). This being so, the decisions of inadmissibility by the Commission should also be allowed to be reopened by the alleged victims and submitted to the Court. Either all decisions -of admissibility or not- of the Commission are allowed to be reopened before the Court, or they are all kept exclusive to the Commission.

9. This understanding is the one that is best suited to the basic notion of *collective guarantee* underlying the American Convention on Human Rights, as well as all treaties of international protection of human rights. Instead of reviewing the decisions on admissibility by the Commission, the Court should be able to concentrate more on the examination of questions of substance in order to fulfill with more speed and security its role of interpreting and applying of the American Convention, determining the occurrence or not of violations of the Convention and its juridical consequences. The Court is not, in my view, a tribunal of appeals of decisions of the Commission on admissibility.

10. The alleged reopening of questions of pure admissibility before the Court surrounds the process with uncertainties, prejudicial to both parties. It further generates the possibility of divergent or conflicting decisions on the matter by the Commission and the Court, thus fragmenting the unity inherent in a decision of admissibility. This in no way contributes to the perfecting of the system of guarantees of the American Convention. The principal concern of both the Court and the Commission should lie, not in the zealous internal distribution of attributions and competences in the jurisdictional mechanism of the American Convention, but rather in the adequate coordination between the two organs of international supervision so as to assure the most effective protection possible of the guaranteed human rights.

11. In the instant case of *Loayza Tamayo*, the Commission had pointed out the prior exhaustion of domestic remedies and declared the petition or communication admissible (case No. 11.154, *Report 20/94*, of 26 September 1994, pp. 14-16 and 31). As the dossier of the case reveals and the public hearing before the Court of 23 September 1995 confirms, the question was only brought up by the Government of Peru in an advanced stage of the proceedings before the Commission[4] in the period of the consideration of the preparation of the Commission's Report on the case (above mentioned document), beyond the time limit (and not *in limine litis*), and, even so, not as a preliminary objection of admissibility proper but rather as *de facto* information on proceedings pending in the domestic jurisdiction[5] .

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4 Hearing of 16 September 1994 before the Commission.

5 The Government only raised the preliminary objection as such before the Commission in its brief of 23 November 1994 (Report prepared by a Working Group), when the Commission's Report containing its decision on the case had already been adopted.

12. The act of pointing out, as a fact and in an extemporaneous manner, the existence of judicial proceedings pending in the domestic courts is not the same as expressly objecting to, on the basis of this fact, the admissibility and examination of the case by the Commission on the international level. In its brief of 15 March 1995 on the preliminary objection presented to the Court, the Government of Peru expressly states that it had not formally interposed to the Commission, the objection, as such, of the non-exhaustion of domestic remedies[6]. Moreover, as the present judgment rightly sets forth, there is no way to prolong indefinitely in time the opportunity granted to the respondent Government to raise a preliminary objection of non-exhaustion of domestic remedies[7] , which exists primarily for its benefit at the stage of admissibility of the petition.

13. The decision of the Commission regarding the admissibility should be considered definitive, impeding the Government to reopen it, and the Court to review it, since, in the present case, the preliminary objection in question was not even raised by the respondent Government in due time (*in limine litis*) for the decision of the Commission. This basis alone is sufficient to reject the preliminary objection interposed by the respondent Government. Given the circumstances of the present case of *Loayza Tamayo*, the objection of the alleged non-exhaustion of domestic remedies should be rejected on the basis of its extemporaneous nature and the tacit waiver before the Commission, and the *estoppel* (*forclusion*) before the Court[8] .

14. The *rationale* of my position, such as I have manifested it in the work of the Court[9] , ultimately lays in the aim of assuring the necessary balance or procedural equality of the parties before the Court -- that is, between the petitioning plaintiffs and the respondent governments-- essential to all jurisdictional systems of international protection of human rights. Without the *locus standi in judicio* of both parties[10] any system of protection finds itself irremediably mitigated, as it is not reasonable to conceive rights without the procedural capacity to vindicate them directly.

15. In the universe of the international law of human rights, it is the individual who alleges violations of his human rights, who alleges having suffered damages, who has to comply with the requirement of prior exhaustion of domestic remedies, who actively participates in an eventual friendly settlement, and who is the beneficiary (he or his relatives) of eventual reparations and indemnities. In the examination of the questions of admissibility before the Commission, the individual complainants and the respondent Governments are *parties*[11] . The reopening of such questions before the Court,

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6 Page 12 of the Government of Peru's brief; *cf.* also the briefs of the Commission of 24 and 25 May 1995.

7 This objection could hardly be interposed before the Court under Article 31(1) of its Rules of Procedure: the scope of this provision is limited, as it does not cover the issue under examination, and is restricted to purely procedural aspects.

8 Under the European Convention on Human Rights, according to the *jurisprudence constante* of the European Court of Human Rights, the respondent Government who failed to raise an objection of non-exhaustion of domestic remedies previously before the Commission, is prevented from raising it before the Court (*estoppel*). The European Court has ruled to this effect, *inter alia*, in the cases of *Artico* (1980), *Corigliano* (1982), *Foti* (1982) and *Ciulla* (1989), concerning Italy; *Granger* (1990), concerning the United Kingdom; *Bozano* (1986), concerning France; *De Jong, Blajet and Van der Brink* (1984), concerning Holland; and *Bricmont* (1989), concerning Belgium. In its Judgment of 22 May 1984, in the *Van der Sluijs, Zuiderveld and Klappe* case, concerning Holland, the European Court went even further. In that case, the respondent Government had initially raised an objection of non-exhaustion of domestic remedies before the European Commission, but failed to mention it in its "preliminary" arguments (hearing of November 1983) before the European Court. The delegate of the Commission deduced, in his reply, that the respondent Government appeared no longer to insist upon that objection. Since the Government did not question the Commission's analysis, the Court took formal notice of the Government's "withdrawal" of the objection of non-exhaustion, thus putting an end to the question (Judgment *cit. supra*, paragraphs 38-39 and 52).

9 E.g., in the public hearing of the Court of 17 January 1996, in the *El Amparo* case, concerning Venezuela.

10 It cannot go unnoticed that the question of *locus standi in judicio* of individuals before the Court (in cases already submitted to it by the Commission) is distinct from the right to submit a concrete case for decision by the Court, which Article 61(1) of the American Convention currently reserves only to the Commission and the States Parties to the Convention.

11 Regarding the admissibility stage of a petition or communication before the Commission, the American Convention refers to *"the party alleging violation of his rights"* (Articles 46(1)(b) and 46(2)(b), to the *"petitioner"* himself

without the presence of one of the parties (the petitioning plaintiffs), militates against the principle of procedural equality (*equality of arms/égalité des armes*).

16. In our regional system of protection[12], the spectre of the persistent denial of the procedural capacity of the individual petitioner before the Inter-American Court, a true *capitis diminutio*, arose from dogmatic considerations, belonging to another historical era, which tended to avoid his direct access to the international judicial organ. Such considerations, in my view, in our time lack support or meaning, even more so when referring to an international tribunal *of human rights*.

17. In the inter-American system of protection, *de lege ferenda* one gradually ought to overcome the paternalistic and anachronistic conception of the total intermediation of the Commission between the individual (the true complaining party) and the Court, according to clear and precise criteria and rules, previously and carefully defined. In the present domain of protection, every international jurist, faithful to the historical origins of his discipline, will know to contribute to the rescue of the position of the human being as a subject of international law (*droit des gens*), endowed with international legal personality and full capacity.

A.A. Cançado Trindade

Antônio Augusto Cançado Trindade
Judge

M. Ventura R.

Manuel E. Ventura-Robles
Secretary

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and the State (Article 47(c)), and to the *"parties concerned"* before the Commission (Article 48(1)(f) having clearly in mind the individual complainants and the respondent Governments. *Cf.* also, in the same sense, Articles 32(a) and (c); 33; 34(4) and (7); 36; 37(2)(b) and (3); and 43(1) and (2) of the Rules of Procedure of the Commission.

12 In the framework of this latter, to the Inter-American Commission, in its turn, is reserved the role of defender of the "public interests" of the system, as guardian of the correct application of the American Convention. If to this role one continues to add the additional function of defender of the interests of the alleged victims, as an "intermediary" between these latter and the Court, an undesirable ambiguity which should be avoided.

APPENDIX IV

THE INTER-AMERICAN COURT OF HUMAN RIGHTS

GARRIDO AND BAIGORRIA CASE

JUDGMENT OF FEBRUARY 2, 1996

In the Garrido and Baigorria 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 H. Jackman, Judge
Alirio Abreu-Burelli, Judge
Antônio A. Cançado Trindade, Judge
Julio A. Barberis, Judge *ad hoc*

also present:

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

pursuant to Articles 45 and 46 of the Rules of Procedure of the Inter-American Court of Human Rights (hereinafter "the Rules of Procedure"), renders the following judgment in 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").

II

1. This case was submitted to the Inter-American Court of Human Rights (hereinafter "the Court") by the Commission by application dated May 29, 1995, which was accompanied by Report 26/94 of September 20, 1994. It originates in a complaint (No. 11.009) against Argentina which the Commission received on April 29, 1992.

2. In its application, the Commission requested the following:

> 1. In accordance with the reasoning set forth in the present application, the Commission requests that the Honorable Court, having received ten copies of this application with its respective attachments, and based on the requirements set forth in Article 61 of the Convention and Articles 26 and 28 of the Rules of Procedure of the Court, admit the present application, transmit it to the Illustrious Government of Argentina and in due time render a judgment declaring:
>
> > i. That the Argentine Government is responsible for the disappearances of Raúl Baigorria and Adolfo Garrido and that, as a consequence, violations of Articles 4 (right to life); 5 (right to respect for physical, mental, and moral integrity); and 7 (right to personal liberty), all in relation to Article 1(1) of the Convention, are imputed to the Government.
> >
> > i i. That the Argentine State has violated the right of the victims and of their families to a fair trial. In particular, it has violated the right to a judicial hearing within a reasonable time as recognized by Article 8(1) of the Convention, as well as the right to simple and prompt judicial recourse for protection against acts that violate fundamental rights as provided for in Article 25 of the Convention, both read in relation to Article 1(1) of the Convention.
> >
> > iii. That the Argentine State as a consequence of the violation of the rights protected by Articles 4, 5, 7, 8, and 25, has also violated Article 1(1) of the Convention, in relation to the obligation to respect the rights and freedoms recognized in the Convention, and the duty to ensure and guarantee the free and full exercise of those rights to all persons subject to the jurisdiction of the Argentine State.
>
> 2. That in accordance with the statements of Point 1 of this petition, the Court order the Argentine State to make full reparations to the family of the victims for the grave material and moral injury caused, and, as a consequence, rule that the Argentine State:
>
> > i. Undertake a rapid, impartial, and exhaustive investigation into the facts complained of for the purpose of determining the whereabouts of Baigorria and Garrido and establishing the responsibility of the persons who are directly or indirectly involved, so that they receive the legal sanctions due them.
> >
> > ii. Provide information on the circumstances of the detention of Baigorria and Garrido and the fate of the victims, and locate and turn over their remains to their families.
> >
> > iii. Grant reparations for the purpose of compensating the families of the victims for the material and moral injuries suffered.
> >
> > iv. Order any other measures which the Court considers appropriate to remedy the injury caused by the disappearance of Baigorria and Garrido.
>
> 3. Order the Argentine State to pay the costs of this proceeding, including the honoraria of the professionals who have served as representatives of the victims both in their efforts before the Commission and in the proceedings before the Court.

3. The Inter-American Commission named Michael Reisman as its Delegate; David Padilla and Isabel Ricupero as Attorneys; and as Assistants, Juan Méndez, José Miguel Vivanco, Viviana Krsticevic, Ariel Dulitzky, Martín Abregú, Diego Lavado, and Carlos Varela Alvarez. Isabel Ricupero was subsequently replaced by Mario López-Garelli.

4. On June 12, 1995, after the President of the Court (hereinafter "the President") made the preliminary review of the application, the Secretariat of the Court (hereinafter "the Secretariat") notified Argentina of the application and informed the State that it had a period of three months to file a written answer (Article 29(1) of the Rules of Procedure) and thirty days following notification of the application to present preliminary objections (Article 31(1) of the Rules of Procedure). The Secretariat also asked Argentina to appoint its Agent to the Court within a period of two weeks and, if it considered it necessary, also to appoint an Alternate Agent.

The Government received the notification on June 14, 1995.

5. By note dated June 22, 1995, in Buenos Aires, Argentina appointed Ambassador Zelmira Regazzoli and Doctor Mónica Pinto as Agent and Alternate Agent respectively; Doctor Francisco Martínez, Doctor Jorge Cardozo and Secretary Ana María Moglia as Advisors; and Minister Haydée Osuna as Assistant. By note of January 31, 1996, Ambassador Humberto Toledo was appointed Alternate Agent.

6. On July 10, 1995, the Agent of the Government informed the Court that Argentina would not present preliminary objections. By another note of the same date the agent notified the Court that Argentina appointed Julio A. Barberis as Judge *ad hoc*.

7. On September 11, 1995, Argentina answered the application. (*infra* para. 24)

8. By Order of December 9, 1995, the President summoned the parties to a public hearing at the seat of the Court to be held on February 1, 1996. The Commission and the Government, in notes received on January 30 and 31, 1996, respectively, requested postponement of that hearing.

9. On February 1, 1996, the public hearing on the merits was held as planned at the seat of the Court.

There appeared,

for the Government of the Republic of Argentina:

Humberto Toledo, Alternate Agent

for the Inter-American Commission on Human Rights:

John Donaldson, Delegate
Domingo Acevedo, Attorney
Ariel Dulitzky, Assistant

II

10. In Section II of its application, the Commission set forth a statement of the facts that gave rise to this case. In this regard, the Commission asserts that, according to the account of eyewitnesses, at approximately 4:00 P.M., on April 28, 1990, Adolfo Argentino Garrido-Calderón and Raúl Baigorria-Balmaceda were detained by uniformed personnel of the Police of Mendoza when they were driving around in a vehicle. This event took place in the General San Martín Park in the City of Mendoza. According to the witnesses, the men were questioned (or detained) by at least four police agents wearing uniforms of the mobile division of the Mendoza Police, who were traveling in two cars belonging to that security force.

11. This incident was communicated to the family of Garrido approximately one hour later, by Ramona Fernández, who heard of the occurrence through the account of an eyewitness.

12. The family of Garrido had immediately initiated a search. They were worried because there was a judicial order of detention out against him. The family asked Attorney Mabel Osorio to locate Garrido.

The result of the inquiry was that Mr. Adolfo Garrido was not found to be detained at any police division. Nevertheless, at the Fifth Police Station of Mendoza the family found the vehicle in which Garrido and Baigorria had been traveling at the time of their detention. The police told them that the vehicle had been found in the General San Martín Park as a result of an anonymous call claiming that there was an abandoned car there.

13. On April 30, 1990, Attorney Osorio filed a writ of habeas corpus on behalf of Garrido, and on May 3 Attorney Oscar A. Mellado also filed a writ on behalf of Baigorria.

Both writs were processed by the Fourth Court of Investigation of the Mendoza Province and were rejected for failure to prove deprivation of liberty.

14. On May 2, 1990, the family of Garrido filed a formal complaint with the Public Prosecutor on duty, alleging the forced disappearance of both persons. This proceeding took place in the Fourth Court of Investigation of the First Judicial District and was identified as No. 60.099.

When Esteban Garrido, brother of one of the victims, answered the summons to testify, he met a police officer named Geminiani at the Court. Mr. Geminiani acknowledged that a photograph of Adolfo Garrido had been shown by a police agent to the owners of a business that had been held up, and that the police "were looking for him." These statements were recorded in the judicial record.

15. The application provides the names of the eyewitnesses who saw Garrido and Baigorria detained and taken away by police personnel.

16. The families of the disappeared reported the events to the Committee on Rights and Guarantees of the Chamber of Representatives and to the Senators of the Mendozan Legislature on May 2 and 11, 1990, respectively. They did not receive an answer.

17. On September 19, 1991, Esteban Garrido presented a new writ of habeas corpus on behalf of both disappeared before the First Court of Investigation of Mendoza. It was rejected. He appealed this decision to the Third Criminal Chamber of Mendoza, which denied the appeal on November 25, 1991.

18. On November 20, 1991, Esteban Garrido became the civil plaintiff in Action No. 60.099, which was brought before the Fourth Court of Investigation of the First Judicial District of Mendoza (*supra*, para. 14).

19. During the five years which have transpired since the disappearance of Garrido and Baigorria, their families have denounced the events at the local level as well as at the national and international levels. They have filed multiple complaints before governmental authorities and have conducted an intense search in judicial, police, and health facilities, all to no avail. The judicial file on this proceeding is still in the initial stage of processing.

III

20. The Inter-American Commission received the complaint in this case on April 29, 1992, and began processing it on May 6, 1992. On September 20, 1994, the Commission adopted Report 26/94,

that was transmitted to Argentina on December 1, 1994, requesting that it provide information on the measures adopted within a period of sixty days. The resolutions of the Report were as follows:

> 50. To declare that responsibility for the disappearances of Raúl Baigorria and Adolfo Garrido is imputed to the State of Argentina in accordance with Article 1(1) of the Convention and that, as a consequence, violations of Articles 4 (right to life), 5 (right to respect of physical, mental, and moral integrity) and 7 (right to personal liberty) of the Convention are attributable to the State.
>
> 51. To recommend to the Government of Argentina that it undertake an exhaustive, rapid and impartial investigation into the events denounced for the purpose of determining the whereabouts of Garrido and Baigorria and establishing the responsibility of the persons who are directly or indirectly involved, so that they receive appropriate legal sanctions. Also to recommend that the State pay compensation to the families of the victims.
>
> 52. To request that the Government of Argentina inform the Commission, within a period of sixty days, of the measures adopted as a result of the present report.
>
> 53. To transmit the present report to the Government of Argentina, which shall not be authorized to publish it.

21. On February 6, 1995, the Commission granted Argentina an extension until February 20, 1995 to submit the information requested.

The Government, in a note dated February 17, 1995, informed the Commission that the Ministry of Justice had initiated measures to give effect to the decisions of the Commission. On March 1, 1995, the Commission granted the Government another period of an additional ninety days to comply with its obligations.

On May 25, 1995, the Government requested that the Commission allow it to continue the actions initiated until the Commission could evaluate the measures adopted at its next session. The Commission decided that the Argentine answer did not demonstrate an advance in compliance with the resolution of Report 26/94. On May 29 it submitted its application to this Court.

IV

22. The application maintains that the events set forth therein describe a case of the forced disappearance of Mr. Raúl Baigorria and Mr. Adolfo Garrido on April 28, 1990, and a resultant denial of justice, which violate numerous articles of the American Convention on Human Rights (hereinafter "the Convention" or "the Inter-American Convention"). In this respect the Commission invokes Articles 1(1) (Obligation to Respect Rights), 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 7(5), 7(6), 8, and 9 (Right to a Fair Trial), 8(1) (Judicial Guarantees), and 25 (Judicial Protection), (*supra* para. 2).

23. In the application the Commission offers the evidence on which it is based.

V

24. The Court considers it pertinent to transcribe the following two paragraphs from Argentina's answer to the application:

> The Government of Argentina accepts the facts set forth in Item II of the application in relation to the situation of Mr. Raúl Baigorria and Mr. Adolfo Garrido, facts which substantially coincide with those raised in the presentation before the Illustrious Inter-American Commission on Human Rights that were not questioned at that time.
>
> The Government of the Republic of Argentina accepts the legal consequences to the Government resulting from the facts referred to in the previous paragraph in light of Article 28(1) and (2) of the American Convention on Human Rights inasmuch as the competent court has not been able to identify the person or persons criminally responsible for the crimes against Raúl Baigorria and Adolfo Garrido and in that way clarify their whereabouts.

25. During the hearing of February 1, 1996, (*supra* para. 9) the Alternate Agent of Argentina, Ambassador Humberto Toledo, stated that the Government "*totally accept*[ed] *its international responsibility*" and reiterated "*the acceptance of international responsibility of the Argentine State in a case of this kind.*" At the same hearing the Commission expressed its agreement to the terms of the acceptance of responsibility made by the Alternate Agent of Argentina.

VI

26. The Court has jurisdiction to hear the instant case. Argentina has been a State Party to the American Convention since September 5, 1984, and on that same day accepted the jurisdiction of the Court.

VII

27. On September 11, 1995, Argentina accepted the facts set forth by the Commission in Section II of the application. Those facts are summarized in paragraphs ten through nineteen of the instant judgment.

Argentina also accepted the legal consequences that derive from the facts cited (*supra* para. 24) Likewise, this State fully accepted its international responsibility in the present case. (*supra* para. 25)

Given the acceptance made by Argentina, the Court determines that there is no controversy between the parties as to the facts that gave rise to the instant case, nor as to international responsibility.

VIII

28. The Court determines that it is now time to decide on the procedures to be followed on the subject of reparations and compensation in the present case. In this regard, the Government has requested of the Court, "the suspension of the proceedings" for a period of six months for the purpose of reaching an agreement. The nature of proceedings before a human rights court does not permit the parties to withdraw from the application of set procedural rules, even by mutual agreement, since they are by nature of a public procedural order.

29. Given the current conversations between the Government, the Commission, and the representatives of the victims, to which the interested parties made reference during the hearing of February 1, 1996, and in the briefs submitted to the Court before the hearing, it appears appropriate to grant them a period of six months to reach an agreement on reparations and compensation.

30. The Court must point out the difference between the suspension of a proceeding, which is inadmissible, and the granting of a period to reach an agreement on reparations and compensation, as this Court has done in some earlier cases. The latter is within the jurisdiction of the Tribunal, and, in the present case may be an adequate way to reach an agreement on reparations and compensation.

IX

31. Now, therefore,

THE COURT,

DECIDES:

unanimously

1. To take note of the acceptance made by Argentina of the acts stated in the application.

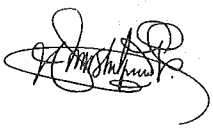
2. To take note as well of Argentina's acceptance of international responsibility for those acts.

3. To grant the parties a period of six months from the date of the present judgment to reach an agreement on reparations and compensation.

4. To reserve the authority to examine and approve that agreement and, in the event that the parties do not agree, to continue the proceedings on reparations and compensation.

Done in Spanish and English, the Spanish text being authentic. Read at a public session at the seat of the Court in San Jose, Costa Rica on February 2, 1996.

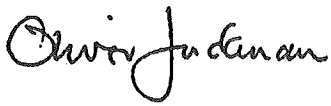
Héctor Fix-Zamudio
President



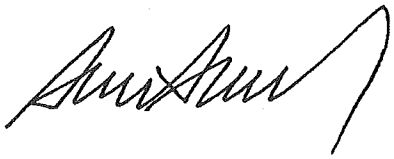
Hernán Salgado-Pesantes

Alejandro Montiel-Argüello

Máximo Pacheco-Gómez

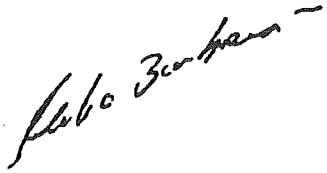


Oliver Jackman



Alirio Abreu-Burelli

Antônio A. Cançado Trindade

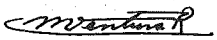


Julio A. Barberis

Manuel E. Ventura-Robles
Secretary

So ordered,

Héctor Fix-Zamudio
President



Manuel E. Ventura-Robles
Secretary

APPENDIX V

ORDER OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS OF FEBRUARY 1, 1996

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

COLOTENANGO CASE

HAVING SEEN:

1. The Order of the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court") of May 18, 1995, the operative section of which provides as follows:

> 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.

2. The reports of the Government of the Republic of Guatemala (hereinafter "Guatemala" or "the Government") submitted to the Court on July 3, 1995, and expanded by the reports submitted on July 7, August 21, September 29, and November 20, of 1995, and January 23, 1996, respectively, in which the Government informed the Court as to the measures adopted in accordance with operative paragraphs 2 and 4 of the Order of the Inter-American Court of May 18, 1995.

3. The written observations of the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") to the Government's reports, received by the Inter-American Court on September 16 and October 31, 1995, and on January 30, 1996, also in accordance with operative paragraphs 2 and 4.

4. The Guatemalan brief submitted on January 28, 1996, seeking an Order from the Court terminating the provisional measures with effect from February 2, 1996, since "*they have been maintained in force for NINETEEN (19) MONTHS, and as the requirement of Extreme Gravity and Urgency invoked by the Commission does not exist, it has become imperative, by reason of the temporary nature of the measures, that they be annulled, since to prolong them indefinitely would be to distort their inherent character.*" (Capitalized in the original)

5. The letter sent to the Commission on May 20, 1995, by the President of the Court, in which, in reference to this case and at the instance of the full Court, he urged that the Commission, "*should examine the possibility of submitting for the consideration of the Court any case in which circumstances of extreme gravity and urgency persist for a prolonged period of time, since the Court is not in possession of sufficient direct knowledge of the facts and of the surrounding circumstances to permit it to come to the most appropriate decision.*"

CONSIDERING:

1. That the extension of the provisional measures prescribed in operative paragraph 1 of the Order of May 18, 1995, comes to an end on February 1, 1996.

2. That up to the present the Government has punctually supplied reports detailing actions which it has taken in fulfillment of the directives of the Inter-American Court, as well as documents intended to demonstrate that in the Municipality of Colotenango there are no "*circumstances of extreme gravity that put at risk the life and personal integrity of the inhabitants of Colotenango.*"

3. That the Commission maintains that, although the imposition of provisional measures has offered "*some level of security to the thirteen persons protected*", the Government "*has not fully complied with the orders of the Court and with its duty to guarantee the security of the persons protected*" and that a "*situation of extreme gravity and urgency continues to exist.*"

4. That the basis of the rule in Article 63(2) of the Convention is the presumption that a request by the Commission for provisional measures is grounded in the understanding that when it has completed its processing of the case before it, that case will be submitted to the jurisdiction of the Court. This follows from the interpretation of the phrase in that provision which reads: "[w]*ith respect to a case not yet submitted to the Court, it may act at the request of the Commission.*" (Emphasis added)

5. That in connection with the provisional measures in the Chunimá Case, the Court has already set out the criteria to be applied in a matter such as the present one. It stated that in regard to provisional measures in matters which have not been submitted to this Court, it is incumbent on the Commission to take all necessary steps to examine the possibility of submitting to the jurisdiction of the Court any case in which circumstances of extreme gravity and urgency persist for a prolonged period of time, since the Court is not in possession of sufficient direct knowledge of the facts and of the surrounding circumstances to permit it to come to the most appropriate decision.

6. That in light of the above, the President, in his letter of May 20, 1995, to the Inter-American Commission, requested that it examine the possibility of submitting the case to the jurisdiction of the Court.

7. That according to the Commission, certain measures taken by the Government, *"have had a positive effect for the persons involved in the Colotenango Case, especially in recent months when the Commission has not learned of any grave situations of harassment."*

8. That although the various steps taken by the Government towards fulfillment of the directives contained in the Orders on provisional measures have led to a noteworthy decrease in the number of acts of intimidation by members of the civil patrols, the Court nevertheless, in view of its protective responsibility, deems it appropriate to maintain the provisional measures in force until such time as there is certainty that no irreparable damage will be done to the lives and physical integrity of the 13 persons under protection.

NOW, THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS

By virtue of Article 63(2) of the American Convention on Human Rights, and in exercise of the authority conferred on it by Articles 24 and 45 of its Rules of Procedure.

DECIDES:

1. To take note of the measures adopted by the Government of the Republic of Guatemala in compliance with the Order of May 18, 1995.

2. To extend for a period of six months the provisional measures ordered in the June 22, 1994 Order of the Court, expanded by the December 1, 1994 Decision of the Court and extended by the Order of May 18, 1995.

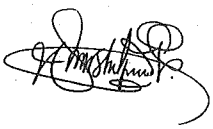
3. To call upon the Government of the Republic of Guatemala, further to the measures already in place, to institute mechanisms of control and vigilance over the civil patrols operating in Colotenango.

4. To call upon the Government of the Republic of Guatemala and the Inter-American Commission on Human Rights to continue to provide periodic reports to the Inter-American Court of Human Rights concerning the measures taken in accordance with the Order of May 18, 1995.

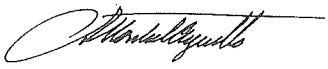
5. To request the Inter-American Commission on Human Rights to consider the appropriateness of submitting this case to the Inter-American Court of Human Rights for its consideration.

Done in Spanish and English, the Spanish text being authentic, on this first day of February, 1996

Héctor Fix-Zamudio
President

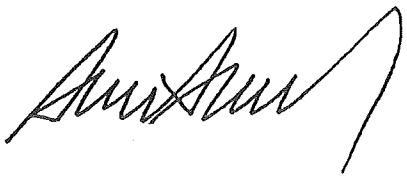


Hernán Salgado-Pesantes



Alejandro Montiel-Argüello

Máximo Pacheco-Gómez



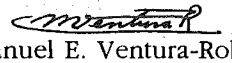
Alirio Abreu-Burelli

Antônio A. Cançado Trindade

Manuel E. Ventura-Robles
Secretary

So ordered,

Héctor Fix-Zamudio
President



Manuel E. Ventura-Robles
Secretary

APPENDIX VI

ORDER OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS OF FEBRUARY 1, 1996

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

CARPIO NICOLLE CASE

HAVING SEEN:

1. The Order of the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court") of September 19, 1995, in which it decided:

> 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.

2. The reports of the Government of the Republic of Guatemala (hereinafter "the Government" or "Guatemala") received by the Court on October 10, November 3, and December 6, 1995, and January 5, 1996.

3. The written comments of the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission") in regard to the said reports, which were received by the Court on October 25, November 21, and December 20, 1995, and January 22, 1996.

CONSIDERING:

1. That in its Order of September 19, 1995, the Court decided that the provisional measures prescribed in the present matter should be in force for six months from the time of notification of the said Order.

2. That the reports, which have been provided in timely fashion, indicate that the Government has taken some steps towards the implementation of the directives of the Inter-American Court.

3. That, in light of the representations made by the Inter-American Commission on Human Rights on alleged acts of intimidation and threats directed towards certain of the persons for whose benefit the provisional measures were ordered, the Court continues to be concerned in regard to the prevention of irreparable damage arising from the violation of the human rights recognized in the American Convention.

NOW, THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

By virtue of Article 63(2) of the American Convention on Human Rights, and in exercise of the powers conferred on it by Articles 24 and 45 of its Rules of Procedure,

DECIDES:

To extend until September 20, 1996, the provisional measures ordered in the September 19, 1995, Order of the Court.

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 VII

ORDER OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS OF FEBRUARY 2, 1996

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

ALEMAN LACAYO 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

HAVING SEEN:

1. The February 2, 1996 communication and its attachments, in which the Inter-American Commission on Human Rights (hereinafter "the Commission" or the "Inter-American Commission"), based on Article 63(2) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and Article 24 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"), submitted to the Inter-American Court of Human Rights (hereinafter "the Court" or the "Inter-American Court") a request for provisional measures on behalf of Mr. Arnoldo Alemán-Lacayo, relative to Case No. 11.281 under consideration by the Commission against the Government of the Republic of Nicaragua. (hereinafter "the Government" or "Nicaragua")

2. The above-mentioned communication from the Commission in which the Court is requested to adopt the following measures:

> 1. Request that the Government of Nicaragua adopt effective security measures to protect the life and personal integrity of Dr. Arnoldo Alemán-Lacayo. To this end, it is recommended that the relatives of Dr. Alemán be given the name and telephone number of a person in a position of authority in the Government who will be responsible for providing them with protection should it become necessary.
>
> 2. Request that the Government of Nicaragua, as part of the security measures, provide Dr. Arnoldo Alemán with an armored car, so that he may travel throughout the national territory without fear of being pursued or attacked by groups of armed irregulars.
>
> 3. Request that the Government of Nicaragua adopt the measures necessary to conduct an exhaustive investigation that will lead to the clarification of the events which occurred on January 25 of the present year, and that it identify those responsible with a view to applying the appropriate sanctions.
>
> 4. Request that the Government of Nicaragua inform the Commission as to the provisional measures adopted in accordance with the directive of the Inter-American Court of Human Rights.

3. The events the Commission took into account in calling upon the Government to adopt provisional measures are summarized below:

> 18. Dr. Arnoldo Alemán-Lacayo, 50 years old, and the Liberal Alliance Candidate for the Presidency of the Republic of Nicaragua, escaped injury in an attempt against his life at approximately 10 a.m. on January 25, 1995 (sic). The events took place in the Municipality of Wiwilí, 300 kilometers north of Managua, when Dr. Alemán was traveling throughout the zone on a campaign tour. Approximately a dozen heavily armed men attacked the motorcade of Alemán.
>
> 19. One of Dr. Alemán's body guards, identified as Luis Angel Cruz, was killed during the course of the attack. In addition, the Deputy Chief of Police of the Department of Nueva Segovia, Orlando Selva, and Liberal party supporters Heriberto Gadea and Antonio Alemán were gravely injured.
>
> 20. The sector where the attack occurred shelters groups of heavily armed delinquents, many of whom maintain ties with bands of ex-members of the Sandinista Popular Army and the Nicaraguan Resistance who rearmed themselves as of 1990.
>
> 21. Arnoldo Alemán is the presidential candidate of a coalition of four liberal parties in the general election of this October 20.

CONSIDERING:

1. That Nicaragua has been a State Party to the American Convention since September 25, 1979, and accepted the compulsory jurisdiction of the Court on February 12, 1991.

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, in matters not yet submitted to it, may adopt such provisional measures as it deems pertinent at the request of the Commission.

3. That in the instant case, independently of the fact that the merits of the matter are under consideration by the Commission, publicity in both the national and international Press, the death of one of Dr. Alemán-Lacayo's bodyguards, and the injuries sustained by others in his entourage, have

invested the events on which the Commission bases its request for provisional measures with a high degree of notoriety and credibility.

4. That these circumstances entitle the Court to apply the provisions of Article 63(2) of the Convention, since it considers this to be a case of "extreme gravity and urgency" and one in which it is necessary to avoid irreparable damage to Mr. Arnoldo Alemán-Lacayo.

5. That for those reasons, Nicaragua should adopt the measures necessary to preserve the life and personal integrity of Arnoldo Alemán-Lacayo and to avoid irreparable damage to him.

6. That the Government has the obligation to prevent violations of human rights and to investigate the events that led to this request for provisional measures so as to identify those responsible and impose the appropriate sanctions in order to avoid the repetition of such acts.

NOW, THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS

By virtue of Article 63(2) of the American Convention on Human Rights, and in exercise of the powers conferred on it by Article 24 of its Rules of Procedure,

DECIDES:

1. To call upon the Government of the Republic of Nicaragua to adopt, forthwith, such measures as are necessary to protect the life and personal integrity of Dr. Arnoldo Alemán-Lacayo and to avoid irreparable damage to him, in strict compliance with its legal obligation under Article 1(1) of the Convention to respect and guarantee human rights.

2. To call upon the Government of Nicaragua to investigate the events and punish those responsible for them.

3. To call upon the Government of Nicaragua to submit to the Court, upon notification of this Order, a monthly report concerning the provisional measures which it has taken, and upon the Inter-American Commission on Human Rights to forward to the Court its observations on such report within fifteen days of its receipt.

4. To include this matter on the agenda of the next regular session of the Court in order to analyze the results of the measures adopted by the Government of Nicaragua.

Done in Spanish and English, the Spanish text being authentic, on this second day of February, 1996

Héctor Fix-Zamudio
President

Hernán Salgado-Pesantes

Alejandro Montiel-Argüello

Máximo Pacheco-Gómez

Oliver Jackman

Alirio Abreu-Burelli

Antônio A. Cançado Trindade

So ordered,

Héctor Fix-Zamudio
President

Manuel E. Ventura-Robles
Secretary

APPENDIX VIII

ORDER OF THE

INTER-AMERICAN COURT OF HUMAN RIGHTS

OF FEBRUARY 2, 1996

HAVING SEEN:

1. Article 26 of the Rules of Procedure of the Inter-American Court of Human Rights (hereinafter "the Rules of Procedure") provides that for *"a case to be referred to the Court under Article 61(1) of the Convention, an application shall be filed with the Secretariat* [indicating] *the purpose of the application, a statement of the facts, the supporting evidence, the legal arguments and relevant conclusions."*

2. Article 34(1) of the Rules of Procedure provides that *'*[t]*he Court may, at the request of a party or on its own motion, obtain any evidence which it considers likely to clarify the facts of the case. In particular, it may decide to hear as a witness or expert witness, or in any other capacity, any person whose evidence, statements or opinion it deems useful."*

3. Article 29(1) of the aforementioned Rules of Procedure provides that *'*[t]*he respondent State shall always have the right to file a written answer to the application within three months following notification thereof."*

4. According to the provision contained in Article 31(2), *'*[t]*he document setting out the preliminary objections shall be filed with the Secretariat in ten copies and shall set out the facts on which the objection is based, the legal arguments, and the conclusions and supporting documents, as well as any evidence which the party filling the objection may wish to produce."*

5. Article 32 provides that *'*[t]*he President shall, after consulting the Agents and the Delegates, fix the date for the opening of the oral proceedings."*

CONSIDERING:

1. Pursuant to the above provisions and the principles of expeditiousness and diligence governing the processes involved in the exercise of human rights, it is the procedural responsibility of the Inter-American Commission on Human Rights to stipulate in the application the evidentiary means it proposes to employ indicating and identifying the witnesses and experts; the place and circumstances of any inspections; the purpose of the expert evidence and any other information necessary for the gathering of evidence. The documents may accompany the application or be submitted at a later stage, provided that they are filed prior to the oral proceedings. By the same token, it is incumbent upon the respondent State to fulfill the same requirements, in the same terms, in its written answer to the application.

2. Other than the procedural steps of application and answer, and filing of preliminary objections and answer, the Rules of Procedure make no provision for the specific indication of evidence, which would enable the parties to exercise the necessary reciprocal control in regard to the propriety and validity of such evidence.

NOW, THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

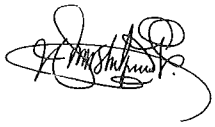
by virtue of the powers conferred on it in Article 1(3) of its Rules of Procedure,

DECIDES:

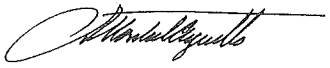
1. That, for the purpose of regulating the procedure and in strict compliance with the Rules of Procedure, the Court shall admit only such evidence as is indicated in the application and answer and in the document setting out the preliminary objections and the answers to them. Should any of the parties allege *force majeure,* serious impediment or the emergence of supervening facts as grounds for the use of an item of evidence, the Court may, as an exception in the circumstances described, admit such evidence at a time other than those indicated above, provided that the opposing party is guaranteed the right of defense.

2. That this Order shall be communicated to the States Parties to the American Convention on Human Rights, the Secretary General of the Organization of American States, and the Inter-American Commission on Human Rights.

Héctor Fix-Zamudio
President



Hernán Salgado-Pesantes



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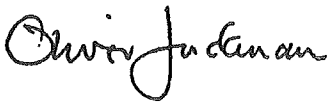
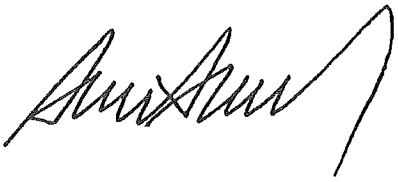
Máximo Pacheco-Gómez



Oliver Jackman



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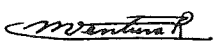
Antônio A. Cançado Trindade



(s) Manuel E. Ventura-Robles
Secretary

APPENDIX IX

INTER-AMERICAN COURT OF HUMAN RIGHTS

BLAKE CASE

PRELIMINARY OBJECTIONS

JUDGMENT OF JULY 2, 1996

In the Blake 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
Oliver Jackman, Judge
Antônio A. Cançado Trindade, Judge
Alfonso Novales-Aguirre, Judge *ad hoc*;

also present:

Manuel E. Ventura-Robles, Secretary

pursuant to Article 31(6) of the Rules of Procedure of the Inter-American Court of Human Rights (hereinafter "the Rules of Procedure"), renders the following judgment on the preliminary objections filed by the Government of Guatemala (hereinafter "the Government" or "Guatemala").

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 on Human Rights (hereinafter "the Commission" or the "Inter-American Commission") by petition of August 3, 1995. The case originated in a complaint (No. 11.219) against Guatemala lodged with the Secretariat of the Commission on November 18, 1993.

2. In referring 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 Articles 26 *et seq.* of the Rules of Procedure. The Commission submitted this case to the Court for a decision as to whether there had been a violation of the following Articles of the Convention: 7 (Right to Personal Liberty), 4 (Right to Life), 25 (Right to Judicial Protection), 8 (Right to a Fair Trial), 13 (Freedom of Thought and Expression), and 22 (Freedom of Movement and Residence), all these in relation to Article 1(1) of the Convention, with the alleged *"violation of the rights to personal liberty, life and freedom of expression as well as for the denial of justice to the detriment of Mr. Nicholas Chapman Blake,"* and of Article 51(2) of the Convention for refusal to *"implement the recommendations made by the Commission."* In addition, the Commission asked the Court to declare that the Government *"must make full reparation to Nicholas Chapman Blake's next of kin for the grave material -and moral- damage suffered as a result of the multiple violations of rights protected by the Convention and the enormous expenses incurred by the victim's relatives to establish his whereabouts and identify those responsible for his disappearance and subsequent concealment."* Lastly, it asked the Court to order the Government to pay the costs *"of this case, including the fees of the professionals who served as the victim's representatives before the State authorities and in the processing of the case before the Commission and the Honorable Court."*

3. The Inter-American Commission designated Claudio Grossman and John Donaldson to act as its Delegates, and Edith Márquez-Rodríguez, David J. Padilla and Domingo E. Acevedo to act as its Attorneys. It also named the following persons to act as Assistants authorized to represent the victim: Janelle M. Diller, Margarita Gutiérrez, Joanne M. Hoeper, Felipe González, Diego Rodríguez, Arturo González and A. James Vázquez-Azpiri.

4. By note of August 18, 1995, after a preliminary review of the application by the President of the Court (hereinafter "the President"), the Secretariat of the Court (hereinafter "the Secretariat") notified the Government of the application and informed it that it had a period of three months in which to answer, two weeks to name an Agent and Alternate Agent, and thirty days to file preliminary objections, all those periods to commence on the date of notification of the application. By communication of the same date the Government was also invited to appoint a Judge *ad hoc.*

5. On September 1, 1995, the Government gave notice that it had designated Mr. Dennis Alonzo-Mazariegos as Agent and Mr. Vicente Arranz-Sanz as Alternate Agent. On September 22, 1995, the Government informed the Secretariat that it had appointed Mr. Alfonso Novales-Aguirre as Judge *ad hoc*.

6. On September 16, 1995, in accordance with Article 31(1) of the Rules of Procedure, the Government submitted a brief containing its preliminary objections (see *infra* para. 22).

7. That same day the Secretariat forwarded the Government's brief to the Commission and on October 16, 1995, the Commission presented its answer contesting the preliminary objections.

8. On November 9, 1995, the Government submitted its reply to the application.

9. By Order of December 9, 1995, the President decided to summon the parties to a public hearing so that their comments on the preliminary objections presented in this case could be heard.

10. The public hearing was held at the seat of the Court on January 28, 1996, at which there appeared:

for the Government of Guatemala:

Dennis Alonzo-Mazariegos, Agent
Fredy Gudiel-Samayoa, Advisor;

for the Inter-American Commission on Human Rights:

Claudio Grossman, Delegate
John Donaldson, Delegate
Domingo Acevedo, Attorney
Felipe González, Assistant

II

11. The following paragraphs summarize the events, circumstances and processing of this case before the Commission as they were set forth in the application and its attachments submitted to the Court.

12. According to the application, on March 26, 1985, Mr. Nicholas Chapman Blake, a United States citizen and journalist residing in Antigua, Guatemala, set off with Mr. Griffith Davis, a United States citizen and photographer, to the small village of El LLano in the Department of Huehuetenango, arriving there on March 28, 1985. The purpose of the trip was to collect information for an article on one of the Guatemalan guerrilla bands. That same day, the El Llano Civil Patrol, under the command of Mario Cano, questioned Mr. Blake and Mr. Davis *"on the purpose of their trip."* Years later, it was established that after seeking instructions from officers of the Las Majadas military garrison, Mario Cano ordered three members of his patrol -identified as Epólito Ramos-García, Candelario Cano-Herrera and Vicente Cifuentes- to arrest Blake and Davis and take them to a place known as Los Campamentos on the border with the El Quiché Department, telling them, *"You can kill them if you wish."* On arrival there, *"Epólito Ramos-García fired on one of them, killing him instantly"* and *"Vicente Cifuentes ... shot the second man, killing him also,"* whereupon the *"three civil patrolmen threw the bodies into very dense undergrowth at the side of the path"* and covered them with tree trunks *"to make them disappear."*

13. The Commission in its application set forth the many measures Mr. Nicholas Chapman Blake's relatives took, to no avail, until Mr. Justo Martínez told them, in 1988, how Mr. Blake and Mr. Davis had been killed by the El Llano Civil Patrol. Mr. Martínez also claimed that the previous year (1987) the remains of the two victims had been burned to prevent discovery. The remains -first Mr. Davis's and later Mr. Blake's- were eventually discovered in 1992. Once Mr. Nicholas Chapman Blake's remains had been identified by a forensic expert, his death certificate was drawn up and the date of his death established as March 29, 1985.

14. The complaint was received by the Inter-American Commission on November 18, 1993, and on December 6, 1993, it was transmitted to the Government, which was asked to submit information on the case within 90 days. By note of March 7, 1994, the Government requested an extension of the deadline and on March 10, 1994, the Commission granted an extension of thirty days. The Government submitted its comments on the case on April 14, 1994.

15. The Commission convened a hearing attended by both parties at its headquarters on September 16, 1994, in order to reach a friendly settlement. At that hearing, the Government submitted a brief in which it formally raised the objection of non-exhaustion of domestic remedies and asked the Commission to consider its participation in the friendly settlement to be at an end.

16. At the plaintiff's request, a hearing was held on February 14, 1995, at which the Government's representative rejected the proposal of a friendly settlement of the case and *"once more raised the objection of non-exhaustion of remedies under domestic law."*

17. On February 15, 1995, the Commission approved Report 5/95, and decided in its resolutory part:

TO RECOMMEND

1. That the State of Guatemala accept its objective responsibility for the murder of Mr. Nicholas Blake, his disappearance and the cover-up of his murder, and make the appropriate reparations to his successors.

2. That the State of Guatemala, on the basis of evidence already in existence and evidence obtainable under its legislation, identify, prosecute, detain and punish those responsible for the death of Mr. Nicholas Blake.

3. That the State of Guatemala, on the basis of evidence already in existence and evidence obtainable under its legislation, identify, prosecute, detain and punish those responsible for the cover-up and obstruction of the judicial proceeding concerning the disappearance and death of Mr. Nicholas Blake.

4. That the State of Guatemala take such measures as are necessary to avoid a recurrence of such types of violation, including abuses by the Civil Patrols, cover-up by the civilian and military authorities, and the lack of effective judicial proceedings.

5. That this report drawn up in accordance with Article 50 be transmitted to the Government, which shall not be at liberty to publish it, and

6. That if within a period of sixty days from the transmittal of this Report, the Government has not implemented the above recommendations, the instant case be submitted to the Inter-American Court of Human Rights pursuant to Article 51 of the American Convention.

18. On May 4, 1995, the Commission transmitted Report 5/95 to the Government of Guatemala, informing it that if it failed to implement the recommendations contained therein, the Commission would submit the case for the consideration of the Inter-American Court as provided in Article 51 of the Convention.

19. On July 5, 1995, the Government transmitted its reply to the Commission, declaring that:

> [t]he proceedings on the merits are currently at the investigation stage, the last procedural steps being the statements by witnesses in the instant case before the District Prosecutor of the Ministry of the Interior ["Ministerio Público"] of Huehuetenango ... As indicated by the statements made by the aforementioned persons, it is evident that the case is progressing.

20. On August 3, 1995, having not reached an agreement with the Government, the Commission submitted the case for the consideration and decision of the Court.

III

21. The Court is competent to hear the instant case. Guatemala has been a State Party to the American Convention since May 25, 1978, and accepted the contentious jurisdiction of the Court on March 9, 1987.

IV

22. The Government filed three preliminary objections, summarized as follows:

First. Incompetence of the Inter-American Court of Human Rights to try this case, inasmuch as recognition of the compulsory competence of the Court applies exclusively to cases that occurred after the date on which the declaration was deposited with the Secretariat of the Organization of American States.

Second. Incompetence of the Court to deal with this application by reason of its subject.

Third. Violation by the Commission of the American Convention by virtue of the restriction regarding interpretation contained in Article 29(d).

V

23. The first objection is that of "[i]*ncompetence of the Court to hear this case*" which the Government based on the fact that Guatemala accepted the jurisdiction of the Court on March 9, 1987,

"with the reservation that cases in which the Court's competence is accepted relate exclusively to events that occurred after the date on which the declaration is presented to the Secretariat of the Organization of American States" and that the acts to which the application refers occurred in March 1985, prior to Guatemala's acceptance, so that the Court lacked competence to try the case. The Government maintains that despite the fact that the Commission *"[a]ccuses it ... of arbitrary and unlawful abduction of Mr. Nicholas Chapman Blake, of causing his forced disappearance and taking his life,"* those events clearly occurred in March 1985.

24. The Inter-American Commission requested that this objection be dismissed because the application in the instant case *"refers to events that took place after that date."* In support of its request, the Commission contends that lack of competence *ratione temporis "does not apply to continuous crimes,"* stating that from the time of Mr. Blake's arrest by the El Llano Civil Self-Defense Patrol on March 28, 1985, he had been disappeared until June 14, 1992, the date on which his remains were discovered. Accordingly, Mr. Blake's disappearance had been in effect *"for a period of time that exceeded by more than five years the acceptance of the compulsory jurisdiction of the Court -March 9, 1987- by the State of Guatemala."* According to the Commission, the continuous effect of the disappearance is illustrated in the instant case by *"the concealment of Mr. Blake's remains, the cover-up of the perpetrators and accomplices, the authorities' total indifference and lack of information about the events, and the lasting consequences that this tragic situation has had on Mr. Blake's family."*

VI

25. The second objection is that of *"[i]ncompetence of the Inter-American Court of Human Rights by reason of the subject,"* claimed by the Government *"on the grounds that the events on which the application is based do not violate any of the human rights and freedoms recognized by the American Convention,"* inasmuch as they constitute an unlawful common criminal act for which the State cannot be held responsible on the grounds that members of the Civil Self-Defense Patrols are agents of the State. With regard to the links between the Civil Patrols and the Army, the Government contends that *"[i]t is natural for the Civil Patrols to have close ties to the National Army as far as the anti-subversion struggle is concerned... but one may not blithely conclude from this that their members belong to, or have the same duties as, the Armed Forces and that they are Agents of the Guatemalan State."* Consequently, if some of the members of those Patrols commit crimes, *"their responsibility is direct and individual"* since their membership of a Civil Patrol *"grants them neither immunities nor privileges, nor exemptions of any kind."*

26. The Commission asserts that the Government, in its second objection, raises a matter relating to the merits of the case before the Court; that establishing whether the alleged events constitute a violation of the Convention will depend on the evidence supplied by the parties and that, therefore, *"it will be based on different objectives and criteria to those the Court should apply to determine its competence at this introductory or preliminary stage."* The Commission reiterates that the Court is competent to try the instant case because the acts imputed to the State affect rights protected by the Convention, inasmuch as, under International Law, a State incurs responsibility when acts that constitute a violation are attributable to it; in other words, when "[s]*uch acts are committed by agents of the State or persons or groups of persons connected with it, or with its acquiescence."* Likewise, the State is responsible *"if it does not investigate or repress acts that may constitute a violation of internationally protected rights."* The Commission contends that Guatemala has not met its obligation to control paramilitary groups operating within its national territory, that the Statute of the Civil Self-Defense Patrols places them under the Ministry of Defense, and that they are armed, trained and supervised by the Army, so that *"they act as agents of the Guatemalan State."*

VII

27. Concerning the third preliminary objection, the Government maintains that the Inter-American Commission violates Article 29(d) of the Convention in its attempt to exclude or limit the effect of the American Declaration of the Rights and Duties of Man. It alleges a *"distorted interpretation"* of the

human rights recognized in the Convention, one totally lacking in logic or even minimum legal grounds and without precedent in the international and regional protective systems.

28. According to the Commission, this alleged violation *"is not valid as a preliminary objection inasmuch as it concerns* [the] *Government's assessment of the legal arguments the Commission uses in the application,"* which the Court will have the opportunity to address when it examines the merits of the point raised by the Commission.

VIII

29. The following is the Court's consideration of the preliminary objections presented by Guatemala. The first objection concerns the lack of competence of this Court, on the grounds that the deprivation of liberty to which Mr. Nicholas Chapman Blake was subjected (on March 28, 1985) and his death (on March 29, 1985, according to the death certificate) occurred prior to Guatemala's acceptance of the jurisdiction of this Court (March 9, 1987), with the explicit clarification that such acceptance applied exclusively to events that *"occurred after the date on which the instrument of acceptance was deposited with the Secretariat of the Organization of American States."*

30. There is no disagreement between the Government and the Commission on the fact that Mr. Blake's detention and death occurred during March 1985 or that those events took place before Guatemala had deposited the instrument of acceptance of the jurisdiction of this Court on March 9, 1987.

31. The disagreement between the parties concerns the effects of those events. The Government maintains that they ended in March 1985, while the Commission contends that the effects are continuous, since the deprivation of Mr. Blake's liberty and his death were discovered many years later and its consequences are still being felt, inasmuch as:

> they derive from Mr. Blake's kidnapping and subsequent forced disappearance by agents of the Guatemalan State and comprise, in addition to that crime, a series of violations including the cover-up of the disappearance by high-level Government officials and the Guatemalan Armed Forces, as well as the delay and consequent denial of justice by the Guatemalan State.

32. At the public hearing on January 28, 1996, both parties further explained their arguments in response to questions from Judges Novales-Aguirre, Cançado Trindade, Jackman and Montiel-Argüello. The Government strongly urged its view that the events had all ended in March 1985, that is, prior to its acceptance of the jurisdiction of this Court. The Commission, for its part, reiterated that, in its view, there was continuity in Guatemala's violation of rights enshrined in the American Convention and that Mr. Blake's death should be considered to be a continuous crime since it was only discovered on June 14, 1992.

33. The Court is of the view that the acts of deprivation of Mr. Blake's liberty and his murder were indeed completed in March, 1985 -the murder on March 29 according to the death certificate, as Guatemala maintains- and that those events cannot be considered *per se* to be continuous. The Court therefore lacks competence to rule on the Government's liability. This is the only aspect of the preliminary objection which the Court considers to be well founded.

34. Conversely, since the question is one of forced disappearance, the consequences of those acts extended to June 14, 1992. As the Commission states in its application, government authorities or agents committed subsequent acts, and this, in the Commission's view, implies complicity in, and concealment of, Mr. Blake's arrest and murder. Although the victim's death was known to the authorities or agents, his relatives were not informed despite their unstinting efforts to discover his whereabouts, and because attempts had been made to dispose of the remains. The Commission also claims that there were further violations of the American Convention connected with these events.

35. In the first cases of disappearance of persons submitted to it this Court maintained that:

> [t]he forced disappearance of human beings is a multiple and continuous violation of many rights under the Convention that the States Parties are obligated to respect and guarantee... The practice of disappearance, in addition to directly violating many provisions of the Convention, such as those noted above, constitutes a radical breach of the treaty in that it shows a crass abandonment of the values which emanate from the concept of human dignity and of the most basic principles of the inter-American system and the Convention. The existence of this practice, moreover, evinces a disregard of the duty to organize the State is such a manner a to guarantee the rights recognized in the Convention (*Velásquez Rodríguez Case*, Judgment of July 29, 1988. Series C No. 4, paras. 155 and 158, and *Godínez Cruz Case*, Judgment of January 20, 1989. Series C No. 5, paras. 163 and 166).

36. There is no treaty in force containing a legal definition of forced disappearance of persons which is applicable to the States Parties to the Convention. However, note should be taken of the texts of two instruments, the United Nations Declaration on the Protection of All Persons from Enforced Disappearance, of December 18, 1992, and the Inter-American Convention on Forced Disappearance of Persons, of June 9, 1994. Although the latter has not yet entered into force for Guatemala, these instruments embody several principles of international law on the subject and they may be invoked pursuant to Article 29(d) of the American Convention. In the terms of that article, no provision of this Convention shall be interpreted as *"excluding or limiting the effects that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may have."*

37. Article 17(1) of the United Nations Declaration states that:

> Acts constituting enforced disappearance shall be considered a continuing offense as long as its perpetrators continue to conceal the fate and the whereabouts of persons who have disappeared and as long as these facts remain unclarified.

Article III of the aforementioned Inter-American Convention provides that:

> The States Parties undertake to adopt, in accordance with their constitutional procedures, the legislative measures that may be needed to define the forced disappearance of persons as an offense and to impose an appropriate punishment commensurate with its extreme gravity. This offense shall be deemed continuous or permanent as long as the fate or whereabouts of the victim has not been determined.

38. In addition, in Guatemala's domestic legislation, Article 201 TER of the Penal Code -amending decree No. 33-96 of the Congress of the Republic approved on May 22, 1996- stipulates in the pertinent part that the crime of forced disappearance *"shall be deemed to be continuing until such time as the victim is freed."*

39. The foregoing means that, in accordance with the aforementioned principles of international law which are also embodied in Guatemalan legislation, forced disappearance implies the violation of various human rights recognized in international human rights treaties, including the American Convention, and that the effects of such infringements -even though some may have been completed, as in the instant case- may be prolonged continuously or permanently until such time as the victim's fate or whereabouts are established.

40. In the light of the above, as Mr. Blake's fate or whereabouts were not known to his family until June 14, 1992, that is, after the date on which Guatemala accepted the contentious jurisdiction of this Court, the preliminary objection raised by the Government must be deemed to be without merit insofar as it relates to effects and actions subsequent to its acceptance. The Court is therefore competent to examine the possible violations which the Commission imputes to the Government in connection with those effects and actions.

IX

41. The second preliminary objection is based on a claim of this Court's incompetence owing to the subject, inasmuch as Guatemala considers that the events on which the application is based do not constitute a violation of any of the human rights and freedoms recognized in the American Convention and that they are ordinary unlawful criminal acts which cannot be imputed to the State, since Civil Self-

Defense Patrols cannot be presumed to be agents of the State. Accordingly, if the members of those patrols commit criminal acts, their liability is direct and individual.

42. The Commission, for its part, asserts that the objection refers to the merits of the case, inasmuch as establishing whether the alleged facts constitute violations of the Convention will depend on the evidence supplied by the parties.

43. The Court is of the view that this second objection is not preliminary; that it is, rather, essentially linked to the merits of the dispute. In order to establish whether the Civil Self-Defense Patrols ought or ought not to be deemed agents of the State and, therefore, whether the events indicated by the Inter-American Commission are attributable to the State or, on the contrary, are ordinary crimes, it will be necessary to examine the merits of the dispute and consider the evidence supplied by the parties. Consequently, this objection must be rejected on the grounds of inadmissibility.

X

44. The third objection concerns the alleged violation by the Commission of Article 29(d) of the Convention, which the Government attributes to a *"distorted interpretation"* of the human rights recognized in the Convention. The Commission maintains that this objection also concerns the merits, because only at that stage will the Court be able to establish whether or not the Commission has correctly interpreted the precepts of the Convention which the Government claims it has infringed.

45. This Court maintains that the Government's arguments are unclear, since the precept it invokes (*supra*, para. 36) has a different meaning to that attributed to it; moreover, the matter was not clarified at the public hearing held on January 28, 1996. The Government is apparently contending that the Commission's interpretation of the provisions of the Convention in which the human rights violated are enshrined is inaccurate. The objection evidently relates to the merits of the case; therefore this Court may consider whether the Commission's arguments regarding Guatemala's possible violation of those provisions of the Convention are well founded. Consequently, this objection should also be dismissed on the grounds of inadmissibility and the fact that it is not a preliminary objection.

46. As the first preliminary objection is only partially founded and the other two are inadmissible, the hearing of the case should proceed. Whereas the victim's detention and murder do not fall within the competence of the Court, it maintains its jurisdiction over the effects and actions subsequent to the date on which Guatemala accepted the competence of the Court.

XI

Now, therefore,

THE COURT,

DECIDES:

unanimously

1. That the first objection is partially founded and to declare itself incompetent to decide on Guatemala's alleged responsibility for the detention and death of Mr. Nicholas Chapman Blake.

2. To continue to hear the case with regard to the effects and acts that occurred after the date on which Guatemala accepted the competence of the Court.

3. To dismiss the second and third objections on the grounds of inadmissibility.

Judge Cançado Trindade informed the Court of his Separate Opinion, and Judge Novales-Aguirre of his individual concurring opinion, both of which are attached hereto.

Done in Spanish and English, the Spanish text being authentic. Read at a public session at the seat of the Court in San José, Costa Rica, this second day of July, 1996.

Héctor Fix-Zamudio
President

Hernán Salgado-Pesantes

Alejandro Montiel-Argüello

Oliver Jackman

Antônio A. Cançado Trindade

Alfonso Novales-Aguirre
Judge *ad hoc*

Manuel E. Ventura-Robles
Secretary

So ordered,

Héctor Fix-Zamudio
President

Manuel E. Ventura-Robles
Secretary

SEPARATE OPINION OF JUDGE A. A. CANÇADO TRINDADE

1. I have joined in the decision of the Inter-American Court of Human Rights in the instant *Blake* case, although I would have preferred the Court to have based its conclusions on a different reasoning. Given the importance of this Judgment on Preliminary Objections, this being the first time that the Court has been called upon to decide on the matter in the special circumstances of the *cas d'espèce*, and because of its implications for cases of like kind in the future, I shall explain my understanding of the grounds for this decision. My Separate Opinion dwells upon the Court's decision on the first preliminary objection interposed by the Government of Guatemala, since I am satisfied with the Court's decision on the second and third objections, rejected as unfounded for appearing rather as arguments as to the merits.

2. The Court has before it a case of disappearance of a person, since it has been established that the detention and death of Mr. Nicholas Chapman Blake occurred between 28 and 29 March 1985, and his presumed mortal remains (later identified as such by a forensic expert) were only found in June 1992. Since the Court has developed some considerations on the concept of "forced disappearance of persons" (paragraphs 35-39 of the Judgment), may I add a brief general observation, recalling that the term -which comes to be used increasingly since the mid-sixties, gradually passing into the lexicon of the international law of human rights during the next decade,- has only recently been defined as a crime (Article II) by the 1994 Inter-American Convention on Forced Disappearance of Persons. The international experience on the matter accumulated by human rights supervisory organs in recent years shows that forced disappearance of persons cannot be dissociated from violations of other rights, enshrined in human rights treaties like the American Convention on Human Rights, such as, e.g., the right to personal liberty and security (Article 7(1)), the right not to be subject to arbitrary arrest or imprisonment (Article 7(3)), the right not to subjected to torture or to cruel, inhuman, or degrading treatment (Article 5), the right to recognition as a person before the law (Article 3).

3. Inasmuch as cases of enforced disappearance have been characterized by the denial of responsibility on the part of the public authorities and the resulting impossibility of obtaining justice and reparation, leading to a situation of impunity and to the defenselessness of the victims, both direct (the "disappeared") and indirect (their relatives), neither can forced disappearance be dissociated from violations of other rights, also protected in treaties such as the American Convention, namely, e.g., the right to simple and prompt recourse to a competent national court or tribunal (Article 25) and the right to a fair trial by an independent and impartial tribunal (Article 8). In reality, only after discovery of the whereabouts of a disappeared person has it been possible to determine whether those and other rights have been violated. This we know from the experience on the matter of the international organs of protection of human rights, starting with the need to consider a case of disappearance in an integral manner, comprising its multiple aspects.

4. Since it has been established, at this phase of preliminary objections, in the instant *Blake* case, that neither party disputes the facts of the detention and death of Mr. Nicholas Chapman Blake, occurred between 28 and 29 March 1985, -the death having been found or confirmed more that seven years later, in June 1992,- the Court has before it a case of disappearance, and must determine, at the next stage of the proceedings, whether or not that disappearance was forced. In any event, the characterization of the present case as one of disappearance, requires that this latter be understood in an integral manner, comprising its multiple aspects.

5. Indeed, this appears to have been the understanding, at this phase of preliminary objections, with distinct purposes and conflicting arguments, of both the Inter-American Commission on Human Rights in its complaint of 3 August 1995, and the Government of Guatemala in its brief of preliminary

objections of 16 September 1995,- as both the Commission and the Government refer to all the complaints as a whóle. This is one aspect which cannot pass unnoticed.

6. In presenting its first preliminary objection, Guatemala cites the instrument of its acceptance of the jurisdiction of the Court on 9 March 1987 (that is, the Governmental Agreement n. 123-87, of 20 February 1987), Article 2 of which provides that

> The acceptance of the competence of the Inter-American Court of Human Rights is effected for an indefinite period of time, with a general character, on the condition of reciprocity and with the reservation that cases in which the Court's competence is accepted relate exclusively to events that occurred after the date on which this declaration is presented to the Secretary of the Organization of American States.

It should be clarified that the "reservation" reproduced above is not to be understood in the same sense attributed to the term in the domain of the law of treaties. It is used, rather, in the sense of a condition expressed by the Guatemalan Government in the terms of acceptance of the contentious jurisdiction of the Court for "specific cases", -which Guatemala is entirely at liberty to do by virtue of the provisions of Article 62(2) of the American Convention on Human Rights.

7. The aforementioned brief of preliminary objection adds that

> As the Commission accuses the State of Guatemala of the arbitrary and unlawful abduction of Mr. Nicholas Chapman Blake, of perpetrating his forced disappearance and taking his life, affirming that all those events occurred on 28 March 1985 in the place known as *Los Campamentos* in the Department of Huehuetenango, and that, consequently, on this day Mr. Blake's human rights recognized by the Convention in its Articles 7, 4, 8, 25, 13, 22 and 1(1) were violated, by the same token, the Court's incompetence to hear the case is evident, inasmuch as the acceptance of the compulsory jurisdiction of the Court applies exclusively to cases concerning events that occurred after the date on which the acceptance was deposited at the Secretariat General of the OAS, that is, after 9 March 1987, so that the preliminary objection interposed is entirely founded.

Another clarification is worth making here. It has not been shown, as the respondent Government contends, that the Commission claimed that the death and forced disappearance of Mr. Nicholas Chapman Blake, and the other alleged violations of the cited Articles of the American Convention, "all" occurred and ended on 28 March 1985. To the best of my knowledge the Commission did not make that claim in its complaint, a point duly clarified by the Commission itself at the public hearing before the Court on 28 January 1996.

8. In my understanding, the first preliminary objection of Guatemala is characterized as a preliminary objection of competence *ratione temporis*, interposed not as a condition of admissibility of the complaint, but rather as a condition of the process, of the application of the Court's jurisdictional activity. As such, it does not have the wide scope which the respondent Government purports to attribute to it, so as to restrict *ratione temporis* the very submission of the entire case to the jurisdiction of the Court. It is only meant to exclude from consideration by the Court, owing to restriction of its competence *ratione temporis*, those events which occurred prior to Guatemala's acceptance of the jurisdiction of the Court. There remains, however, the complaint of forced disappearance in respect of related rights, and as to the effects and actions subsequent to the deposit of its instrument of acceptance (on 9 March 1987), over which the Court retains its jurisdiction.

9. The Court recalls (paragraph 35 of the Judgment) its own characterization of the disappearance of persons, in the first cases of this kind submitted to it in the late 1980s, as a "multiple and continued violation of many rights" recognized in the American Convention; and it rightly points out (paragraph 38 of the Judgment) that the Guatemalan Penal Code in force typifies forced disappearance as a *continued* crime (Article 201 *ter* amended). Furthermore, the notion of *continuing situation (situación*

continuada/situation continue) is also judicially recognized by the European Court of Human Rights, in decisions on cases of detention dating back to the 1960s[1] .

10. It should also be borne in mind that, in the instant *Blake* case, the Commission is not in fact seeking a decision of the Court on the violation of the right to life in particular or on the violation of the right not to be subject to arbitrary detention in particular. The Commission's complaint comprises the alleged multiple violations of human rights involved in the continuing disappearance of Mr. Nicholas Chapman Blake, taken as a whole. Hence the importance of the understanding of the present case of disappearance, bearing in mind the ineluctable interrelation between certain protected human rights as disclosed by a case of this nature.

11. As a final thought, may I point out that cases of disappearance, such as the present one, encompass, among related rights, *non-derogable* fundamental rights, and this, in my understanding, places the interdiction of that crime in the domain of *jus cogens*, of the peremptory norms of general international law. It is not surprising that the 1994 Inter-American Convention on Forced Disappearance of Persons prohibits (Article X) the invocation of any justification for that crime, even in exceptional circumstances (e.g., state or threat of war, or any public emergencies).

12. I say this because, in my view, the emphasis of this Judgment of the Court on preliminary objections should have been placed, not on the sword of Damocles of 9 March 1987, date on which Guatemala accepted the jurisdiction of the Court (which must be accepted as a limitation *ratione temporis* of its jurisdiction, given the present stage of insufficient evolution of the precepts of the law of treaties to fulfill the basic purpose of effective protection of human rights), but rather on the nature of the alleged multiple and interrelated violations of protected human rights, prolonged in time, with which the present case of disappearance is concerned.

13. When, in relation to Article 62(2) of the American Convention on Human Rights, by the application of the rigid postulates of the law of treaties one is led to a situation like the present one, in which issues of the investigation of the detention and death of a person, and of the punishment of the perpetrators, end up by being returned to the domestic jurisdiction, serious questions subsist in the air, revealing a serious challenge for the future. The entire evolution of the international law of human rights, over the past five decades, has been constructed on the understanding or premise that the protection of human rights, as rights inherent in the human being, is not exhausted -cannot be exhausted- in the action of the State.

14. It calls to attention that, in the circumstances of the present case, one has had to resign oneself to the *renvoi* or abandonment to the national jurisdiction of the issues of the investigation of the detention and death of a person, and the punishment of those responsible for them, after resorting to the international jurisdiction precisely in view of the shortcomings or insufficiencies of national jurisdiction to this effect. The great challenge appearing on the horizon consists, in my view, in continuing to advance resolutely towards the gradual humanization of the law of treaties (a process already initiated with the emergence of the concept of *jus cogens*[2]), as this chapter of international law

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1 Moreover, the practice of the Human Rights Committee, under the United Nations Covenant on Civil and Political Rights and its first Optional Protocol, as from the early eighties, contains examples of the consideration of continuing situations generating events that occurred or persisted after the date of entry into force of the Covenant and Protocol with regard to the State at issue, and which constituted *per se* violations of the rights enshrined in the Covenant.

2 Vienna Convention on the Law of Treaties (1969), Articles 53 and 64; Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations (1986), Articles 53 and 64.- Another illustration in this sense lies in the safeguard clause in defense of the human being contained in Article 60(5) of the two Vienna Conventions (as to the termination of a treaty or the suspension of its application).

persists still strongly impregnated with State voluntarism and an undue weight attributed to the forms and manifestations of consent.

15. It only remains for me to express the hope that, perhaps with the gradual development of the conceptualization, and a solid jurisprudential construction, of the crime of forced disappearance of persons -only recently defined in the international law of human rights,- in the foreseeable future it will no longer be possible to compartmentalize or introduce artificial separations among its multiple components. The day this degree of evolution of the matter is attained, any preliminary objection that implies separating the examination of the detention and death of a person from the consideration of alleged additional and continued violations of related rights ought to be discarded as unfounded.

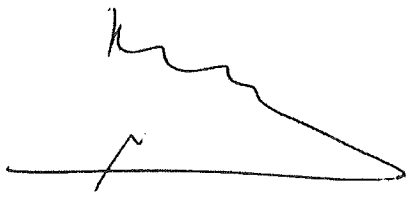
Antônio Augusto Cançado Trindade
Judge

Manuel E. Ventura-Robles
Secretary

INDIVIDUAL CONCURRING OPINION OF JUDGE ALFONSO NOVALES-AGUIRRE

I have concurred in the Judgment in which the Inter-American Court of Human Rights only partially accepted the objection of incompetence *ratione temporis* interposed by the Government of the Republic of Guatemala, considering as I do that no other decision would have been appropriate in strict compliance with the law. Nonetheless, since the Court has partially accepted the objections, it will not now, in its judgment on the merits, be able to pronounce on Mr. Nicholas Chapman Blake's arrest and murder, since these occurred prior to Guatemala's acceptance of the jurisdiction of the Court.

The unlawful death of any person is intolerable and for that reason alone should not go unpunished. Through this concurring opinion I utter a battle cry against impunity in connection with those events on which the Court has declared itself incompetent, and urge the Government of the Republic of Guatemala to pursue the exhaustive investigations warranted by this case and, consequently, to capture, try and sentence the intellectual or material authors of the crimes committed.



Alfonso Novales-Aguirre
Judge *ad hoc*

Manuel E. Ventura-Robles
Secretary

APPENDIX X

ORDER OF THE

INTER-AMERICAN COURT OF HUMAN RIGHTS

OF JUNE 27, 1996

LOAYZA TAMAYO CASE

HAVING SEEN:

1. The judgment on preliminary objections of January 31, 1996 in the Loayza Tamayo Case.

2. The communication from the Government of Peru (hereinafter "the Government" or "Peru"), submitted on March 21, 1996, in which it filed a motion for *"nullification"* of that judgment, which had declared the preliminary objection raised by the Government to be without merit.

3. The communication from the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") of April 29, 1996, in which it presented its observations on the petition for nullification filed by the Government of Peru and requested *"that the petition of nullification be rejected."*

4. The communication of June 11, 1996 from the Government, in which it referred to the observations made by the Inter-American Commission on the petition for nullification.

CONSIDERING:

1. That the communication from Peru's Agent, in which he lodged the petition of "nullification", is based primarily on the argument that the decision of January 31, 1996 on preliminary objections does not *"conform to the law, inasmuch as it lacks legal justification, a sine qua non for the pronouncement of any decision."* It adds a number of considerations on the exhaustion of domestic remedies as a condition of admissibility of claims before the Inter-American Commission, on the ground that, as evinced in the documentation submitted by the Government's representatives to the Commission, a case was at that time in progress in the national courts, so that the Commission was not competent to act or to hear an international case until the case before the national courts was resolved. The brief also cited the Separate Opinion emitted by then Judge of this Court, Dr. Rodolfo Piza-Escalante, in the context of the Court's interpretative rulings on the reparations judgments of August 17, 1990, on compensatory damages in the Velásquez Rodríguez and Godínez Cruz Cases. The burden of that opinion was that a ruling of the Court which does not go to the merits of a case, and does not constitute a final disposal of the dispute, may not properly be called "a judgment", inasmuch as it is in the nature

of an "interlocutory decision"; as a consequence, since is not a final pronouncement, such a decision is subject to interpretation, alteration, reversal or nullification.

2. That the main contention of the Delegate of the Inter-American Commission in his observations on the aforementioned communication is that, in accordance with Article 25(2) of the Statute of the Court, only rulings or decisions issued by the President or the Committees of the Court that are not purely procedural may be appealed before the full Court. Consequently, rulings or decisions of the full Court are not subject to appeal. Thus, the decision on preliminary objections delivered by the Court on January 31, 1996, may not be legally contested. The proceeding before the Court is covered by the rule of non-appealability; for this reason there is no provision in the Court's Rules of Procedure for what, in some domestic legal codes and in procedural law doctrine, are known as "general characteristics" [caracteres generales] which lay down the time limits within which motions for the review of judicial decisions may be validly filed. It would be wrong to claim that the decisions of the Inter-American Court or any other tribunal are open to challenge at all times. This would undermine the security of the juridical process and thwart the attainment of the ultimate goal of a lawsuit, which is to put an end to the dispute between the parties.

3. That the Commission also states that in the domestic legislation of the vast majority of States governed by the system of codified law, the proper procedural method of contesting decisions in which -as in the instant case- one of the parties claims that the laws have been erroneously applied or that the facts have been misinterpreted, is by way of appeal rather than nullification. The latter may be filed under domestic legislation in order to contest rulings that contain errors of form, or derive from a proceeding in which the predetermined formalities have not been observed; this is known as *error in procedendo*.

II

4. That this Court observes, first and foremost, that the Inter-American Commission on Human Rights correctly claims that, in any event, what the Peruvian Government is in fact filing is an appeal against the merits of the judicial decision, and not what the Government describes as a "nullification", since according to the general rules of impugnment under domestic law, "nullification" is used to contest a breach of procedure, which has not been alleged in this case.

5. That, whether or not the decision in question may technically be described as a "judgment,", an "interlocutory decision," or an "interlocutory judgment," -as it is in the legislation of some countries- the main point at issue is whether the decisions rendered by this Tribunal may be contested.

6. That with regard to this Court's decisions that resolve a dispute as to merits, Article 67 of the Convention categorically states that the judgment of the Court shall be final and not subject to appeal. It is also quite clear that other decisions which are not purely procedural, that is, those traditionally called "interlocutory decisions or judgments," may not be challenged in any way.

7. That, according to Article 25(2) of the Statute of the Court and Article 45 of its Rules of Procedure, judgments and interlocutory decisions for discontinuance of a case shall be rendered by the Court, but the Rules of Procedure may delegate to the President or to the Committees of the Court authority to carry out certain parts of the legal proceedings, with the exception of issuing final rulings or advisory opinions. Rulings or decisions issued by the President or the Committees that are not purely procedural in nature may always be appealed before the full Court. These precepts dictate that only the decisions of the President or of the Committees of the Court may be challenged before the full Court; however, other decisions, including decisions on preliminary objections, may not be contested. The reason is that a contentious proceeding before this Court must be concentrated inasmuch as protection of the human rights enshrined in the American Convention requires that such a proceeding be as brief as possible; it cannot, therefore, be subject to the excessive formalities of an ordinary domestic trial which is governed by a complex system of impugnment instruments, and directions and deadlines for filing them.

8. That, for the reasons set out above, the conclusion of this Court is that the application presented by the Government is out of order, and must accordingly be rejected.

9. That the filing of applications which are flagrantly out of order slows down the speed with which justice should be imparted in the field of human rights. Therefore, it is the opinion of this Court that parties to human rights cases have a duty to refrain from making applications of this nature.

NOW THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS

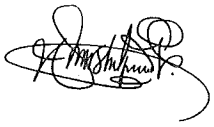
By virtue of the powers conferred on it by Article 62(3) of the American Convention on Human Rights and Article 45 of its Rules of Procedure,

DECIDES:

1. To reject, as being out of order, the motion introduced by the Government of Peru for review of the January 31, 1996 decision on preliminary objections.

2. To continue to hear the case.

Hector Fix-Zamudio
President



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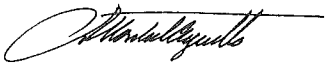

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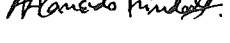
Oliver Jackman



Antonio A. Cançado Trindade

Manuel E. Ventura-Robles

APPENDIX XI

ORDER OF THE PRESIDENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS OF JUNE 12, 1996

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

LOAYZA TAMAYO CASE

HAVING SEEN:

1. The petition of January 12, 1996 in which 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") the case of Loayza-Tamayo against the Government of the Republic of Peru (hereinafter "the Government" or "Peru").

2. The communication of April 19, 1996 from the Inter-American Commission in which it dispatched to the Secretariat of the Court a note it had sent to the Government of Peru concerning the conditions in which María Elena Loayza-Tamayo was being detained.

3. The note received on May 15, 1996 from the Government of Peru in response to the Inter-American Commission concerning the conditions in which María Elena Loayza-Tamayo was being detained.

4. The Commission's request of May 30, 1996 for provisional measures pursuant to Article 63(2) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and Article 24(1) of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"), requesting from the Inter-American Court "*to bring to an end the solitary confinement and incommunicado detention imposed on María Elena Loayza-Tamayo on April 9, 1996 and that she be returned to Pavilion 'A' of the Chorrillos Women's Maximum Security Penitentiary in the same conditions in which she had been held prior to her transfer.*" The Commission adduced the following arguments in support of its request:

a. The Penitentiary in question has three pavilions designated 'A', 'B' and 'C' respectively. Pavilion 'A' houses inmates categorized as least dangerous, that is, the well-behaved and those who claim to be innocent and to have no connection with subversive or terrorist groups and have openly denounced such groups, as is the case of María Elena Loayza.

b. Pavilions 'B' and 'C' house inmates categorized as highly or moderately dangerous and those who have declared themselves in favor of the so-called "peace accord" ... Pavilion 'C' also houses inmates awaiting classification and those who express their desire to sever connections with their subversive or terrorist groups, as well as inmates who do not wish to participate in other daily activities ..[i]n short, inmates who are unwilling to comply with prison regulations.

c. On April 9 of this year [t]he Peruvian Government, through the Penitentiary's authorities, ordered María Elena Loayza to be transferred to the Penitentiary's maximum-danger pavilion, held in continuous solitary confinement -as explained below, a regime of total incommunicado detention- for one year, which constitutes an arbitrary and unlawful deterioration in detention conditions, thereby violating, among other instruments, the American Convention on Human Rights and the Standard Minimum Rules for the Treatment of Prisoners.

d. The criteria of good faith imply that when there is an international complaint against the State for violations of rights guaranteed by the American Convention, that State has the obligation to refrain from needlessly adopting any measure that may adversely affect the matter raised by the plaintiff until such time as the case is definitively resolved by the International Tribunal.

e. Decree Law 25475 and Supreme Order 114-92-JUS, issued by the Illustrious Government on April 5, 1992 as part of its anti-subversion strategy, establish procedures that are clearly incompatible with the international obligations which the Peruvian State has undertaken and is obliged to observe.

f. The Peruvian State's argument that 'deviation' from the agreement of the Penal Technical Council 'would put the security system and the principle of authority at risk' is also unfounded, since María Elena Loayza-Tamayo has been confined in Block 'A' of the Penitentiary for over three years and has never, and will never, constitute a risk to the so-called 'Security System'.

g. There is a dual sense of urgency about this case: firstly, the Commission's firm belief that the Peruvian Government, through the extreme gravity of the measure adopted, is causing irreparable damage to a person who has been arbitrarily tried and sentenced, in violation of the American Convention; secondly, the physical and mental suffering to which María Elena Loayza is being subjected as a consequence of her confinement in a tiny cell for twenty-three and a half (23.5) hours a day for one year.

h. Moreover, this gravity derives from the cruel and inhumane treatment involved in solitary and totally incommunicado confinement for one year, as well as the severe restrictions on visits to which the Government has subjected María Elena Loayza.

CONSIDERING:

1. That Peru has been a State Party to the American Convention since July 28, 1978 and that it accepted the compulsory jurisdiction of the Court on January 21, 1981.

2. That Article 63(2) of the Convention provides that the Court shall take the provisional measures it deems pertinent in matters it has under consideration in cases "*of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons.*"

3. That in this regard, Article 24(1) of the Rules of Procedure in force provides that "[a]*t any stage of the proceedings involving cases of extreme gravity ad urgency and when necessary to avoid*

irreparable damage to persons, the Court, may, at the request of a party or on its own motion, order whatever provisional measures it deems appropriate, pursuant to Article 63(2) of the Convention."

4. That by the terms of Article 24(4) of the Rules of Procedure: "[i]*f the Court is not sitting, the President, in consultation with the Permanent Commission and, if possible, with the other judges, shall call upon the government concerned to adopt the necessary urgent measures and to act so as to permit any provisional measures subsequently ordered by the Court, in its next session, to have the requisite effect."*

5. That in the instant case, which has been submitted for the consideration of the Tribunal, the Inter-American Commission asks the Court to request Peru, as provisional measures, "*to bring to an end the solitary confinement and incommunicado detention imposed on María Elena Loayza-Tamayo on April 9, 1996 and return her to Pavilion 'A' ....*"

6. That the Government has maintained that on the basis of Decree Law 25475, María Elena Loayza-Tamayo, sentenced to 20 years' imprisonment "*for the crime of terrorism against the State*", must complete her sentence "*at a maximum security prison in continuous solitary confinement during the first year of her detention, to be followed by compulsory labor for the remainder of her term until she is released.*"

7. That by the terms of Article 24(4) of the Rules of Procedure, the President is entitled to order urgent measures only; it is therefore for the Court at its next session to decide on the appropriateness of the provisional measures sought by the Commission, since it is proper that the government concerned be heard before such measures can be granted.

NOW, THEREFORE:

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

pursuant to Article 63(2) of the American Convention of Human Rights and in exercise of the authority conferred on him by Article 24(4) of the Rules of Procedure, in prior consultation with the other judges of the Court,

DECIDES:

1. To request that the Government of the Republic of Peru adopt forthwith such measures as are necessary to effectively ensure the physical, psychological and moral integrity of Ms. María Elena Loayza-Tamayo, so that any provisional measures that the Inter-American Court may take can have the requisite effect.

2. To request that the Government of the Republic of Peru submit to the President of the Court, not later than June 25, 1996, a report on the measures taken so that they may be brought to the attention of the Court at its next session scheduled for June 26 to July 3, 1996.

3. To submit this Order for the Court's consideration and pertinent effects during its next session.

Héctor Fix-Zamudio
President

Manuel E. Ventura-Robles
Secretary

So ordered,

Héctor Fix-Zamudio
President

Manuel E. Ventura-Robles
Secretary

APPENDIX XII

ORDER OF
THE INTER-AMERICAN COURT OF HUMAN RIGHTS
OF JULY 2, 1996

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

LOAYZA TAMAYO CASE

HAVING SEEN:

1. The petition of January 12, 1996, in which 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") the case of Loayza Tamayo against the Government of the Republic of Peru (hereinafter "the Government" or "Peru").

2. The communication of April 19, 1996 from the Inter-American Commission in which it dispatched to the Secretariat a note it had sent to the Government of Peru concerning the conditions in which María Elena Loayza-Tamayo was being detained.

3. The note of May 15, 1996, received on May 28, 1996, from the Government of Peru in response to the Inter-American Commission concerning the conditions in which María Elena Loayza-Tamayo was being detained.

4. The Commission's request of May 30, 1996 for provisional measures pursuant to Article 63(2) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and Article 24(1) of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"), requesting from the Inter-American Court "*the ending of the solitary confinement and incommunicado detention imposed on María Elena Loayza-Tamayo on April 9, 1996 and that she be returned to Pavilion 'A' of the Chorrillos Women's Maximum Security Penitentiary in the same conditions in which she had been held prior to her transfer.*" The Commission based its request on the fact that María Elena Loayza-Tamayo was "*confined in a tiny cell for twenty-three and a half (23.5) hours a day for one year.*"

5. In exercise of the powers conferred on him by Article 24(4) of the Rules of Procedure, the President of the Court (hereinafter "the President") issued an Order on June 12, 1996 in which he decided:

1. To request that the Government of the Republic of Peru adopt forthwith such measures as are necessary to effectively ensure the physical, psychological and moral integrity of Ms. María Elena Loayza-Tamayo, so that any provisional measures that the Inter-American Court may take can have the requisite effect.

2. To request that the Government of the Republic of Peru submit to the President of the Court, not later than June 25, 1996, a report on the measures taken so that they may be brought to the attention of the Court at its next session scheduled for June 26 to July 3, 1996.

3. To submit this Order for the Court's consideration and pertinent effects during its next session.

That Order of the President was based on the following considerations:

5. That in the instant case, which has been submitted for the consideration of the Tribunal, the Inter-American Commission asks the Court to request Peru, as provisional measures, "*to bring to an end the solitary confinement and incommunicado detention imposed on María Elena Loayza-Tamayo on April 9, 1996 and return her to Pavilion 'A' ....*"

6. That the Government has maintained that on the basis of Decree Law 25745, María Elena Loayza-Tamayo, sentenced to 20 years' imprisonment "*for the crime of terrorism against the State*", must complete her sentence "*at a maximum security prison in continuous solitary confinement during the first year of her detention, to be followed by compulsory labor for the remainder of her term until she is released*".

7. That by the terms of Article 24(4) of the Rules of Procedure, the President is entitled to order urgent measures only; it is therefore for the Court at its next session to decide on the appropriateness of the provisional measures sought by the Commission, since it is proper that the government concerned be heard before such measures can be granted.

6. The above-mentioned report from the Government received on June 24, 1996, stating that "*at no time have the conditions of* [María Elena Loayza-Tamayo's] *imprisonment deteriorated*", since her living conditions are the same as those of other prisoners.

7. The Commission's comments of July 1, 1996 on the aforementioned written communication from the Government, declaring that Ms. Loayza-Tamayo "*has been subjected to a regime of incommunicado detention and deprived of daylight in a tiny cell ... for twenty-three and a half hours a day*", conditions that "*in themselves constitute cruel and inhumane treatment.*"

CONSIDERING:

1. That Peru has been a State Party to the American Convention since July 28, 1978 and that it accepted the compulsory jurisdiction of the Court on January 21, 1981.

2. That Article 63(2) of the Convention provides that the Court shall take the provisional measures it deems pertinent in matters it has under consideration in cases "*of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons.*"

3. That in this regard, Article 24(1) of the Rules of Procedure in force provides that:

> [a]t any stage of the proceedings involving cases of extreme gravity and urgency and when necessary to avoid irreparable damage to persons, the Court may, at the request of a party or on its own motion, order whatever provisional measures it deems appropriate, pursuant to Article 63(2) of the Convention."

4. That in the instant case, which has been submitted for the consideration of the Tribunal, the Inter-American Commission asks the Court to request Peru, as provisional measures, to "*revoke the solitary*

confinement and incommunicado detention imposed on María Elena Loayza-Tamayo on April 9, 1996 and return her to Pavilion 'A' ...."

5. That the Government maintained in its response that pursuant to Decree Law 25475, María Elena Loayza-Tamayo, sentenced to 20 years' imprisonment *"for the crime of terrorism against the State"*, must complete her sentence *"at a maximum security prison in continuous solitary confinement during the first year of her detention, to be followed by compulsory labor for the remainder of her term until she is released."* The Government further declares that "[t]*he Honorable Commission's allegations ... that the conditions in which María Elena Loayza-Tamayo is being detained have deteriorated are false."*

6. That the Government also points out in its report of June 24, 1996 that María Elena Loayza-Tamayo

> is regularly visited by her next of kin and attorneys as stipulated in the legislation in force in Peru, and that claims that she is being held in a different (smaller) cell from those inhabited by other prisoners are false ... [and] that there is no danger to her physical, psychological or moral integrity ...

7. That the Court has examined the circumstances and facts that informed the Order of the President of the Court of June 12, 1996, and finds it to be consistent with the law and with the merits of the proceedings.

8. That the Commission's declaration, contained in its May 30, 1996 petition for provisional measures, to the effect that María Elena Loayza-Tamayo has been *"confined in a tiny cell for twenty-three and a half (23.5) hours a day for one year"* has not been refuted by the Government.

9. That from the reports submitted by the parties, the Court finds it difficult to determine the precise circumstances of the prison regime applied to María Elena Loayza-Tamayo. It therefore considers it is necessary to uphold the measures taken by the President, the purpose of which is to preserve her physical, psychological and moral integrity.

NOW, THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

pursuant to Article 63(2) of the American Convention of Human Rights and in exercise of the authority conferred on it by Articles 24 and 45 of the Rules of Procedure,

DECIDES:

1. To ratify the Order of the President of the Inter-American Court of June 12, 1996.

2. To call once more upon the Government of the Republic of Peru to take, on behalf of Ms. María Elena Loayza-Tamayo, all provisional measures necessary for the effective safeguard of her physical, psychological and moral integrity.

3. To call upon the Government of Peru to continue to report every two months on the provisional measures taken.

4. To call upon the Inter-American Commission on Human Rights to submit to the Court its comments on that information not later that one month from the date of its receipt.

Héctor Fix-Zamudio
President

Hernán Salgado-Pesantes

Alejandro Montiel-Argüello

Oliver Jackman

Antônio A. Cançado Trindade

Manuel E. Ventura-Robles
Secretary

So ordered,

Héctor Fix-Zamudio
President

Manuel E. Ventura-Robles
Secretary

APPENDIX XIII

ORDER OF THE PRESIDENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS OF APRIL 12, 1996

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

VOGT CASE

HAVING SEEN:

1 The petition of March 28, 1996 and its annexes, in which the Inter-American Commission of Human Rights (hereinafter "the Commission" or "the Inter-American Commission"), pursuant to Article 63(2) of the American Convention on Human rights (hereinafter "the Convention" of "the American Convention") and Article 24 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"), submitted to the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court") a request for provisional measures in favor of Father Daniel Vogt, in connection with case No. 11.497 currently before the Commission against the Government of the Republic of Guatemala (hereinafter "the Government" or "Guatemala").

2. The aforementioned petition in which the Commission requested the Court to adopt the following provisional measures:

> 1. That effective security measures be taken to guarantee the life and physical integrity of the priest, Daniel Joseph Vogt.
>
> 2. That an investigation be duly undertaken to determine the identity of the persons responsible for the threats to Father Vogt and the harassment, surveillance and attempts on his life to which he has been subjected.
>
> 3. That the authorities publicly issue a declaration in the country's most widely circulated media repudiating the actions of which Father Daniel Joseph Vogt has been victim. Also, that the Government include in its reports to the Honorable Court a copy of those public declarations.
>
> 4. That the State promptly inform the Honorable Court of the specific measures it has taken to protect Father Daniel Vogt and that, after supplying that information, it report every 60 days on the status of the provisional measures.

5. That the Honorable Court hold a public hearing at its earliest convenience so that the Commission may have the opportunity to provide a detailed explanation of the state of defenselessness and grave danger in which Father Vogt finds himself. At the same time, the Government will have the opportunity to report on the specific measures taken to solve those crimes, punish the perpetrators, prevent a recurrence of such events in future, and guarantee Father Vogt's safety.

3. The facts on which the request was based are summarized below:

a) Father Daniel Joseph Vogt is a Catholic priest carrying out his evangelical work in the community of Rubelpec, El Estor, Izabal in the interior of Guatemala. For over a year and a half he has been the victim of acts of harassment and persecution because of his pastoral work, mainly in the form of a number of serious death threats, attempts on his life, and a series of false accusations linking him to offenses such as sedition and deforestation.

b) On September 10, 1994 members of the community of El Estor, Izabal, Guatemala gathered to discuss the detention of 21 *campesinos* from the community who were accused of deforestation; a group of persons drafted and signed a petition addressed to the Mayor of El Estor, Mr. Paredes Chub, and other local authorities. On September 14, 1994 members of this community held a peaceful demonstration in favor of the detainees.

c) On September 15, 1994 the Mayor of El Estor accused the inhabitants who had signed the petition and Father Vogt of sedition. Although Father Vogt had not taken part in the demonstration, he was accused of being "*the intellectual author*" of the action. Father Vogt was relieved of his duties for this offense in late 1995.

d) Father Vogt was subsequently accused of forest-related crimes and depredation of protected areas before the Second Official of Puerto Barrios; the case is still unresolved. On April 16, 1995 the priest escaped with his life from an ambush set to assassinate him. In June of 1995, he filed a criminal suit in connection with the ambush and other acts of harassment which have still not been investigated. On June 17, 1995 two unidentified individuals told Father Daniel Drinan, another priest from El Estor, that Father Vogt's life "*was in grave danger*" and two death threats were made by telephone to the priest's home that night.

e) At the hearing held before the Commission on February 22, 1996 information was provided, including Father Vogt's statement that he was still receiving telephone threats to his life and physical integrity by telephone.

f) The priest asked the police, as a security measure, to provide night and day patrols around the church, but the Government has provided such protection only sporadically. Nor has it conducted any investigations in regard to the petitions for habeas corpus lodged on November 3, 1994 and July 6, 1994, on behalf of Father Vogt, although the Magistrates' Court of the El Estor Municipality ruled in favor of the petitions.

g) On March 15, 1996 Mr. Jorge Cruz, an official of the Magistrates' Court of the El Estor Municipality went to the office of the Parish of that community with a writ signed by *Licenciado* Ramón García-Strany, an official of the Ministry of Public Affairs of Puerto Barrios. The writ contained a request to investigate squatting on a farm and again accused Father Vogt of being *"the intellectual author"* of the action. The official declared that "*that they had agreed with Judge Miguel Pilar Chinchilla- Gómez to 'let Father Vogt off the hook' in exchange for 25.000 quetzales. If Father Vogt did not accept the offer, an adverse report would be submitted to the Ministry of Public Affairs and would lead to the priest's arrest.*" Despite the above, Father Vogt refused.

h) Guatemala has taken no action to protect the priest and to "*put an end to the false accusations made against him, to investigate the death threats he has received and the attempts to carry them out, or to punish those responsible.*"

i) The Commission has requested preventive measures on three occasions: September 30, 1994; June 16, 1995, and March 6, 1996, but the Government has failed to take the protective measures sought. Accordingly, the authorities have not conducted any investigation nor have they taken the necessary measures to protect Father Vogt's life and the integrity of his person.

CONSIDERING:

1. That Guatemala has a been a State Party to the American Convention since May 25, 1978 and that it accepted the jurisdiction of the Court on March 9, 1987.

2. That Article 63(2) of the Inter-American Convention provides that in cases of extreme gravity and urgency, and when necessary to avoid irreparable damage 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 it.

3. That Article 1(1) of the Convention sets forth the obligation of the States 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, as the Commission points out in its request for provisional measures, the background information presented in this case effectively constitutes "*a prima facie case of urgent and grave danger to Father Daniel Vogt's life and the integrity of his person.*"

5. That the Inter-American Commission has taken precautionary measures on three occasions, pursuant to Article 29 of its Regulations, and as they have not to date had the required effect, it has become a special circumstance making it incumbent on the President of the Court to request urgent measures to preserve Father Daniel Joseph Vogt's life and the integrity of his person and avoid irreparable damage to him.

6. That the Government has the obligation to prevent violations of human rights and to investigate the events that led to this request for provisional measures in order to identify those responsible and punish them appropriately so as to prevent any recurrence of the events.

NOW, THEREFORE:

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

In consultation with the Court and pursuant to Article 63(2) of the American Convention on Human Rights and exercising the authority conferred on him by Article 24 of the Rules of Procedure of the Court.

DECIDES:

1. To request that, in strict compliance with the obligation to respect and guarantee human rights which it accepted under Article 1(1) of the American Convention on Human Rights, the Government of the Republic of Guatemala adopt forthwith such measures as are necessary to protect the life and integrity of Father Daniel Joseph Vogt and avoid his suffering irreparable damage.

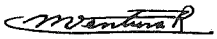
2. To request that the Government of the Republic of Guatemala investigate the events and punish those responsible.

3. 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 notification on any urgent measures it has taken, and that the Inter-American Commission on Human Rights submit to the Court its comments on that information within fifteen days of its receipt.

4. To submit this order for the Court's consideration and pertinent effects during its next regular session.

5. To summon the parties to a public hearing to be held at the seat of the Court on June 26, 1996, at 4:00 p.m., so that the Court may hear their views on the events and circumstances that led to the request for provisional measures and to this Order.

Héctor Fix-Zamudio
President



Manuel E. Ventura-Robles
Secretary

So ordered,

Héctor Fix-Zamudio
President

Manuel E. Ventura-Robles
Secretary

APPENDIX XIV

ORDER OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS OF JUNE 27, 1996

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

VOGT CASE

HAVING SEEN:

1. The petition of March 28, 1996 and its annexes, in which the Inter-American Commission of Human Rights (hereinafter "the Commission" or "the Inter-American Commission"), pursuant to Article 63(2) of the American Convention on Human rights (hereinafter "the Convention" of "the American Convention") and Article 24 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"), submitted to the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court") a request for provisional measures in regard to Father Daniel Joseph Vogt, in connection with case No. 11.497 currently before the Commission against the Government of the Republic of Guatemala (hereinafter "the Government" or "Guatemala").

2. That the reason for the Commission's request is that Father Daniel Joseph Vogt, a Catholic priest carrying out his evangelical work in the community of Rubelpec, El Estor, Izabal in the interior of Guatemala, has for more than a year and a half, owing to his pastoral work, been the victim of acts of harassment and persecution mainly in the form of a number of serious death threats, attempts on his life, and a series of false accusations linking him to offenses such as sedition and deforestation.

3. By virtue of the authority conferred on him by Article 24(4) of the Rules of Procedure, the President of the Court (hereinafter "the President") issued an Order of April 12, 1996 in which he decided:

> 1. To request that, in strict compliance with the obligation to respect and guarantee human rights which it accepted under Article 1(1) of the American Convention on Human Rights, the Government of the Republic of Guatemala adopt forthwith such measures as are necessary measures to protect the life and integrity of Father Daniel Joseph Vogt and avoid his suffering irreparable damage.
>
> 2. To request that the Government of the Republic of Guatemala investigate the events and punish those responsible.
>
> 3. 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 notification on any urgent measures it has taken, and that the Inter-American Commission on Human Rights submit to the Court its comments on that information within fifteen days of its receipt.
>
> 4. To submit this order for the Court's consideration and pertinent effects during its next regular session.

> 5. To summon the parties to a public hearing to be held at the seat of the Court on June 26, 1996, at 4:00 p.m., so that the Court may hear their views on the events and circumstances that led to the request for provisional measures and to this Order.

The Order of the President was based on the following considerations:

> 3. That Article 1(1) of the Convention sets forth the obligation of the States 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, as the Commission points out in its request for provisional measures, the background information presented in this case effectively constitutes "*a prima facie case of urgent and grave danger to Father Daniel Vogt's life and the integrity of his person.*"
>
> 5. That the Inter-American Commission has taken precautionary measures on three occasions, pursuant to Article 29 of its Regulations, and that they have not to date had the required effect, it has become a special circumstance making it incumbent on the President of the Court to request urgent measures to preserve Father Daniel Joseph Vogt's life and the integrity of his person and avoid irreparable damage to him.
>
> 6. That the Government has the obligation to prevent violations of human rights and to investigate the events that led to this request for provisional measures in order to identify those responsible and punish them appropriately so as to prevent any recurrence of the events.

4. On May 14, 1996 the Government presented to the Court its first report, in which it stated that no situation of extreme urgency existed in the Municipality of El Estor, "*since Father Daniel Joseph Vogt is living and moving about in this and other communities and even traveling abroad in all tranquillity.*"

5. The Commission's observations of May 30, 1996 on the Government's first report, in which it stated that *"Father Daniel Joseph Vogt's situation is still one of 'extreme gravity and urgency' ... It is of the utmost importance that the Government of Guatemala fully comply with the Orders of the Illustrious Court, adopting the necessary measures to protect Father Vogt's life and the integrity of his person."*

6. That on June 25, 1996, the Government presented its second report, in which it stated that Father Daniel Joseph Vogt was still receiving the necessary protection:

> so that the day and night patrols provided by the police department to protect Father Vogt are in effect ... communications are open between the police authorities and Father Vogt and the members of the El Estor Pro-Defense Committee, [and] as far as the proceedings connected with this case are concerned ... the investigation into the threats and harassment are going forward ... [also] the Second Court of First Instance was asked to issue a warrant for the arrest of Mr. Adrián Coc-Coc, accused of making the threats to the priest in question.

7. The public hearing held on June 26, 1996 at the seat of the Court and attended by:

for the Government of Guatemala:

> Cruz Munguía Sosa, representative

for the Inter-American Commission on Human Rights:

> David J. Padilla, attorney
> Denise Gilman, attorney
> Marcela Matamoros, assistant
> Father Daniel Joseph Vogt, assistant

At that hearing attention was drawn to the fact that the Government had taken measures to protect Father Daniel Joseph Vogt's life and the integrity of his person. At the same time, the Commission maintained

that those measures had not been adequate, particularly as regards the duty to investigate the threats denounced. The Commission stressed that the previous precautionary measures it had called for on September 30, 1994, June 16, 1995 and March 6, 1996 had been fruitless, for which reason it had submitted the request for provisional measures to the Court.

CONSIDERING:

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

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

> [i]n 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 the Court has examined the circumstances and events that formed the basis of the President's April 12, 1996 Order, which this Court confirms, finding it to be consistent with the law and the merits of the proceedings.

4. That the Court, having studied the arguments of the Government and the Commission, observes that Guatemala has taken some measures to protect Father Daniel Joseph Vogt. The above notwithstanding, the Court considers that the measures to investigate the events have been neither adequate nor efficacious.

5. That, accordingly, it is necessary to request that the Government of Guatemala, as a vital aspect of its protective duty, take effective measures to investigate the events denounced and, where appropriate, punish the perpetrators.

6. That the Court stresses that the State has the obligation to investigate any situation in which the human rights protected by the Convention may have been violated. The obligation to investigate, as well as prevent and punish, must be assumed by the State as a legal duty and not merely as a formality.

7. That, in particular, the Commission has the obligation in every case to take measures to guarantee the life and physical integrity of all persons whose rights may be violated.

NOW, THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

by virtue of the powers conferred on it in Article 63(2) of the American Convention on Human Rights and Article 24 of the Rules of Procedure of the Court,

DECIDES:

1. To ratify the Order of the President of the Inter-American Court of Human Rights of April 12, 1996.

2. To call upon the Government of the Republic of Guatemala:

   a. To maintain the provisional measures on behalf of Father Daniel Joseph Vogt.

b. As a vital aspect of its protective duty, to take effective measures to investigate the events denounced and, where appropriate, punish the perpetrators.

3. To call upon the Government of Guatemala to continue to report every two months on the provisional measures taken.

4. To call upon the Inter-American Commission on Human Rights to submit to the Court its comments on that information not later than one month from the date of its receipt.

Héctor Fix-Zamudio
President

Hernán Salgado-Pesantes

Alejandro Montiel-Argüello

Oliver Jackman

Antônio A. Cançado Trindade

Manuel E. Ventura-Robles
Secretary

So ordered,

Héctor Fix-Zamudio
President

Manuel E. Ventura-Robles
Secretary

APPENDIX XV

ORDER OF THE PRESIDENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS OF APRIL 24, 1996

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

SERECH AND SAQUIC CASE

HAVING SEEN:

1. The petition of April 12, 1996 and its annexes, in which 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"), pursuant to Article 63(2) of the American Convention on Human Rights (hereinafter "the American Convention") and Article 24 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"), a request for provisional measures on behalf of Blanca Margarita Valiente de Similox, Vitalino Similox, Sotero Similox, María Francisca Ventura Sican, Lucio Martínez, Maximiliano Solís, Bartolo Solís, Julio Solís Hernández, María Magdalena Sunún González, Héctor Solís, José Solís, Gregoria Gómez, Juan García, Eliseo Calel and Víctor Tuctuc, in connection with case No. 11.570 now before the Commission against the Government of the Republic of Guatemala (hereinafter "the Government" or "Guatemala").

2. That the aforementioned petition by the Commission requested the Court to adopt the following provisional measures:

> 1. That effective security measures be adopted to guarantee the life and physical integrity of Blanca Margarita Valiente de Similox, Vitalino Similox, Sotero Similox, María Francisca Ventura Sican, Lucio Martínez, Maximiliano Solís, Bartolo Solís, Julio Solís Hernández, María Magdalena Sunún González, Héctor Solís, José Solís, Gregoria Gómez, Juan García, Eliseo Calel and Víctor Tuctuc.
>
> 2. That an investigation be duly undertaken to determine the identity of those responsible for the threats to, and attacks on the lives and personal integrity of Blanca Margarita de Similox, Vitalino Similox, Sotero Similox, María Francisca Ventura Sican, Lucio Martínez, Maximiliano Solís, Bartolo Solís, Julio Solís Hernández, María Magdalena Sunún González, Héctor Solís, José Solís, Gregoria Gómez, Juan García, Eliseo Calel and Víctor Tuctuc.
>
> 3. To call upon the State of Guatemala to use all the means at its disposal to execute the warrant for the arrest of Víctor Román and duly prosecute Víctor Román, Armando Tucubal, Héctor Cotzál and Hugo Cotzál, all accused in the deaths of Pascual Serech and Manuel Saquic, and possible perpetrators, together with Edwin and Carlos Román, of the threats to the members of the Kakchiquel Presbytery and CIEDEG in connection with this case.
>
> 4. To call upon the State of Guatemala to report forthwith to the Honorable Court on the specific measures it has adopted to protect Blanca Margarita de Similox, Vitalino Similox, Sotero Similox,

María Francisca Ventura Sican, Lucio Martínez, Maximiliano Solís, Bartolo Solís, Julio Solís Hernández, María Magdalena Sunún González, Héctor Solís, José Solís, Gregoria Gómez, Juan García, Eliseo Calel and Víctor Tuctuc and, after providing that information, to report every 60 days on the status of the provisional measures.

5. To request the Honorable Court to hold a public hearing at its earliest convenience so that the Commission may have the opportunity to explain in detail the condition of defenselessness and grave danger in which Blanca Margarita Valiente de Similox, Vitalino Similox, Sotero Similox, María Francisca Ventura Sican, Lucio Martínez, Maximiliano Solís, Bartolo Solís, Julio Solís Hernández, María Magdalena Sunún González, Héctor Solís, José Solís, Gregoria Gómez, Juan García, Eliseo Calel and Víctor Tuctuc find themselves. At the same time, the Government would have the opportunity to inform on the specific measures it has taken to clarify these crimes, punish those responsible for them, prevent a recurrence of such events in future, and guarantee the security of the persons named in this request.

3. The events that form the basis of the request, which are summarized below:

a) On August 1, 1994 Pascual Serech, a member of the Kakchiquel Presbytery of the Conference of Evangelical Churches of Guatemala (hereinafter "CIEDEG") and President of the CIEDEG Human Rights Committee, was murdered in Panabajal, San Juan Comalapa, Chimaltenango, Guatemala. Before he died, Mr. Serech recognized Víctor Román Cotzál, then an army commissioner in the area, and his sons Héctor and Hugo Cotzál as his attackers. Later, the chief of civilian patrols of Panabajal and an army officer in the area, Armando Tucubal, was also charged of Mr. Serech's murder.

b) On August 18, 1994 the Judge of the First Instance of Chimaltenango, Edgar Ramiro Elias-Ogaldez, in charge of the Serech case, was murdered. On June 23, 1995 Mr. Manuel Saquic-Vásquez, minister of the CIEDEG Kakchiquel Presbytery in Chimaltenango and coordinator of the Human Rights Committee of the Kakchiquel Presbytery and of the Mayan Defense Council in Chimaltenango, was abducted. His body was later discovered and bore clear signs of torture. Former army commissioners Víctor Román Cotzál is accused of his murder.

c) Since the deaths of the two ministers, the members of the CIEDEG Kakchiquel Presbytery, relatives of the victims and persons connected with the cases opened in Guatemala concerning the murders have been the subject of constant and increasing acts of harassment and violence, especially against the persons named in this petition. The threats and attacks have been aimed mainly at the following persons, all of whom are connected with the work of the CIEDEG Kakchiquel Presbytery and with the case and investigation of the deaths of Mr. Saquic and Mr. Serech.

1. Vitalino Similox: President of CIEDEG.

2. Margarita Valiente de Similox: wife of Vitalino Similox, head of the Kakchiquel Presbytery, who is actively involved in the lawsuits relating to the deaths of Mr. Serech and Mr. Saquic and testified at the hearing held by the Inter-American Commission on February 22, 1996.

3. Sotero Similox: father of Vitalino Similox and a participant in the campaign to shed light on the deaths of the two ministers.

4. Maximiliano Solís: leader of the Human Rights Committee of the CIEDEG Kakchiquel Presbytery, who testified at the hearing held by the Commission on February 22, 1996.

5. Bartolo Solís: brother of Maximiliano Solís and a member of the Kakchiquel Presbytery Human Rights Committee.

6. Julio Solís Hernández: father of Maximiliano and Bartolo Solís.

7. María Magdalena Sunún González: mother of Maximiliano and Bartolo Solís.

8. Héctor Solís: a member of the Kakchiquel Presbytery residing in Pacorral, Tecpán, Chimaltenango.

9. José Solís: father of Héctor Solís.

10. Gregoria Gómez: mother of Héctor Solís.

11. Lucio Martínez; administrator and minister of the Kakchiquel Presbytery in Chimaltenango, who is actively involved in the clarification of the cases.

12. María Francisca Ventura Sican: wife of Mr. Manuel Saquic and the private complainant in the criminal case concerning her husband's murder.

13. Eliseo Calel: a member of the Kakchiquel Presbytery, who worked with Mr. Serech, an activist and office-holder in the New Guatemala Democratic Front [*Frente Democrático Nueva Guatemala* - FDNG]

14. Víctor Tuctuc: a minister of the Kakchiquel Presbytery in San Juan Comalapa, Chimaltenango, and an FDNG activist.

15. Juan García: a member of the Kakchiquel Presbytery.

d) The threats and attacks leveled at the above-mentioned persons took the form of death-threat notes, abductions, physical attacks and harassment. These acts began on January 8, 1995 with a meeting of members of the area's civil patrols and military officials, at which CIEDEG, the Mayan Defense Council and the Office for National Coordination of the Widows of Guatemala (CONAVIGUA) were accused of holding anti-army sentiments, receiving money from abroad and being in possession of firearms. Mr. Román Cotzál was among those attending the meeting, at which several of the persons cited in this request were mentioned by name.

e) These threats and attacks have continued up to the present and are made through groups such as "Jaguar Justiciero" and persons unknown; it is believed that the authors of the threats, accused of the murders of Mr. Serech and Mr. Saquic, are Víctor Román Cotzál, Héctor and Hugo Cotzál and Armando Tucubal. Edwin and Carlos Román, sons of Víctor Román, are also alleged to be responsible for making the threats.

f) On February 22, 1996, the Inter-American Commission held a hearing attended by several of the persons named in the cases before it, who received threats on account of their participation in the hearing.

4. According to the Commission, Guatemala has not taken any effective action to protect those persons, and although a few measures have been taken, "*the persons named are still constantly harassed. Furthermore, those persons who are accused of the murders of Serech and Saquic and are possibly responsible for the threats and attacks are still at large.*"

5. Although the Commission has twice sought precautionary measures from Guatemala, on October 11, 1995 and March 6, 1996, the requisite effect has not been obtained.

CONSIDERING:

1. That Guatemala has been a State Party to the American Convention since May 25, 1978 and that it accepted the jurisdiction of the Court on March 9, 1987.

2. That Article 63(2) of the Convention provides that the Court shall take the provisional measures it deems pertinent in matters it has under consideration in cases "*of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons.*"

3. That by the terms of Article 24(4) of the Rules of Procedure: "[i]*f the Court is not sitting, the President, in consultation with the Permanent Commission and, if possible, with the other judges, shall call upon the government concerned to adopt the necessary urgent measures and to act so as to permit any provisional measures subsequently ordered by the Court, in its next session, to have the requisite effect.*"

4. That Article 1(1) of the American Convention sets forth the obligation of the States Parties to respect the rights and freedoms recognized in this treaty and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms.

5. That the facts presented in this case effectively constitute "*a prima facie case of urgent and grave danger to the lives and physical integrity*" of the 15 persons named (underlining in the original).

6. That the fact that the Inter-American Commission has twice called for precautionary measures which "*have not produced the requisite effect of protection, since no proper investigation of the threats has been made by the competent authorities nor has the pending warrant for the arrest of Víctor Román Cotzál been executed, nor have Armando Tucubal, Héctor Cotzál or Hugo Cotzál been prosecuted although those persons stand accused of the murders of two members of CIEDEG,* [nor] *have other appropriate measures been taken to protect the lives and physical integrity*" of the 15 persons named in the Commission's request, establishes exceptional circumstances which make it necessary to order urgent measures so as to avoid irreparable damage to them.

7. That it is the responsibility of the Government to adopt security measures for all citizens, an undertaking that is all the more crucial in the case of persons involved in judicial proceedings before the organs of the inter-American system for the protection of human rights, the purpose of which is to determine whether or not human rights covered by the American Convention have been violated.

8. That, likewise, the Government of Guatemala has the obligation to investigate the events that led to this request for provisional measures in order to identify those responsible and punish them accordingly, particularly with regard to the alleged explicit threats of reprisals against some of the persons named, on account of their appearance before the Commission at the public hearing on February 22 of this year.

NOW, THEREFORE:

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

in consultation with the Court and pursuant to Article 63(2) of the American Convention on Human Rights and in exercise of the authority conferred on him by Article 24(4) of the Rules of Procedure.

DECIDES:

1. To call upon the Government of the Republic of Guatemala to adopt forthwith such measures as may be necessary to protect the lives and physical integrity of Blanca Margarita Valiente de Similox, Vitalino Similox, Sotero Similox, María Francisca Ventura Sican, Lucio Martínez, Maximiliano Solís, Bartolo Solís, Julio Solís Hernández, María Magdalena Sunún González, Héctor Solís, José Solís, Gregoria Gómez, Juan García, Eliseo Calel and Víctor Tuctuc, and to avoid irreparable damage to them, in strict compliance with the obligation to respect and guarantee human rights, which it undertook in accordance with Article 1(1) of the American Convention on Human Rights.

2. To call upon the Government of the Republic of Guatemala to investigate the events and punish those responsible and to use the means at its disposal to execute the warrant for the arrest of Víctor Román Cotzál.

3. To call upon the Government of the Republic of Guatemala to report to the Court, every thirty days from the date of notification, on the urgent measures it adopts, and upon the Inter-American Commission on Human Rights to transmit its comments on that information to the Court within fifteen days of its receipt.

4. To submit this Order for the Court's consideration and pertinent effects during its next session.

5. To summon the parties to a public hearing at the seat of the Court on June 27, 1996, at 10:00 a.m., so that the Court may hear their views on the events and circumstances that led to this request for provisional measures and to this Order.

Héctor Fix-Zamudio
President

Manuel E. Ventura-Robles
Secretary

So ordered,

Héctor Fix-Zamudio
President

Manuel E. Ventura-Robles
Secretary

APPENDIX XVI

ORDER OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS OF JUNE 28, 1996

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

SERECH AND SAQUIC CASE

HAVING SEEN:

1. The petition of April 12, 1996 and its annexes, in which 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"), pursuant to Article 63(2) of the American Convention on Human Rights (hereinafter "the American Convention") and Article 24 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"), a request for provisional measures on behalf of Blanca Margarita Valiente de Similox, Vitalino Similox, Sotero Similox, María Francisca Ventura Sican, Lucio Martínez, Maximiliano Solís, Bartolo Solís, Julio Solís Hernández, María Magdalena Sunún González, Héctor Solís, José Solís, Gregoria Gómez, Juan García, Eliseo Calel and Víctor Tuctuc, in connection with case No. 11.570 now before the Commission against the Government of the Republic of Guatemala (hereinafter "the Government" or "Guatemala").

2. That the Commission's request was based on the allegation that the persons mentioned above, all members or relatives of members of the Kakchiquel Presbytery of the Conference of Evangelical Churches of Guatemala (CIEDEG) or persons who have played an active role in the investigation of the murders of CIEDEG ministers Pascual Serech and Manuel Saquic-Vásquez in August 1994 and June 1995 respectively, have been the subject of threats, harassment and attacks by a group of members of the civilian patrols and former military officers in the area, who consider this group to hold anti-army sentiments. The Commission considers that the events constitute a *prima facie* case of urgent and grave danger to these persons' lives and physical integrity.

3. The Order of the President of the Court (hereinafter "the President") of April 24, 1996, in which he decided:

> 1. To call upon the Government of the Republic of Guatemala to adopt forthwith such measures as may be necessary to protect the lives and physical integrity of Blanca Margarita Valiente de Similox, Vitalino Similox, Sotero Similox, María Francisca Ventura Sican, Lucio Martínez, Maximiliano Solís, Bartolo Solís, Julio Solís Hernández, María Magdalena Sunún González, Héctor Solís, José Solís, Gregoria Gómez, Juan García, Eliseo Calel and Víctor Tuctuc, and to avoid irreparable damage to them, in strict compliance with the obligation to respect and guarantee human rights, which it undertook in accordance with Article 1(1) of the American Convention on Human Rights.

2. To call upon the Government of the Republic of Guatemala to investigate the events and punish those responsible and to use the means at its disposal to execute the warrant for the arrest of Víctor Román Cotzál.

3. To call upon the Government of the Republic of Guatemala to report to the Court, every thirty days from the date of notification, on the urgent measures it adopts, and upon the Inter-American Commission on Human Rights to transmit its comments on that information to the Court within fifteen days of its receipt.

4. To submit this Order for the Court's consideration and pertinent effects during its next session.

5. To summon the parties to a public hearing at the seat of the Court on June 27, 1996, at 10:00 a.m., so that the Court may hear their views on the events and circumstances that led to this request for provisional measures and to this Order.

The Order of the President was based on the following considerations:

4. That Article 1(1) of the American Convention sets forth the obligation of the States Parties to respect the rights and freedoms recognized in this treaty and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms.

5. That the facts presented in this case effectively constitute "*a prima facie case of urgent and grave danger to the lives and physical integrity*" of the 15 persons named (underlining in the original).

6. That the fact that the Inter-American Commission has twice requested precautionary measures which "*have not produce the requisite effect of protection, since no proper investigation of the threats has been made by the competent authorities nor has the pending warrant for the arrest of Víctor Román Cotzál been executed, nor have Armando Tucubal, Héctor Cotzál or Hugo Cotzál been prosecuted although those persons stand accused of the murders of two members of CIEDEG,* [nor] *have other appropriate measures been taken to protect the lives and physical integrity*" of the 15 persons named in the Commission's request, establishes exceptional circumstances which make it necessary to order urgent measures so as to avoid irreparable damage to them.

7. That it is the responsibility of the Government to adopt security measures for all citizens, an undertaking that is all the more crucial in the case of persons involved in judicial proceedings before the organs of the inter-American system for the protection of human rights, the purpose of which is to determine whether or not human rights covered by the American Convention have been violated.

8. That, likewise, the Government of Guatemala has the obligation to investigate the events that led to this request for provisional measures in order to identify those responsible and punish them accordingly, particularly with regard to the alleged explicit threats of reprisals against some of the persons named, on account of their appearance before the Commission at the public hearing on February 22 of this year.

4. The first report from the Government of Guatemala on May 30, 1996, in which it listed the urgent measures taken in compliance with the Order of the President of April 24, 1996 and declared that "*Guatemala has deployed all efforts to investigate the events which it has deemed pertinent within the existing legal framework.*" Moreover, the aforementioned report indicated that the Government had held a meeting on March 26, 1996, which was attended by members of the State institutions and the persons affected, and that "*the latter declared that they did not wish to be assigned personal security since it undermined their independence and freedom of action; that all they wanted was for Víctor Román Cotzál be captured and the threats investigated.*"

5. The Commission's comments of June 14, 1996 on the first report from the Government, in which it considered that the latter had not complied with the President's requirements in his Order of April 24, 1996 and that a situation of extreme gravity and urgency still existed. In this regard, it stated that "*at least one threat has occurred since the Order of the Court, the investigation of the Ministry of Public Affairs has been slow and ineffective and those accused of harassing the protected persons are still at large.*"

6. The public hearing held on June 27, 1996 at the seat of the Court, which was attended by:

for the Government of Guatemala:

Cruz Munguía Sosa, representative;

for the Inter-American Commission on Human Rights:

David J. Padilla, attorney
Denise Gilman, attorney
Frank Larue, assistant
William Harrell, assistant

The Commission called as a witness Mrs. Blanca Margarita Valiente de Similox whose statement was heard.

At that hearing attention was drawn to the fact, firstly, that the Government had taken measures to protect the lives and physical integrity of the persons named in the Order of the President, that the events were currently under investigation and that orders had been issued to capture those allegedly responsible. Secondly, the Commission maintained that, while it recognized that the Government had taken positive measures, they had been inadequate, especially as regards the duty to investigate the events denounced, which was tantamount to a situation of impunity.

CONSIDERING:

1. That Guatemala is a State Party to the American Convention, which sets forth in its Article 1(1) the obligation of the States 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, and that on March 9, 1987 Guatemala had accepted the jurisdiction of the Court in accordance with Article 62 of the Convention.

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

> [i]n 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 the Court has examined the circumstances and events that led to the Order of the President of April 24, 1996, which this Court confirms, considering it to be consistent with the law and the merits of the proceedings.

4. That the Court, having studyied the arguments adduced by the Government and the Commission, observes that Guatemala has taken some measures to protect the persons mentioned in the Order of the President of April 24, 1996. This notwithstanding, the Court considers that the investigations conducted have been neither adequate nor effective.

5. That it is therefore necessary to call upon the Government of Guatemala, as a vital aspect of its protective duty, to take effective measures to investigate the events denounced, guarantee the full independence of the judges, and, where appropriate, to punish those responsible.

6. That the Court underscores that the State has the obligation to investigate any situation in which the human rights protected by the Convention may have been violated. That the obligation to investigate, as well as to prevent and sanction, must be assumed by the State as a legal duty and not merely as a formality.

7. That, in particular, Guatemala has an obligation in every case to guarantee the lives and physical integrity of all persons whose rights may be threatened.

NOW, THEREFORE;

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of the authority conferred on it by Article 63(2) of the American Convention on Human Rights and Article 24 of the Rules of Procedure of the Court.

DECIDES:

1. To ratify the Order of the President of April 24, 1996.

2. To call upon the Government of the Republic of Guatemala:

   a. To maintain the provisional measures on behalf of Blanca Margarita Valiente de Similox, Vitalino Similox, Sotero Similox, María Francisca Ventura Sican, Lucio Martínez, Maximiliano Solís, Bartolo Solís, Julio Solís Hernández, María Magdalena Sunún González, Héctor Solís, José Solís, Gregoria Gómez, Juan García, Eliseo Calel and Víctor Tuctuc.

   b. That as a vital aspect of its protective duty, it take effective measures to investigate the events and, where appropriate, punish those responsible for them.

3. To call upon the Government of the Republic of Guatemala to continue to report every two months on the provisional measures taken.

4. To call upon on the Inter-American Commission on Human Rights to transmit to the Court its comments on that information not later that one month from the date of its receipt.

Héctor Fix-Zamudio
President

Hernán Salgado-Pesantes

Alejandro Montiel-Argüello

Oliver Jackman

Antônio A. Cançado Trindade

Manuel E. Ventura-Robles
Secretary

So ordered,

Héctor Fix-Zamudio
President

Manuel E. Ventura-Robles
Secretary

APPENDIX XVII

ORDER OF THE PRESIDENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS OF APRIL 12, 1996

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

SUAREZ ROSERO CASE

HAVING SEEN:

1. The petition of December 22, 1995 in which 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") the case of Suárez-Rosero against the Government of the Republic of Ecuador (hereinafter "the Government" or "Ecuador"), of which petition the Government was duly and officially apprised on January 16, 1996.

2. The note from the President of the Inter-American Court, in which he granted the Government "*a two-month extension to file preliminary objections and a two-month extension to respond to the petition,*" as requested, which deadlines would expire on April 16 and June 16, 1996 respectively.

3. The Commission's request of March 15, 1996 for provisional measures pursuant to the provisions of Article 63(2) of the American Convention on Human rights (hereinafter "the Convention" or "the American Convention") and Article 24(1) of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"), in which it requested the Inter-American Court to "*take the necessary measures to ensure that Mr. Iván Suárez-Rosero is immediately released pending continuation of the procedures.*" The Commission adduced the following arguments in support of its request:

> a. Rafael Iván Suárez-Rosero has been detained since June 23, 1992; he has not been tried and has been held in preventive detention for approximately three years and nine months.
>
> b. Mr. Suárez-Rosero is imprisoned in the Quito Social Rehabilitation Center Number 1 (former García Moreno Prison). During the almost four years that have elapsed, this defendant, like most of the others similarly detained, has not been housed separately from condemned prisoners.

c. In the committal for trial order, on July 10, 1995, issued in criminal case No. 93-92, the then President of the Quito Superior Court decided in regard to the detention of Mr. Suárez and two others accused of having covered up the crime, that "they did not fall under the requirements of Article 177 of the Code [of Criminal Procedure, which authorizes preventive detention of persons accused of crimes] cited" and that they should be released (see annex 20 of the Commission's request of December 22, 1995). However, since the compulsory conference for these proceedings is still pending, the release order has not been executed.

d. Mr. Suárez-Rosero is accused of being an accessory, which carries a maximum sentence of two years (see Article 48 of the Penal Code, Annex 1). It is therefore evident that he has been held in preventive detention for a longer period than he would have served had he been tried and convicted.

e. In view of the Commission's decisions set out in Report 11/95, on January 16, 1996 another petition for habeas corpus was filed by Rafael Iván Suárez-Rosero, requesting his immediate release. This petition was denied on January 23, 1996 (see decision of January 23, 1996 by the Office of the Mayor of the Metropolitan District of San Francisco de Quito, Annex 2). The Court with jurisdiction to hear this case in regard to the criminal proceedings against Rafael Iván Suárez-Rosero ruled that he be kept in preventive detention (see letter of January 31, 1996 from the Bench of the First Chamber of the Superior Court of Justice of Quito, Annex 3).

4. The decision of January 23, 1996 by the Office of the Mayor of the Metropolitan District of San Francisco de Quito, in which it decided to "[R]*eject* [a further] *application for habeas corpus filed by Mr. RAFAEL IVAN SUARES-* (sic) *ROSERO, as unreceivable inasmuch as it requires application of the legal process provided for in Art. 121 of the Law on Narcotic Drugs and Psychotropic Substances.*"

CONSIDERING:

1. That Ecuador has been a State Party to the American Convention since December 28, 1977 and that it accepted the compulsory jurisdiction of the Court on July 24, 1984.

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

3. That in relation to this matter, Article 24(1) of the Court's Rules of Procedure currently in force provides that "[a]*t any stage of the proceedings involving cases of extreme gravity and urgency and when necessary to avoid irreparable damage to persons, the Court may, at the request of a party or on its own motion, order whatever provisional measures it deems appropriate, pursuant to Article 63(2) of the Convention.*"

4. That in the instant case, which has been submitted to this Tribunal, the Inter-American Commission requests that the Court seek from Ecuador such provisional measures as are *"necessary to ensure that Mr. Iván Suárez-Rosero is immediately released pending continuation of the procedures."*

5. That the situation of Mr. Suárez-Rosero, as stated by the Commission, may be categorized as extremely grave, inasmuch as it may cause him irreparable damage since, as the Commission stated, *"he has been held in preventive detention for a longer period than he would have served had he been tried and convicted."*

6. That, nonetheless, the provisional measures requested imply anticipation of certain effects that would be produced by the judgement on the merits which this Court may deliver, since in its request the Commission considers that the imprisonment of the alleged victim violates the American Convention. These are precautionary measures described in legal writings as partially restitutive or anticipatory and which the court cannot prescribe without first hearing the adversary, in this case the Government of Ecuador, one requisite being a preliminary analysis of the situation that necessitates the order for provisional measures.

7. That by the terms of Article 24(4) of the Rules of Procedure, "[i]*f the Court is not sitting, the President, in consultation with the Permanent Commission and, if possible, with the other judges, shall call upon the government concerned to adopt the necessary urgent measures and to act so as to permit any provisional measures subsequently ordered by the Court, in its next session, to have the requisite effect.*"

8. That in accordance with this precept, the President of the Court is authorized to order urgent measures only; it is therefore for the Court at its next session to decide on the appropriateness of the anticipatory provisional measures sought by the Commission, which can only be granted after the Government concerned has been heard.

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 in exercise of the authority conferred on him by Article 24(4) of the Rules of Procedure of the Court, in prior consultation with the Permanent Commission of the Court,

DECIDES:

1. To request that the Government of the Republic of Ecuador adopt forthwith such measures as are necessary to effectively ensure the physical and moral integrity of Mr. Rafael Iván Suárez-Rosero, so that any provisional measures that the Inter-American Court may take can have the requisite effect.

2. To request that the Government of the Republic of Ecuador 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.

3. To instruct the Secretariat of the Court to transmit the reports presented by the Government of the Republic of Ecuador to the Inter-American Commission Human Rights without delay; the Commission shall then submit its comments not later than fifteen days following receipt of the relevant information.

4. To submit this order for the Court's consideration and pertinent effects during its next regular session.

5. To summon the parties to a public hearing to be held at the seat of the Court on June 26, 1996, at 10:00 a.m., so that the Court may hear their views on the events and circumstances that led to the request for provisional measures and to this Order.

Héctor Fix-Zamudio
President

Manuel E. Ventura-Robles
Secretary

So ordered,

Héctor Fix-Zamudio
President

Manuel E. Ventura-Robles
Secretary

APPENDIX XVIII

ORDER OF THE PRESIDENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS OF APRIL 24, 1996

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

SUAREZ ROSERO CASE

HAVING SEEN:

1. The Order of the President of the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court") of April 12, 1996, wherein he decided:

> 1. To request that the Government of the Republic of Ecuador adopt forthwith such measures as are necessary to effectively ensure the physical and moral integrity of Mr. Rafael Iván Suárez-Rosero, so that any provisional measures that the Inter-American Court may take can have the requisite effect.
>
> 2. To request that the Government of the Republic of Ecuador 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.

2. The aforementioned Order, in which the President of the Court convened the Government of the Republic of Ecuador (hereinafter "Ecuador" or "the Government") and the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") to attend a public hearing to be held at the seat of the Court on June 26, 1996, so that the Court may hear their views on the events and circumstances that inspired the Commission's request for provisional measures.

3. The Inter-American Commission's request of April 12, 1996 for expansion of provisional measures, in which it asked the Court:

> [t]hat it request the State of Ecuador to adopt effective security measures to protect the lives and personal integrity of [Rafael Iván Suárez-Rosero, Margarita Ramadán de Suárez, and Micaela Suárez-Ramadán].
>
> To further request the State of Ecuador to investigate the attempt on Mr. Suárez's life and the threats and harassment to which he and his family have been subjected, and to punish those responsible.

> To request the State to report promptly to the Honorable Court on the specific measures it has taken to protect Mr. Suárez and his family and, once that information has been provided, to keep it regularly informed on the status of the provisional measures;

and reiterated its request that the Court approach the Government to request adoption of the measures necessary for Mr. Rafael Iván Suárez-Rosero to be immediately granted a provisional release.

4. The basis of the Inter-American Commission's request for the expansion of provisional measures, namely, an alleged attempt on the life of Mr. Suárez-Rosero on April 1, 1996, and threats and harassment to which he, his wife, Mrs. Margarita Ramadán de Suárez, and their daughter, Micaela Suárez-Ramadán, have been subjected since that date.

5. The statement of facts, lasting thirteen hours and forty-five minutes, given by Police Sub-lieutenant, CDP Guard Officer, on April 1, 1996, which claimed that the detainees had *"fought among themselves,"* that in the fray Mr. Rafael Iván Suárez-Rosero had received *"a slight superficial wound on his right side at the level of his navel,"* and that the immediate medical attention he had received showed that Mr. Suárez-Rosero had *"suffered no serious injury"*. The report also stated that the perpetrator had been punished *"with five (5) days of solitary confinement and five (5) days without visitors, as stipulated in the CRSVQ-1 regulations."*

CONSIDERING:

1. That Article 63(2) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") provides that the Court shall adopt such provisional measures as it deems pertinent in matters it has under its consideration when they relate to cases *"of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons,"* and that by the terms of Article 24(4) of the Rules of Procedure, "[i]*f the Court is not sitting, the President, in consultation with the Permanent Commission and, if possible, with the other judges, shall call upon the government concerned to adopt the necessary urgent measures and to act so as to permit any provisional measures subsequently ordered by the Court, in its next session, to have the requisite effect."*

2. That pursuant to the above-mentioned Order of April 12, Ecuador is obliged to adopt all necessary measures to ensure the physical and moral integrity of Mr. Suárez-Rosero and to keep the President of the Court regularly informed of such measures, *"so that any provisional measures that the Inter-American Court may take may have the requisite effect."*

3. That in the expansion of its request for adoption of provisional measures, the Commission indicates that on April 1, 1996 Mr. Suárez was warned *"not to forget that he had relatives outside."* Although the Commission does not specify who made the threats nor does it provide any further detail or description of the event, it must be borne in mind that Mr. Suárez is in the midst of a far-reaching criminal process involving crimes connected with drug trafficking, which causes the Commission concern about the threats to his wife, Mrs. Margarita Ramadán de Suárez, and their daughter, Micaela Suárez-Ramadán.

4. That with regard to the Commission's second request, concerning the "*attack*" on Mr. Suárez, consideration must be given to the police report of April 1, 1966, provided by the Commission for the consideration of the Court, indicating that Mr. Suárez suffered a superficial wound as a result of quarrel which, it is stated, broke out when he himself approached Mr. Jorge Reyes *"to complain about a pending action"*. The same report also indicates that the person responsible for these acts was punished in accordance with the prison regulations in force in Ecuador.

5. That there are therefore two contradictory versions of the manner in which the alleged events occurred, and the Court has no further information at its disposal until the Government presents its first report in accordance with the second paragraph of the operative part of the April 12, 1996 Order of the President of the Court. However, States are obliged to protect the lives and physical integrity of their

citizens in any circumstance, all the more so in this specific case in which the statements of Mr. Suárez-Rosero and Mrs. Ramadán de Suárez have been presented to the Court as part of the Commission's stock of evidence in a judicial process to determine whether or not the human rights enshrined in the American Convention have been violated by a State Party. This circumstance requires the Government to guarantee that neither witnesses nor their families shall be the victims of any sort of reprisal on account of their testimony to this Court.

6. That the Commission's third request, concerning periodic information on the measures taken by the Government, has already been complied with in regard to Mr. Suárez-Rosero.

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 after prior consultation with the Permanent Commission of the Court,

DECIDES:

1. To request that the Government of the Republic of Ecuador expand the provisional measures established in the Order of the President of April 12, 1996 to include Ms. Margarita Ramadán de Suárez and her daughter, Micaela Suárez-Ramadán, investigate the events denounced by the Inter-American Commission on Human Rights, and punish those responsible.

2. To submit this Order for the Court's consideration and pertinent effects during its next regular session.

3. To request that the Government of the Republic of Ecuador include in the reports it shall present every thirty days to the President of the Court, pursuant to his Order of April 12, 1996, the measures taken in compliance with this Order so that they may be brought to the attention of the Court.

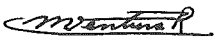
4. To request that the parties, in their presentations to the Court during the public hearing convened for June 26, 1996 at 10:00 a.m., include their views on the events and circumstances that motivated this Order.

Héctor Fix-Zamudio
President

Manuel E. Ventura-Robles
Secretary

So ordered,

(s) Héctor Fix-Zamudio
President



Manuel E. Ventura-Robles
Secretary

APPENDIX XIX

ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF JUNE 28, 1996

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

SUAREZ ROSERO CASE

HAVING SEEN:

1. The petition of March 15, 1996 and its annexes, in which the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission"), pursuant to Article 63(2) of the American Convention on Human rights (hereinafter "the Convention" or "the American Convention") and Article 24 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"), submitted to the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court") a request for provisional measures in regard to the Suárez-Rosero Case now under consideration by the Court. In that petition the Commission requested the Court to order the provisional measures necessary to preserve the physical and moral integrity of Mr. Rafael Iván Suárez-Rosero, claimant and alleged victim in that case.

2. The basis of the Commission's request, that there was reason to fear for the physical and moral safety and integrity of Mr. Suárez-Rosero, who was detained at the time in connection with a judicial process.

3. The Order of April 12, 1996, issued by the President of the Court in exercise of the authority conferred on him under Article 24(4) of the Rules of Procedure and in consultation with the other judges of the Court, who submitted their observations in writing. In that order, the President decided:

> 1. To request that the Government of the Republic of Ecuador adopt forthwith such measures as are necessary to effectively ensure the physical and moral integrity of Mr. Rafael Iván Suárez-Rosero, so that any provisional measures that the Inter-American Court may take can have the requisite effect.
>
> 2. To request that the Government of the Republic of Ecuador 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.

That Order of the President was based on the following considerations:

> 4. That in the instant case, which has been submitted to this Tribunal, the Inter-American Commission requests that the Court seek from Ecuador such provisional measures as are *"necessary to ensure that Mr. Iván Suárez-Rosero is immediately released pending continuation of the procedures."*
>
> 5. That the situation of Mr. Suárez-Rosero, as stated by the Commission, may be categorized as extremely grave, inasmuch as it may cause him irreparable damage since, as the Commission stated, *"he has been held in preventive detention for a longer period than he would have served had he been tried and convicted."*
>
> 6. That, nonetheless, the provisional measures requested imply anticipation of certain effects that would be produced by the judgment on the merits which this Court may deliver, since in its request the Commission considers that the imprisonment of the alleged victim violates the American Convention. These are precautionary measures described in legal writings as partially restitutive or anticipatory and which the court cannot prescribe without first hearing the adversary, in this case the Government of Ecuador, one requisite being a preliminary analysis of the situation that necessitates the order for provisional measures.
>
> 7. That by the terms of Article 24(4) of the Rules of Procedure, "[i]*f the Court is not sitting, the President, in consultation with the Permanent Commission and, if possible, with the other judges, shall can upon the government concerned to adopt the necessary urgent measures and to act so as to permit any provisional measures subsequently ordered by the Court, in its next session, to have the requisite effect."*
>
> 8. That in accordance with this precept, the President of the Court is authorized to order urgent measures only; it is therefore for the Court at its next session to decide on the appropriateness of the anticipatory provisional measures sought by the Commission, which can only be granted after the Government concerned has been heard.

4. The expansion of the Commission's request of April 12, 1996, in which it asked the Court that the measures adopted be expanded to include Mr. Suárez-Rosero's wife, Margarita Ramadán de Suárez, and their daughter, Micaela Suárez-Ramadán. The expansion was based on an alleged attack on Mr. Suárez-Rosero on April 1, 1996 and threats and harassment to which his family had been subjected since that date.

5. The Order of April 24, 1996, issued by the President of the Court in exercise of the authority conferred on him by Article 24(4) of the Rules of Procedure of the Court, in consultation with the other judges of the Court, in which he decided:

> 1. To request that the Government of the Republic of Ecuador expand the provisional measures established in the Order of the President of April 12, 1996 to include Mrs. Margarita Ramadán de Suárez and her daughter, Micaela Suárez-Ramadán, investigate the events denounced by the Inter-American Commission on Human Rights, and punish those responsible.
>
> 2. To submit this Order for the Court's consideration and pertinent effects during its next regular session.
>
> 3. To request that the Government of the Republic of Ecuador include in the reports it shall present every thirty days to the President of the Court, pursuant to his Order of April 12, 1996, the measures taken in compliance with this Order so that they may be brought to the attention of the Court.

That Order of the President was based on the following considerations:

> 3. That in the expansion of its request for adoption of provisional measures, the Commission indicates that on April 1, 1996 Mr. Suárez was warned *"not to forget that he had relatives outside."* Although the Commission does not specify who made the threats nor does it provide any further detail or description of the event, it must be borne in mind that Mr. Suárez is in the midst of a far-reaching criminal process involving crimes connected with drug trafficking, which causes the Commission concern about the threats to his wife, Mrs. Margarita Ramadán de Suárez, and their daughter, Micaela Suárez-Ramadán.

4. That with regard to the Commission's second request, concerning the "*attack*" on Mr. Suárez, consideration must be given to the police report of April 1, 1966, provided by the Commission for the consideration of the Court, indicating that Mr. Suárez suffered a superficial wound as a result of quarrel which, it is stated, broke out when he himself approached Mr. Jorge Reyes *"to complain about a pending action."* The same report also indicates that the person responsible for these acts was punished in accordance with the prison regulations in force in Ecuador.

5. That there are therefore two contradictory versions of the manner in which the alleged events occurred, and the Court has no further information at its disposal until the Government presents its first report in accordance with the second paragraph of the operative part of the April 12, 1996 Order of the President of the Court. However, States are obliged to protect the lives and physical integrity of their citizens in any circumstance, all the more so in this specific case in which the statements of Mr. Suárez-Rosero and Mrs. Ramadán de Suárez have been presented to the Court as part of the Commission's stock of evidence in a judicial process to determine whether or not the human rights enshrined in the American Convention have been violated by a State Party. This circumstance requires the Government to guarantee that neither witnesses nor their families shall be the victims of any sort of reprisal on account of their testimony to this Court.

6. The certified copy of written communication No. 861-CSQ-P-96 of the President of the Superior Court of Justice of Quito and the ruling of April 16, 1996, at 10:00 a.m., of the First Chamber of that Court, "*whereby* [the Government communicated that] *the order had been given for Mr. Rafael Iván Suárez-Rosero's release.*" Those documents were presented by the Government of the Republic of Ecuador at the Secretariat of the Court on May 29, 1996.

7. The petition presented by the Inter-American Commission on Human Rights on June 10, 1996, whereby it informed the Court that "*the safety of Mr. Suárez and his family does not appear to be threatened at this time*" and, as a consequence, also communicated its decision to "*desist from the request for provisional measures to protect the physical and psychological integrity of Mr. Suárez and his relatives ... reserving the right to make a further request for provisional measures should there be a change of circumstances.*" The Commission also noted that the decision to desist from the above-mentioned request was taken "*without prejudice to the hearing of the case, in regard to which it requests the Honorable Court to proceed with it.*"

CONSIDERING:

1. That Ecuador is a State Party to the American Convention, Article 1(1) of which sets forth the obligation of the States 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, and that on July 24, 1984 Ecuador accepted the competence of this Court pursuant to Article 62 of the Convention.

2. That, in the instant case, the Inter-American Commission recently informed the Court that it was desisting from its requests for provisional measures on the grounds that the circumstances of extreme gravity and urgency that had inspired the adoption of urgent measures no longer existed, a fact demonstrated by the release of Mr. Rafael Iván Suárez-Rosero by the Government of Ecuador, and that there was currently no risk to the safety of Mr. Suárez-Rosero and his family.

3. The reasons that led the President to order urgent measures in this case had ceased to exist.

NOW, THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

By virtue of the powers conferred on it by Article 63(2) of the American Convention on Human Rights and Article 24 of the Rules of Procedure of the Court,

DECIDES:

To lift the urgent measures issued by the President of the Court, in the light of the new circumstances indicated both by the Inter-American Commission on Human Rights and the Government of the Republic of Ecuador.

Héctor Fix-Zamudio
President

Hernán Salgado-Pesantes

Alejandro Montiel-Argüello

Oliver Jackman

Antônio A. Cançado Trindade

Manuel E. Ventura-Robles
Secretary

So ordered

Héctor Fix-Zamudio
President

Manuel E. Ventura-Robles
Secretary

APPENDIX XX

CDH-R3/96

INTER-AMERICAN COURT OF HUMAN RIGHTS

Decision approved by the Inter-American Court of Human Rights
at the Nineteenth Special Session,
during the first meeting held on June 26, 1996

HAVING SEEN:

1. That Article 25(2) of the Statute of the Inter-American Court of Human Rights (hereinafter "the Statute") provides that:

> [t]he Rules of Procedure may delegate to the President or to Committees of the Court authority to carry out certain parts of the legal proceedings, with the exception of issuing final rulings or advisory opinions. Rulings or decisions issued by the President or the Committees of the Court that are not purely procedural in nature may be appealed before the full Court.

2. That Article 6(2) of the Rules of Procedure of the Inter-American Court of Human Rights (hereinafter "the Rules of Procedure") establishes that "[t]*he Court may appoint ... commissions for specific matters.*"

3. That Article 34(4) of the Rules of Procedure provides that "[t]*he Court may, at any stage of the proceedings ... designate one or more of its members to conduct an inquiry, carry out an investigation on the spot or take evidence in some other manner.*"

NOW, THEREFORE:

THE COURT DECIDES:

That the receipt of testimonial and expert evidence in the proceedings before it may be verified by the presence of one or more of its members at a public hearing at the seat of the Court or *in situ*.

Héctor Fix-Zamudio
President

Manuel E. Ventura-Robles
Secretary

APPENDIX XXI

ORDER OF THE

INTER-AMERICAN COURT OF HUMAN RIGHTS

OF JULY 8, 1996

GENIE LACAYO CASE

HAVING SEEN:

The decision adopted by the Inter-American Court of Human Rights during its XIX Special Session, at the first meeting, held on June 26, 1996, in which it decided "[t]*hat the receipt of testimonial and expert evidence in the proceedings before it may be verified by the presence of one or more of its members at a public hearing at the seat of the Court or in situ.*"

CONSIDERING:

1. That in the Genie Lacayo case, a public hearing will begin on September 5, 1996, for the purpose of hearing testimonial evidence.

2. That receipt of testimony is a part of the preparatory phase and must be done promptly.

NOW, THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS

DECIDES:

To authorize those judges present at the XX Special Session of the Inter-American Court of Human Rights to hear the testimonial evidence in the Genie Lacayo case.

Héctor Fix-Zamudio
President

Hernán Salgado-Pesantes

Rafael Nieto-Navia

Alejandro Montiel-Argüello

Máximo Pacheco-Gómez

Manuel E. Ventura-Robles
Secretary

APPENDIX XXII

INTER-AMERICAN COURT OF HUMAN RIGHTS

EL AMPARO CASE

REPARATIONS
(ART. 63(1) OF THE AMERICAN CONVENTION ON HUMAN RIGHTS)

JUDGMENT OF SEPTEMBER 14, 1996

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
Alirio Abreu-Burelli, Judge;
Antônio A. Cançado Trindade, Judge;

also present:

Manuel E. Ventura-Robles, Secretary, and
Víctor Ml. Rodríguez-Rescia, Interim Deputy Secretary,

pursuant to the Court's judgment of January 18, 1995, and in application of Articles 45 and 46 of the Rules of Procedure of the Inter-American Court of Human Rights (hereinafter "the Rules of Procedure"), all of the above in relation to Article 63(1) of the American Convention on Human Rights (hereinafter "the Convention" or the "American Convention") enters the following judgment on reparations in the instant case brought by the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") against the Republic of Venezuela (hereinafter "Venezuela", "the State" or "the Government").

I

1. The instant 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, transmitting its Report No. 29/93 of October 12, 1993. It originated in Petition No. 10.602 against Venezuela, lodged with the Secretariat of the Commission on August 10, 1990.

2. In its petition the Commission asserted that Venezuela had violated the following articles of 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 1(1) (Obligation to Respect Rights), with the deaths of José R. Araujo, Luis A. Berrío, 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, which occurred at the "La Colorada" Canal, Páez District in the State of Apure, Venezuela.

It also claimed in the petition that Articles 5, 8(1), 24 and 25 of the Convention had been violated to the detriment of Wolmer Gregorio Pinilla and José Augusto Arias, sole survivors of the aforementioned events.

3. It further contended that the instant case referred to events that began on October 21, 1988. On that day sixteen fishermen from the village of "El Amparo", Venezuela, were on their way to the "La Colorada" canal along the Arauca river in Apure State on a "fishing trip." At approximately 11:20 a.m., when some of the fishermen were leaving the boat, members of the military and the police of the "José Antonio Páez Specific Command" (CEJAP), opened fire on them, killing fourteen of the sixteen fishermen.

4. On August 1, 1994, the State submitted its answer to the petition and, by note of January 11, 1995, reaffirmed that Venezuela "*d*[id] *not contest the facts referred to in the complaint and accept*[ed] *the international responsibility of the State.*"

5. On January 18, 1995, the Court delivered a judgment in which it declared that it:

> 1. Takes note of the recognition of responsibility made by the Republic of Venezuela, and decides that the 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 between 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. Reserves the right to review and approve the agreement, and in the event that 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. (*El Amparo Case*, Judgment of January 18, 1995. Series C. No. 19, Operative part).

II

6. Pursuant to Article 62 of the Convention, the Court is competent to rule on the payment of reparations, indemnities and costs in the instant case, inasmuch as Venezuela ratified the Convention on August 9, 1977, and accepted the contentious jurisdiction of the Court on June 24, 1981.

III

7. The time limit stipulated in operative paragraph 3 of the Court's judgment expired on July 18, 1995, but there has been no indication that an agreement has been reached. Consequently, pursuant to that judgment, it is for the Court to determine the scope of the reparations and the amount of the indemnities and costs.

8. By Order of September 21, 1995, the Court decided to institute the proceedings for reparations, indemnities and costs and granted the Commission until November 3, 1995 to offer and present any evidence in its possession concerning the reparations, indemnities and costs in the instant case. The pertinent information was received on that date. The Court also granted the State until January 2, 1996 to submit its comments on the Commission's brief, and these were received on that date.

9. On January 27, 1996. the Court held a public hearing at its seat to allow the parties to voice their opinions on the reparations, indemnities and costs. The following persons attended the hearing:

for the Venezuelan State:

Asdrúbal Aguiar-Aranguren, Agent
Ildegar Pérez-Segnini, Alternate Agent
Guillermo Quintero, Advisor
Rodolfo Enrique Piza-Rocafort, Advisor
Raymond Aguiar, Observer;

for the Inter-American Commission:

Claudio Grossman, Delegate
Oscar Luján-Fappiano, Delegate
Milton Castillo, Attorney
Juan Méndez, Assistant
Ligia Bolívar, Assistant
Walter Márquez, Assistant.

10. At the public hearing on reparations, the Government provided the following documentary evidence: two notes pertaining to the human development indicators in the State of Apure, a pamphlet entitled "Poverty Estimates at 30/06/94", and a pamphlet entitled "Some social indicators by federal unit, period 1990-1994." At the hearing, the Commission supplied two legal authorizations of the powers granted by the victims' relatives; a brief containing the statement by the Venezuelan Government's representative before the Commission; various documents including newspaper clippings, and others referring to meetings of the attorneys in the case with the next of kin and survivors; a book entitled "Comandos del crimen: la masacre de El Amparo" (Commandos of Crime: the El Amparo Massacre) and a brief addressed to the Secretary of the Court on the various steps of the proceedings.

11. Through a communication of April 29, 1996, the Secretariat, on instructions from the President of the Court, requested the Commission to clarify its position on a number of points relating to loss of earnings and Costs and Expenses [*daño emergente*] in the case. The Commission clarified its position, on receipt of the briefs from the victims' representatives of May 13 and 29, 1996. Inasmuch as these notes presented discrepancies vis-à-vis those previously submitted by the Commission and the victims' representatives, clarification was again sought from the Commission, which responded in a note of September 13, 1996 endorsing the observations contained in the brief from the victims' representatives on September 4, 1996 *"that it is therefore* [the Court] *that would ultimately rule."*

IV

12. In order to take an informed decision on the amount of the indemnities, in a manner in keeping with the necessary technical considerations, the Court decided to avail itself of the professional services of an actuarial expert. To that end, *Licenciado* Eduardo Zumbado J., a consultant actuary in San José, Costa Rica, was engaged. The Secretariat of the Court received his report on August 5 and 9, 1996. The actuary simply made the arithmetical calculations on the basis of the data contained in the parties' briefs and the evidence presented in the docket.

V

13. Venezuela recognizes its responsibility in the instant case, which means that it accepts as accurate the facts described in the petition of January 14, 1994, this being the interpretation of the Judgment delivered by the Court on January 18, 1995. Nonetheless, the parties disagree on the scope of the reparations and the amount of the indemnities and costs. The Court will rule on that conflict of opinion in this Judgment.

14. The provision applicable to reparations is Article 63(1) of the American Convention, which reads 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.

The provisions of this article contain one of the fundamental principles of international law, as has been recognized in case law (*Factory at Chorzów,* Jurisdiction, Judgment No. 8, 1927, P.C.I.J., Series A, No. 9, page 21, and *Factory at Chorzów,* Merits, Judgment No. 13, 1928, P.C.I.J., Series A, No. 17, page 29; *Reparation for Injuries Suffered in the Service of the United Nations,* Advisory Opinion, I.C.J. Reports 1949, page 184). It has been applied thus by this Court *(Velásquez Rodríguez Case, Compensatory Damages (Art. 63(1) of the American Convention on Human Rights),* Judgment of July 21, 1989. Series C No. 7, para. 25; *Godínez Cruz Case, Compensatory Damages (Art. 63(1) of the American Convention of Human Rights),* Judgment of July 21, 1989, Series C No. 8, para. 23; *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. 43).

15. By virtue of the foregoing, the obligation to make reparation is governed by international law in all of its aspects, such as its scope, characteristics, beneficiaries, etc. which are not subject to modification or suspension by the respondent State through invocation of provisions of its own domestic law *(Aloeboetoe et al. Case. Reparations, supra* 14, para. 44).

16. Inasmuch as the rule of *"restitutio in integrum"* cannot be enforced in cases in which the right to life has been violated, reparation to the victims' next of kin and dependents must take alternative forms, such as pecuniary compensation. Such compensation refers primarily to actual damages inflicted which, as this Court has declared on a previous occasion, comprise both material and moral damages (*see Aloeboetoe et al. Case, Reparations, supra* 14, paras. 47 and 49).

VI

17. As far as material damages are concerned, in its written communications of November 3, 1995 and May 29, 1996 and at the public hearing on reparations of January 27, 1996, the Commission referred

to Cost and Expenses and considered them to include the expenses incurred by the victims' families in their attempts to obtain information about them, and those incurred in their attempts to locate the corpses and in their dealings with the Venezuelan authorities.

18. The total amount requested by the Commission *"is US$240,000 to be equally divided among the fourteen families and the two survivors."* In its brief of November 3, 1995, and at the public hearing, the Commission pointed out that the victims' representatives had said that *"[t]he State of Venezuela recognized this sum as appropriate and expressly renounced the possibility of demanding proof;"* however, it presented no evidence of such a statement. On the contrary, at the public hearing held before this Court, the State described the sum as *"astronomical"* and *"disproportionate."*

19. In its brief of May 29, 1996, the Commission claimed that *"[t]he living conditions of the victims and their families preclude the preservation of the pertinent documentary proof; hence the need for estimates to be made."*

20. The State, in its brief of January 2, 1996, after studying the amounts requested by the Commission, declared that *"documentary proof of the expenses actually incurred in obtaining information about the victims"* had not been produced, that the amount was clearly *"disproportionate"*, and that it bore no relation to reality.

21. Although no proof of the expenses incurred has been presented, the Court considers it fair to grant an indemnity of US$2,000.00 to each of the families of the deceased victims and to each of the survivors, as compensation for the expenses they incurred in their various representations to the national authorities.

VII

22. In arriving at an appropriate amount for the remainder of the material damages suffered by the victims, the Commission bore in mind *"the minimum rural wage on the date on which the events occurred (October 1988), incorporating the adjustments for general wage increases during the period, as well as the corresponding inflation indexing. Life expectancy is estimated at 69 years."* The Commission arrived at a figure of approximately US$5,500 for each victim and US$2,800 for the two survivors.

23. The State, for its part, declared in its brief of January 2, 1996 that there was no *"evidence to support the claim of each of the persons proposed as successors-in-title, except for the victims themselves, and certainly not for the amount sought for each of them."* It added that the amounts requested *"were out of all proportion to the actual living conditions of the victims and their families, to the conditions prevailing in their geographic location, and to the general economic and social conditions in the Republic of Venezuela."*

24. At the public hearing on January 27, 1996, the Delegate of the Commission said that *"[w]e consider the amount we are seeking, approximately $5,000 for each of the victims or their next of kin, to be a reasonable sum for the time that has elapsed."* At the same hearing, one of the victims' representatives said that the figures arrived at by the Commission were very modest, that a conservative estimate had been made of the victims' earning capacity, and that an error had also been made in the calculation, which was why the actuarial study had been requested.

25. On April 29, 1996 the President requested the Commission to clarify some data on the subject. This information was furnished by way of briefs submitted on May 13 and 29, 1996. Moreover, in the first of the briefs, the Commission also indicated that *"a factual error had been made in calculating the victims' loss of earnings"* and changed the requested amount to a figure ranging between US$67,000 and US$197,000 for each of the victims, and approximately US$5,000 for each of the survivors. The Commission also stated that the basic rural wage for the month of October 1988 was *"1,700 Bolívares,* [and that] *the exchange rate at that time was 37.14 Bs/US$."*

26. By communication of June 14, 1996, the Government presented its observations on the Commission's aforementioned briefs of May 13 and 29, and alleged that *"it was not a simple factual error, but a new calculation that exceeded by more than 1,000 percent the calculations presented at the relevant stage of the proceedings by the victims' attorneys themselves and supported by the Delegates of the Commission,"* and that the Government had in good faith *"accepted the amount formally requested for loss of earnings at the hearing held on last January 27."* Only months later, *"the calculations* [were] *being radically altered ... and astronomical figures* [were] *now being proposed."*

27. The representatives of the victims and their next of kin subsequently provided this Court with information on the victims' age and life expectancy, and the rural basic wage. They also estimated each person's personal expenses at 20 percent of their total earnings.

28. On the basis of the information received, and of the calculations made by the actuary designated *ad effectum*, the Court calculated that the indemnity to be granted to each of the victims or their next of kin depended on their age at the time of death and the years remaining before they would have reached the age at which normal life expectancy is estimated in Venezuela, or the time during which the two survivors remained unemployed. In its calculations, the Court used as the base salary an amount not less than the cost of the basic food basket, which is higher than the minimum rural wage at the time of the events. Once the calculation was made, 25 percent was deducted for personal expenses, as in other cases. To this amount was added the interest accruing from the date of the events up to the present.

29. On that basis, the Court considers that each of the deceased victims' families should receive the following amounts as indemnities:

NAME	**US$ DOLLARS**
Julio Pastor Ceballos	$23,953.79
Moisés A. Blanco	$28,303.94
José I. Guerrero	$23,139.44
Marino E. Vivas	$26,838.00
José G. Torrealba	$28,535.66
José Mariano Torrealba	$23,139.44
José Ramón Puerta	$27,416.52
Arín Ovadía Maldonado	$23,558.79
Rigo J. Araujo	$26,145.70
Pedro I. Mosquera	$27,235.10
Luis A. Berrío	$25,006.34
Rafael Magín Moreno	$23,139.44
Carlos A. Eregua	$28,641.52
Justo Mercado	$26,145.70

30. The Court decides to award an indemnity of US$4,566.41 to each of the two survivors, Wolmer Gregorio Pinilla and José Augusto Arias, as compensation for the two years during which they were unfit to work.

VIII

31. In its brief of November 3, 1995, the Commission cited, as its basis for moral damages, paragraph 87 of the Judgment on reparations in the Aloeboetoe *et al.* case, and paragraphs 40 *et seq.* of the Judgment on compensatory damages in the Velásquez Rodríguez case, observing that in the instant case *"the estimated amount for moral damages is US$125,000 per family -based on the Velásquez and Godínez judgments- to be equitably distributed among the families, depending on the number of*

family members. The amount awarded to the survivors is half that amount [US$62,500]. *The total figure is US$1,875,000."* At the public hearing, the Delegate claimed that the moral damages should not be linked to actual damages. He maintained that moral damages *"to a victim cannot be a direct function of the victim's social status or economic situation."*

32. In its brief of January 2, 1996 the State, for its part, cited this Court and the European Court of Human Rights, to the effect that *"the Tribunal's very recognition that a right has been violated normally constitutes just reparation for the damage inflicted"*; all the more so in the instant case, inasmuch as the State itself has unilaterally recognized its responsibility. The State deemed the compensatory award for moral damages sought by the Commission to be *"excessive and quite disproportionate to the material damages and the general conditions of the instant case and the victims."*

33. The Court observes that while the Commission did rely for its calculation of moral damages on the Court's opinions in the Velásquez Rodríguez and Godínez Cruz cases in Judgments of July 21, 1989, it is also a fact that different awards were made in the Judgment on reparations in the Aloeboetoe *et al.* case (US$29,070 for each of six families and US$38,155 for the seventh, in addition to other obligations to be discharged by the State).

34. The Court is of the opinion that, while case law may establish precedents, it cannot be invoked as a criterion to be universally applied; instead, each case needs to be examined individually. It should also be noted that in the present case, as in that of Aloeboetoe *et al.*, and unlike the Velásquez Rodríguez and Godínez Cruz cases, the State has acknowledged the facts and accepted responsibility.

35. This having been said, there are numerous cases in which other international tribunals have decided that a condemnatory judgment *per se* constitutes adequate reparation for moral damages, as amply demonstrated by the case law of, among others, the European Court of Human Rights (*arrêt Kruslin du 24 avril 1990, série A No. 176-A p. 24 par. 39; arrêt McCallum du 30 août 1990, série A No. 183, p. 27 par. 37; arrêt Wassink du 27 septembre 1990, série A No. 185-A, p. 15 par. 41; arrêt Koendjbiharie du 25 octobre 1990, série A No. 185-B, p.42 par. 35; arrêt Darby du 23 octobre 1990, série A No. 187, p. 14 par. 40; arrêt Lala c. Pays-Bas du 22 septembre 1994, série A No. 297-A p. 15 par. 38; arrêt Pelladoah c. Pays-Bas du 22 septembre 1994, série A No. 297-B p. 36, par. 44; arrêt Kroon et al. c. Pays-Bas du 27 octobre 1994, série A No. 297-C p. 59 par. 45; arrêt Boner c. Royaume-Uni du 28 octobre 1994, série A No. 300-B, p. 76, par. 46; arrêt Ruiz Torija c. Espagne du 9 décembre 1994, série A No. 303-A, p. 13, par. 33; arrêt B. contre Autriche du 28 mars 1990, série A No. 175, p. 20, par. 59).* However, it is the view of this Court that while a condemnatory judgment may in itself constitute a form of reparation and moral satisfaction, whether or not there has been recognition on the part of the State, it would not suffice in the instant case, given the extreme gravity of the violation of the right to life and of the moral suffering inflicted on the victims and their next of kin, who should be compensated on an equitable basis.

36. As this Court has held in the past, "[i]*t is clear that the victims suffered moral damages, for it is characteristic of human nature that anybody subjected to the aggression and abuse described above will experience moral suffering. The Court considers that no evidence is required to arrive at this conclusion." (Aloeboetoe et al. Case, Reparations, supra* 14, para. 52*).*

37. In the light of the above, the Court, taking all the special circumstances of the case into account, concludes that it is fair to award an indemnity of US$20,000 to each of the families of the deceased and to each of the survivors.

IX

38. The Court has ruled in previous cases that the indemnity which should be paid for the arbitrary deprivation of a person's life is a right to which those directly injured by that fact are entitled.

39. At the Court's request, the Commission, on the basis of data provided by the victims' various representatives, presented a series of lists containing the names of the persons who it claims to be the victims' offspring, parents and spouses. For that reason, it has not been possible for the Court to establish an exact list of the victims' successors at the time of their deaths, owing to the contradictions and inaccuracies found in the information supplied. Consequently, in drawing up the list that appears in paragraph 42 below, the Court has been obliged to collate the various lists produced by the Commission and the victims' representatives.

40. As the Court has also declared on previous occasions, it is a norm common to most legal systems that a person's successors are his or her children. It is also generally accepted that the spouse has a share in the assets acquired during a marriage; some legal systems also grant the spouse inheritance rights along with the children *(Aloeboetoe et al. Case. Reparations, supra* 14, para. 62). However, the Court notes that one of the victims, Julio Pastor Ceballos, had a female companion as well as a wife, and had fathered children with both. As far as they are concerned, the Court deems it just to divide the indemnity between the two.

X

41. As regards the distribution of the amounts fixed for the various types of compensation, the Court considers that it would be equitable to apply the following criteria which are in keeping with previous decisions *(Aloeboetoe et al. Case, Reparations, supra* 14, para. 97).

a. Reparations for material damages shall be divided as follows: one third to the wife and two thirds to the children, to be divided among them in equal parts.

b. Reparations for moral damages shall be awarded as follows: one half to the children, one quarter to the wife, and the remaining quarter to the parents.

c. If there is no wife, but a female companion, the portion that would have gone to the former shall be awarded to the latter.

d. As far as reparations for material damages are concerned, if there is neither wife nor female companion, that portion shall be awarded to the parents. In the case of moral damages, if there is neither wife nor female companion, that part shall be added to the share of the children.

e. If there are no parents, their portion shall be awarded to the children of the victims; if there is only one surviving parent, that parent shall receive the entire amount of that share.

f. The expenses shall be reimbursed to the wife or female companion.

g. The two surviving victims shall receive the entire amount of the compensation awarded to them.

42. On the basis of the information contained in the docket, the Court has prepared the following list of beneficiaries entitled to compensation:

1) Julio Pastor Ceballos

PARENTS

Mercedes Durán de Ceballos
Ramón A. Ceballos (appears as the father on one of the lists of the victims' representatives)

WIFE:
Emperatriz Vargas (does not appear on one of the lists supplied by the victims' representatives)

COMPANION:
Florinda Velandia[1] (does not appear on one of the lists supplied by the victims' representatives)

CHILDREN:
Carmen Ceballos
Yris Ceballos
Zulma Ceballos
Julio R. Ceballos
Dedora Ceballos
María Aurelia Ceballos
Jorge Luis Ceballos*
Zaida Ceballos*
Xiomara Ceballos*
Luz Ceballos*

2) Moisés A. Blanco

MOTHER:
María Isabel Blanco

CHILDREN:
Moisés Blanco (does not appear on one of the lists supplied by the victims' representatives)
Jasmir Blanco (does not appear on one of the lists supplied by the victims' representatives)

3) José I. Guerrero

MOTHER:
María Concepción Guerrero

CHILDREN:
Virginia Carrillo (does not appear on one of the lists supplied by the victims' representatives)
Soraida Guerrero
Ana L. Guerrero (does not appear on one of the lists supplied by the victims' representatives)
María Concepción Guerrero B. (appears on one of the lists supplied by the victims' representatives as an additional daughter)

4) Marino E. Vivas

MOTHER:
Leticia Vivas

WIFE:
Noira Modesta López (does not appear on one of the lists supplied by the victims' representatives)

CHILDREN:
Betty X. Vivas
Rafael Vivas (appears as an additional son on one of the lists supplied by the victims' representatives)

5) José G. Torrealba

PARENTS:
María Felipa Bello de Torrealba
José Mariano Torrealba (appears as the father on one of the lists supplied by the victims' representatives)

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1 All the names marked with an asterisk are children of Julio Pastor Ceballos and Florinda Velandia.

6) José Mariano Torrealba

WIFE:
María Felipa Bello de Torrealba (appears on the lists as beneficiary of two different victims, José G. Torrealba and José Mariano Torrealba)

CHILDREN:
José Enrique Torrealba
María Adelaida Torrealba
José Omar Torrealba
José Jasmin Torrealba
Rosa Candelaria Torrealba
Bladimir José Torrealba (appears on one of the lists supplied by the victims' representatives as another son)

7) José Ramón Puerta

PARENTS:
Ana Cristina Ascanio
José Melquíades Puerta

8) Arín Ovadía Maldonado

MOTHER:
María A. Maldonado

9) Rigo J. Araujo

MOTHER:
Claudia A. Araujo (the mother's name appears as Ana Gregoria on one of the lists supplied by the victims' representatives)

10) Pedro I. Mosquera

MOTHER:
Carmen Mosquera

WIFE:
Ana E. Cedeño (does not appear on one of the lists supplied by the victims' representatives)

SON:
Pedro I. Mosquera
William Mosquera (appears as an additional son on the lists supplied by the victims' representatives, but not on that of the Inter-American Commission)

11) Luis A. Berrío

PARENTS:
Wana Matilada de Berrío
Pedro Vicente Bravo (appears as the father on one of the lists supplied by the victims' representatives and the Court also noted that he has a different surname)

WIFE:
Teresa Pérez

CHILDREN:
María E. Berrío
Mercedes Berrío
Luisa Berrío
Consuelo Berrío (does not appear on one of the lists supplied by the victim's representatives)
Nelson Berrío
José Berrío
Carmen Berrío
Elluz Berrío

12) Rafael Magín Moreno

MOTHER:
Victoria Moreno

COMPANION:
Rosa T. Eregua (does not appear on one of the lists supplied by the victims' representatives; appears on another list as the beneficiary of two different victims: Rafael Magín Moreno and Carlos E. Eregua)

CHILDREN:
Magín Moreno
Roger Eregua (does not appear on one of the lists supplied by the victims' representatives)
Rafael Moreno (does not appear on one of the lists supplied by the victims' representatives)

13) Carlos A. Eregua

MOTHER:
Rosa T. Eregua

14) Justo Mercado

COMPANION:
Doris Salazar

CHILDREN
José Salazar
María Salazar (does not appear on one of the lists supplied by the victims' representatives)
Geraldo Salazar (does not appear on one of the lists supplied by the victims' representatives)
Juan Salazar (does not appear on one of the lists supplied by the victims' representatives)
Petra Salazar

15) Wolmer Gregorio Pinilla (Survivor)

16) José Augusto Arias (Survivor)

In the case of the discrepancies noted above, the right to the corresponding indemnities shall be subject to the presentation of supporting documents to the Government of Venezuela by the interested parties.

XI

43. This judgment is to be executed in the following manner: the State shall pay the indemnities awarded to the adult relatives and the survivors within six months of the date of notification. Should any of them die before the payment is made, the sum shall be payable to his or her heirs.

44. In its briefs and at the public hearing of January 27, 1996, the Commission always calculated the compensation in United States dollars. In its communication of June 14, 1996, the Government reiterated that the calculations *"should be made in Bolívares, which is the local currency of the Republic of Venezuela, where the successors-in-title reside."*

45. In respect of the above, the Court decides that the State may fulfill this obligation through payments in dollars of the United States or of the equivalent amount in the local currency of Venezuela. The rate of exchange used to determine the equivalent value shall be the selling rate for the United States dollar and the Venezuelan Bolívar quoted on the New York market on the day before the date of the payment.

46. For payment of the compensation to the minor children, the Government shall set up, within six months, trust funds in a solvent and sound Venezuelan banking institution, on the most favorable terms permitted by banking laws and practice, for each of the minor children, who shall receive the interest accrued on a monthly basis. Once the children become of age or marry, they shall receive the total owing to them. In the event of their death, their rights shall pass to their heirs.

47. In the event that any of the adults fail to claim payment of the compensation to which they are entitled, the State shall deposit the sum due in a trust fund on the terms set forth in the previous paragraph, and shall make every effort to locate that person. If ten years from the establishment of the trust fund the indemnity has not been claimed by the person or his or her heirs, it shall be returned to the State and this judgment shall be deemed to have been fulfilled with regard to that person. The foregoing shall also apply to the trust funds set up for the minor children.

48. The compensation paid shall be exempt from any tax currently in force or any that may be decreed in the future.

49. Should the Government be in arrears with its payments, it shall pay interest on the total of the capital owing at the current bank rate on the date of the payment.

XII

50. In regard to the non-pecuniary reparations and costs, the Commission in its brief of November 3, 1995 requested the Venezuelan State to call a press conference and subsequently inform the public, through the major national daily newspapers, that the events that occurred at "El Amparo" on October 29, 1988 were the responsibility of the State. This must be accompanied by "[t]*he declaration that never will acts such as those perpetrated in this case be tolerated and by the establishment of a foundation for the purpose of promoting and disseminating international human rights law throughout the region where the events occurred.*" It did not, however, support the requests by the victims' representatives for *"publication in the major international newspapers."*

51. In its brief of January 3, 1996 the State declared that the non-pecuniary reparations sought by the Commission were not consistent with *"either international case law in general, or with the case law of the Inter-American Court in particular."* The State considered that the satisfaction sought by the Commission on behalf of the victims had been covered in the claim for moral damages, and claimed that "[t]*he honor and reputation of the victims and their next of kin have been fully restored with the Court's judgment on the merits ... and with the recognition of responsibility - prior and subsequent - by the Republic of Venezuela for the events that took place.*"

52. In the aforementioned brief of November 3, 1995, the Commission requested the reform of the Military Code of Justice, specifically Article 54(2) and (3), and of any military regulations and instructions that are incompatible with the Convention. That article states in its operative part that: "[t]*he President of the Republic, as a functionary of military justice, is empowered ... 2) To order that a military trial not be held in certain cases, when he deems it in the national interest. 3) To order the discontinuance of military trials, when he deems it advisable, in any circumstances.*"

53. In the same brief the Commission called for an investigation and *"effective punishment of the physical and intellectual authors, of the accomplices and of those who sought to cover up the events that gave rise to the instant case."*

54. In its aforementioned brief of January 3, 1996, the State claimed that the Commission's request bore no relation to the events and to the State's responsibility, inasmuch as redress necessitates restoring the situation that existed prior to the events that gave rise to its responsibility. It maintained that "[n]*othing that the Commission seeks in this regard can represent this type of restoration. The Code of Military Justice is not, per se, incompatible with the American Convention on Human Rights.*"

55. With regard to the investigation and effective punishment of the perpetrators of the acts, the State argued that *"it is clear that the Judgment of the Inter-American Court can do more than order the appropriate indemnities without infringing the rights of those allegedly implicated. Compensation of the victims and their next of kin, recognition of the international responsibility of the Venezuelan state, and the condemnatory judgment of the Inter-American Court of Human Rights are the ideal means of making reparation - as far as possible - for the damages caused to the victims and their next of kin."*

56. In short, the Commission defines the non-pecuniary reparations as: reform of the Code of Military Justice and those military regulations and instructions that are incompatible with the Convention; investigation and effective punishment of the physical and intellectual authors, of their accomplices and of those who sought to cover up the acts that gave rise to the instant case; satisfaction of the victims by restoring their honor and reputation, and the unequivocal establishment of the facts; satisfaction of the international community through the declaration that acts such as those that occurred in this case will not be tolerated; and the creation of a foundation for the promotion and dissemination of international human rights law in the region in which the events occurred.

57. The State, for its part, contends that the impugned articles of the Code of Military Justice were not enforced in the instant case and merely constitute a prerogative of the President of the Republic; that the victims have received satisfaction through Venezuela's acceptance of responsibility, and that the non-pecuniary reparations are inconsistent with international jurisprudence in general, and with that of this Court in particular.

58. In connection with the foregoing, the Court considers that, in effect, Article 54 of the aforementioned Code, which grants the President of the Republic the power to order that a military trial not be held in specific cases when he deems it in the national interest and to order the discontinuance of military trials at any stage, has not been enforced in the instant case. The military authorities charged and prosecuted those responsible for the El Amparo case, and the President of the Republic never ordered the cessation, or any discontinuance, of the trial.

59. In Advisory Opinion OC-14/94, this Court stipulated:

> The contentious jurisdiction of the Court is intended to protect the rights and freedoms of specific individuals, not to resolve abstract questions. There is no provision in the Convention authorizing the Court, under its contentious jurisdiction, to determine whether a law that has not yet affected the guaranteed rights and freedoms of specific individuals is in violation of the Convention. As has already ben noted, the Commission has that power and, in exercising it, would fulfill its main function of promoting respect for and defense of human rights. The Court also could do so in the exercise of its advisory jurisdiction, pursuant to Article 64(2) [of the Convention] (*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. 49.

60. The Court, pursuant to the above Advisory Opinion, abstains from making a pronouncement in the abstract on the compatibility of Venezuela's Code of Military Justice, and its regulations and instructions, with the American Convention, and therefore does not deem it appropriate to order the Venezuelan State to undertake the reforms sought by the Commission.

61. Continuation of the process for investigating the acts and punishing those responsible is an obligation incumbent upon the State whenever there has been a violation of human rights, an obligation that must be discharged seriously and not as a mere formality.

62. As far as the other non-pecuniary reparations requested by the Commission are concerned, the Court considers that Venezuela's recognition of its responsibility, the January 18, 1995 judgment on the merits of this case (*see El Amparo Case, supra 5)* and the present judgment rendered by this Court constitute adequate reparation in themselves.

XIII

63. With reference to the Commission's request to be awarded costs, the Court has stated on previous occasions that the Commission cannot demand that expenses incurred as a result of its own internal work structure be reimbursed through the assessment of costs (*Aloeboetoe et al. Case, Reparations, supra 14,* paras. 110-115).

XIV

64. **NOW, THEREFORE**:

THE COURT,

Unanimously

1. Sets the total reparations at US$722,332.20 to be paid to the next of kin and the surviving victims referred to in the instant case. This payment shall be made by the State of Venezuela within six months of the date of notification of the present judgment, and in the form and conditions set out in the preceding paragraphs.

Unanimously,

2. Orders the creation of the trust funds in the terms set forth in paragraphs 46 and 47 of this judgment.

Unanimously,

3. Decides that the State of Venezuela may not impose any tax on the indemnities paid.

Unanimously,

4. Decides that the State of Venezuela shall be obliged to continue investigations into the events referred to in the instant case, and to punish those responsible.

By four votes to one,

5. Declares that it is inappropriate to order non-pecuniary reparations or to rule on the compatibility with the American Convention on Human Rights of the Code of Military Justice and the military regulations and instructions,

Judge Cançado Trindade dissenting.

Unanimously,

6. Decides that it shall supervise compliance with this Judgment and that only when it has been executed will the case be considered closed.

Unanimously,

7. Rules that payment of costs shall not be ordered.

Judge Cançado Trindade informed the Court of his dissenting opinion, which shall be attached to this judgment.

Done in Spanish and English, the Spanish text being authentic, in San José, Costa Rica, on this fourteenth day of September, 1996.

Héctor Fix-Zamudio
President

Hernán Salgado-Pesantes

Alejandro Montiel-Argüello

Alirio Abreu-Burelli

Antônio A. Cançado Trindade

Manuel E. Ventura-Robles
Secretary

Read at a public session at the seat of the Court in San José, Costa Rica, on September 20, 1996.

So ordered,

Héctor Fix-Zamudio
President

Manuel E. Ventura-Robles
Secretary

DISSENTING OPINION OF JUDGE A.A. CANÇADO TRINDADE

1. I regret not to be able to join the majority of the Court as to the criterion it adopted in paragraphs 60 and 62 and the decision it took in resolutory point n. 5 of the present Judgment on reparations. In my Separate Opinion in the previous Judgment (of 18 January 1995) in the same case *El Amparo*, I sustained that the Court should, at that stage of the procedure (recognition of responsibility made by the Republic of Venezuela), have expressly reserved the faculty also of examining and deciding on the original request of the Inter-American Commission on Human Rights as to the incompatibility or otherwise of Article 54(2) and (3) in force of the Code of Military Justice of Venezuela with the object and purpose of the American Convention on Human Rights. As, in the present Judgment, the Court decided to abstain from pronouncing on the matter, I feel obliged to present my Dissenting Opinion.

2. The remark by the Court that the provisions of Article 54(2) and (3) of the Code of Military Justice[1] "have not been applied in the present case" (paragraph 58), does not deprive it of its competence to proceed to the determination of the incompatibility or otherwise of those legal provisions[2] with the American Convention on Human Rights. In my understanding, the very existence of a legal provision may *per se* create a situation which directly affects the rights protected by the American Convention. A law can certainly violate those rights by virtue of its own existence, and, in the absence of a measure of application or execution, by the real *threat* to the person(s), represented by the situation created by such law.

3. It does not seem necessary to me to wait for the occurrence of a (material or moral) damage for a law to be impugned; it may be so without this amounting to an examination or determination *in abstracto* of its incompatibility with the Convention. If it were necessary to wait for the effective application of a law causing a damage, the duty of prevention could hardly be sustained. A law can, by its own existence and in the absence of measures of execution, affect the rights protected to the extent that, for example, by its being in force it deprives the victims or their relatives of an effective remedy before the competent, independent and impartial national judges or tribunals, as well as of the full judicial guarantees (in the terms of Articles 25 and 8 of the American Convention).

4. In abstaining from pronouncing on the matter, the Court failed to proceed, as it was incumbent upon it, to the examination or determination of the incompatibility of Article 54(2) and (3) in force of the Code of Military Justice of Venezuela with the general duties provided for in the American Convention of *ensuring* respect for the rights recognized therein (Article 1) and of adopting provisions of domestic law (legislative or other measures) as may be necessary to give effect to those rights (Article 2). I consider the Court fully competent to rule on this specific point, despite the

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1 . Article 54 of the Code of Military Justice confers upon the President of the Republic, an "official of military justice", the attributions of ordering "not to hold a military trial in certain cases, when he considers so convenient" to national interests (para. 2), and of ordering "the discontinuance of military trials, when he deems so convenient, at any stage of the process" (para. 3).

2 . And military regulations and instructions.

allegation of non-application of the above-mentioned provisions of the Code of Military Justice in the *cas d'espèce*.

5. It was necessary to await many years for the possibility to be admitted of raising the question of the incompatibility of legislative measures and administrative practices with the international conventional obligations pertaining to human rights, in the context of concrete cases[3] . The international case-law in the present domain, at both regional and global levels, has evolved to the point of admitting nowadays that an individual may, under certain circumstances, claim to be victim of a violation of human rights perpetrated by the simple existence of measures permitted by the legislation, without their having being applied to him[4] . He may actually do so in face of the simple *risk* of being directly affected by a law[5] , under the continuous threat represented by the maintenance in force of the impugned legislation[6] . It is acknowledged nowadays that an individual may effectively challenge a law that has not yet been applied to his detriment, sufficing to that effect that such law be *applicable* in such a way that the *risk* or *threat* that he may suffer its effects is real, is something more than a simple theoretical possibility[7] .

6. An understanding to the contrary would undermine the *duty of prevention*, upheld in the case-law of this Court. Precision has been given to the wide scope of this duty, which comprises all the measures, legislative and administrative and others, which promote the safeguard of human rights and ensure that the violations of these latter are effectively treated as unlawful acts bringing about sanctions on those responsible for them[8] . Reparation, as a generic concept, encompasses also these elements, besides the indemnities due to the victims. Full reparation, which in the present context appears as the reaction of the juridical order of protection to the facts in breach of the guaranteed rights, has a wide scope. It includes, besides the *restitutio in integrum* (restoration of the previous situation of the victim, whenever possible) and the indemnities (in the light of the general principle of the *neminem laedere*), the rehabilitation, the satisfaction and - significantly - the guarantee of non-repetition of the acts in violation of human rights (the duty of prevention).

7. As from the moment in which violations of protected human rights are found, the examination of the incompatibility of legal provisions of domestic law with the American Convention on Human Rights becomes, in my view, no longer an *abstract question*. A law can *per se* appear as incompatible with the Convention to the extent that, for instance, it inhibits the exercise of protected rights, even in the absence of a measure of application. A law can *per se* reveal itself incompatible with the Convention to the extent that, for example, it does not impose precise limits to the discretionary power conferred

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3 . As occurred, for example, in the *Kjeldsen* (1972) and *Donnelly* (1973) cases before the European Commission of Human Rights.

4 . European Court of Human Rights, *Klass and Others* case, Judgment of 06.09.1978, para. 34.

5 . European Court of Human Rights, *Marckx* case, Judgment of 13.06.1979, para. 27; European Court of Human Rights, *Johnston and Others* case, Judgment of 18.12.1986, para. 42.

6 . European Court of Human Rights, *Dudgeon* case, Judgment of 22.10.1981, paras. 41 and 63. In the case of *De Jong, Baljet and van den Brink*, the European Court referred to its *jurisprudence constante* ("well-established case-law") whereby the existence of a violation of the Convention was "conceivable even in the absence of detriment"; Judgment of 22.05.1984, para. 41.

7 . Human Rights Committee (under the U.N. Covenant on Civil and Political Rights), case of *Aumeeruddy-Cziffra and Others*, Views of 09.04.1981, para. 9(2). Irrespective of the conclusions as to the determination of the facts in a case, one can hardly deny that a domestic law can, by its own existence, constitute a direct violation of the protected rights; Human Rights Committee, case of the *Disabled and Handicapped Persons in Italy*, Views of 10.04.1984, para. 6(2).

8 . As pointed out by the Inter-American Court in the cases of *Velásquez Rodríguez*, Judgment of 29.07.1988, para. 175; and *Godínez Cruz*, Judgment of 20.01.1989, para. 185.

upon public authorities to interfere in the exercise of protected rights[9]. A law can *per se* appear incompatible with the Convention to the extent that, for example, it renders difficult pending investigations, or raises obstructions in the judicial process, or allows the impunity of those responsible for the violations of human rights.

8. The challenging of the compatibility with the Convention of a law in force which *per se* creates a legal situation which affects the protected human rights is a *concrete question*. In my understanding, it is the *existence of victims*[10] that provides the decisive criterion for distinguishing the examination simply *in abstracto* of a legal provision, from the determination of the incompatibility of such provision with the American Convention on Human Rights in the framework of a concrete case, such as that of *El Amparo*. The existence of victims renders juridically inconsequential the distinction between the law and its application, in the context of a concrete case.

9. In the present Judgment on reparations, the decision of the Court to abstain itself from pronouncing on the incompatibility of Article 54(2) and (3) in force of the Code of Military Justice of Venezuela[11] with the American Convention on Human Rights (resolutory point n. 5) seeks to base itself (paragraphs 59-60) on an *obiter dictum* of its Advisory Opinion (on the *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention*, OC-14/94), of 09 December 1994, according to which "there is no provision in the Convention authorizing the Court, under its contentious jurisdiction, to determine whether a law that has not yet affected the guaranteed rights and freedoms of specific individuals is in violation of the Convention"[12] . The Court fails to answer the prior question whether a law, by its own existence, affects, or can affect, the rights protected by the Convention.

10. An organ of international protection of human rights should not, in my view, start from the premise that a law, by its own existence, "has not yet affected" the protected rights, it being therefore necessary to wait for measures of execution which bring about the occurrence of a damage. It should not do so with all the more reason when the whole evolution of the juridical order of protection[13] is oriented and inclined nowadays clearly in another sense. The decision of the Court on this specific point, based upon the *obiter dictum* referred to of its Advisory Opinion OC-14/94, conflicts, in my view, with the letter and spirit of Article 62(1) and (3) of the American Convention, by virtue of which the contentious jurisdiction of the Court extends to *all cases concerning the interpretation and application* of the provisions of the Convention. These provisions include the duties of the States Parties to guarantee the recognized rights and to harmonize their domestic law with the norms of the Convention so as to give effect to those rights.

11. Accordingly, the determination of the incompatibility of an internal or domestic law with the Convention is not an exclusive prerogative of the exercise of the advisory jurisdiction of the Court. The difference lies in that, in the exercise of the advisory jurisdiction (Article 64(2) of the Convention), the Court may deliver opinions on the incompatibility or otherwise of a domestic law (and as well of a draft

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9 . European Court of Human Rights, *Malone* case, Judgment of 02.08.1984, paras. 67-68. A law that attributes such a discretionary power ought to indicate expressly the precise extent and limits of such power; European Court of Human Rights, *Silver and Others* case, Judgment of 25.03.1983, paras. 86-88.

10 . In the present domain of protection, the victims of human rights violations occupy a central position; and as the *contentieux* of reparations and indemnities clearly discloses, it is the victims themselves - and not the Inter-American Commission on Human Rights - who are the true complainant party before the Court. This is what may be unequivocally understood from this Judgment and the public hearing of 27 January 1996 before the Court in the present case.

11 . And military regulations and instructions.

12 . Paragraph 49 of Advisory Opinion OC-14/94.

13 . Which corresponds to the evolution of the notion of *victim* in the international law of human rights; cf. *Recueil des Cours de l'Académie de Droit International de La Haye*, 1987, vol. 202, pp. 243-299.

law[14]) with the Convention *in abstracto*, while in the exercise of the contentious jurisdiction the Court may determine, at the request of a party, the incompatibility or otherwise of a domestic law with the Convention *in the circumstances of the concrete case*. The American Convention effectively authorizes the Court, in the exercise of its contentious jurisdiction, to determine whether a law, impugned by the complainant party, and which by its own existence affects the protected rights, is or not contrary to the American Convention on Human Rights. The Court has the competence *ratione materiae*, and should, thus, have proceeded to this determination and to the establishment of its juridical consequences.

Antônio Augusto Cançado Trindade
Judge

Manuel E. Ventura-Robles
Secretary

14 . As admitted by the Inter-American Court in its Advisory Opinion (on the *Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica*, OC-4/84), of 19 January 1984 (paras. 22-29).

APPENDIX XXIII

INTER-AMERICAN COURT OF HUMAN RIGHTS

NEIRA ALEGRIA ET AL. CASE

REPARATIONS
(ART. 63.1 AMERICAN CONVENTION ON HUMAN RIGHTS)

JUDGMENT OF SEPTEMBER 19, 1996

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

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
Alirio Abreu Burelli, Judge
Antônio A. Cançado Trindade, Judge
Jorge E. Orihuela I., Judge *ad hoc*;

also present:

Manuel E. Ventura-Robles, Secretary, and
Víctor Ml. Rodríguez-Rescia, Interim Deputy Secretary

in application of Articles 44(1) of the Rules of Procedure of the Inter-American Court of Human Rights in force for matters submitted for its consideration prior to July 31, 1991 (hereinafter "the Rules of Procedure") in relation to Article 63(1) of the American Convention on Human Rights (hereinafter "the Convention" or the "American Convention"), and pursuant to the Court's judgment of January 19, 1995, enters the following judgment on reparations in the instant case brought by the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") against the Republic of Peru (hereinafter "Peru", "the State" or "the Government").

I

1. The instant case was brought to the Inter-American Court of Human Rights (hereinafter "the Court" or the "Inter-American Court") by the Inter-American Commission by application of October 10, 1990, which was accompanied by Report No. 43/90 of May 14, 1990. It originated in a petition (No. 10.078) lodged with the Secretariat of the Commission on August 31, 1987, against Peru.

2. In its application the Commission asserted that the Government had violated the following articles of the American Convention: 1 (Obligation to Respect Rights), 2 (Domestic Legal Effects), 4 (Right to Life), 7 (Right to Personal Liberty), 8 (Judicial guarantees), and 25 (Right to Judicial Protection), and requested the Court to *"adjudicate this case in accordance with the terms of the Convention, and to fix the responsibility for the violation described herein, and that it award just compensation to the next of kin of the victim(s)."* In its last brief, the Commission added Articles 5 and 27 and deleted Article 2.

3. According to the application, 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", charged with the crime of terrorism. The Commission adds that, as a consequence of a riot at that correctional facility on the date indicated, the Government, by Supreme Decree No. 6-86 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 claims that those persons have been missing since the date on which the Armed Forces put down the riots and that their relatives have not seen or heard of them since.

4. On June 27, 1991, the Government presented its counter-memorial, in which it refuted and contested all the facts described to the Court by the Commission, on the ground that they did not reflect *"the actual situation as verified by the reality of the 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 charged with terrorism. The Government requested that the Commission be sanctioned for submitting the case to the Court.

5. On January 19, 1995, the Court delivered a judgment on the merits of the case, the operative part of which:

> 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 of *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 (*Neira Alegría et al. Case,* Judgment of January 19, 1995. Series C No. 20, Operative part).

II

6. Pursuant to Article 62 of the Convention, the Court is competent to decide the amount of compensation and expenditures in the instant case, inasmuch as Peru ratified the Convention on July 28, 1978 and recognized the contentious jurisdiction of the Court on January 21, 1981.

III

7. On April 12, 1995 the Commission informed the Court no negotiation had been possible with the Government, and, in its brief of July 21, 1995, requested the Court to initiate the proceeding for the reparations phase. Consequently, and in accordance with operative paragraph 5 of the Court's judgment of January 19, 1995, it is for the Court to determine the extent of the compensation and expenditures.

8. By order of August 1, 1995, the President of the Court decided to institute the proceeding on reparations and expenditures, and granted the Commission until September 30, 1995 to produce and submit the evidence in its possession with regard to reparations and expenditures in the instant case. The Court also granted the State until December 7, 1995 to submit its comments on the Commission's brief. Those comments were received on that date.

9. On September 30, 1995, the Commission submitted its brief on reparations and expenditures, in which it asserted that the priority was to provide a conceptual definition of the parties entitled to compensation and establish the identity of the injured persons. It also requested the Court to indicate the scope of the compensatory indemnity, the reimbursement of expenditures, and the respective amounts. The Commission cited the Aloeboetoe *et al.* Case in which the Court established that *"national jurisprudence generally accepts that the right to apply for compensation for the death of a person passes to the survivors affected by that death,"* going on to declare that the parties entitled to receive compensation were the victims' closest relatives or family (*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. 54).

10. In regard to the injured persons entitled to be compensated for the damage inflicted on the three victims by the Peruvian State, the Commission submits the following list: of Víctor Neira Alegría's family: his wife, Mrs. Aquilina M. Tapia de Neira, who is responsible for three minor children, and Irene Alegría, a sister of the victim, who lodged the appeal of *habeas corpus*; of William Zenteno Escobar's family: his companion, Mrs. Norma Yupanqui Montero, and his daughters Erika Claudia Zenteno, Edith Valia Zenteno and Milagros Yoisy Rodríguez, the victim's daughter by Mrs. Julia Rodríguez Zenteno; of Edgar Zenteno Escobar's family: in accordance with Peruvian legislation, since he was a bachelor and without dependents: his father, Mr. Corcenio Zenteno Flores, his mother, Mrs. Aurea Escobar de Zenteno, and his brothers, Jack and Franz Zenteno Escobar.

11. The Commission considers that in determining the amount of the compensation and its distribution, a balance must be struck, taking into account the victim's age, life expectancy, actual and potential income, and the number of his dependents and heirs.

12. According to the Commission, the Costs and Expenses [*daño emergente*] include the expenditures incurred by the victims' relatives and the survivors as a direct consequence of the events. This heading includes expenditures incurred in their legal and administrative representations in Peru, medical expenses, photocopies, telephone calls and other expenses relating to legal assistance. The Commission estimates the overall expenditures incurred by the victims' next of kin at US$6,300, an amount which it deems *"a reasonable assessment of the expenditures incurred by the victims' families on their numerous trips to Lima, and their many representations to the Peruvian State in connection with the instant case."* The Commission requests that this estimate be divided equally among the three families; that is, US$2,100 to each of them.

13. The Commission maintains that "loss of earnings" includes any *"income that the dependent relatives would have received from the victim during the latter's lifetime."* "Loss of earnings" was determined by the minimum wage at the time the events occurred -June 1986 - and includes *"general wage increases during the period (2% per annum), taking into account life expectancy in Peru (sixty-seven years)."* The amount requested by the Commission for each family is estimated in dollars, *"a currency with stable purchasing power, it being understood that it may be paid in Peruvian Soles at the rate of exchange in effect on the date of payment."*

14. Under the "loss of earnings" heading, the Commission specifically requests the following amounts:

For the relatives of William Zenteno Escobar:

> US$172,958.35 to be distributed among the following family members at the discretion of the Court: Norma Yupanqui Montero, spouse; Erika Claudia Zenteno, daughter: Edith Valia Zenteno, daughter, and Milagros Yoisy Rodríguez, daughter of William Zenteno Escobar by Mrs. Julia Rodríguez Zenteno.

For the next of kin of Edgar Zenteno Escobar:

> US$148,036.16 to be distributed among the following family members at the discretion of the Court: Corcenio Zenteno Flores, father; Aurea Escobar de Zenteno, mother, and Jack and Franz Zenteno Escobar, brothers.

15. In view of the Commission's unavailing efforts to determine the whereabouts of Mrs. Aquilina M. Tapia de Neira and her three children, it requested the Court to arrange for the amounts allocated to those persons to be deposited in a bank account, in the name of Mrs. Neira Alegría, in a currency with stable purchasing power, and requested that the Peruvian Government publicize the ruling and the next of kin's entitlement to the indemnity to be determined by the Court, through regular announcements in widely-circulated newspapers and on nationwide broadcasting stations. The Commission added that the indemnification could only be effected on the presentation of proof of kinship by the victim's relatives.

16. The Commission considers the suffering inflicted on the relatives of the victims as a result of their deaths to be moral damages, which are evident in the *"violent and brutal manner in which the three persons were killed by agents of the Peruvian State."* With regard to the adverse psychological consequences that the disappearance of persons can have on their next of kin, the Commission maintains that the minor child, Erika Claudia Zenteno Yupanqui, daughter of William Zenteno Escobar, has been the most seriously affected by her father's death and is receiving medical and psychological treatment in Lima. The Commission estimates the moral damages, based on the judgments on compensation rendered by the Court in the Velásquez Rodríguez and Godínez Cruz cases, at US$125,000 for each of the three families, to be distributed equitably according to the number of family members.

17. The Commission states that these indemnities must be paid directly to the beneficiary relatives. For the indemnities to the minor children, it proposes the establishment of a trust fund, *"the basic value of which would consist of a sum proportional to the estimated projected income of the victim, after deducting what would have been the victim's own living expenses. The foregoing would be determined by applying the current or present value method."* The minor children would receive the remainder of the indemnity to which they are entitled when they come of age or marry. The Commission requests that the adult beneficiaries *"be paid the total amount, adjusted to the date on which the judgment is delivered."*

18. The Government submitted its comments on the Commission's brief on reparations on December 7, 1995, with assurances of its readiness to abide by the Court's ruling. It proposed that the indemnity should be determined on the basis of the correlation between the acts and the proven damages inflicted. Accordingly, for purposes of determining Costs and Expenses [*daño emergente*], they would have to be duly substantiated by documentary proof of actual expenditures. Such proof does not exist in the instant case, since the Commission has produced none.

19. Regarding the persons entitled to compensation, the Government maintains that, in matters of succession, Peruvian law establishes that a person's heirs are his or her descendants and spouse in that order and, in their default, the parents and other ascendants; consequently, there is no reason in the instant case to compensate the sister of the late Víctor Neira Alegría, it being only his spouse and children who are entitled to such compensation.

20. On the subject of "loss of earnings", the Government states that the criteria laid down by the Commission are not acceptable, based as they are on inaccurate data, such as the average life-span of Peruvians, the assumption that time would have been devoted to work, and the minimum living wage, none of which has been substantiated. The Government further adduces *"the probability that if the victims had lived, they would have been sentenced to years of imprisonment for the crime of terrorism and would therefore not have been in a position to work during that time."*

21. As far as moral damages are concerned, the Government claims that this is not a case of forced disappearance; it is a case of persons who were charged with a crime and unfortunately lost their lives when an organized revolt was being crushed. The decision could not, therefore, be defended on the basis of the cases cited as precedents. It could be maintained in the instant case that *"the next of kin had already suffered moral damages, but that the damages had been inflicted on them by the victims themselves when they unlawfully took part in acts connected with terrorism, which was the reason for their arrest and untimely deaths."* The Government deems the amount of US$125,000 assessed for the moral damages caused to the next of kin of each of the victims to be exorbitant. It considers that this amount, like the others sought by the Commission, *"does not accord with* [their] *actual economic situation."*

22. On March 25, 1996, the Inter-American Commission presented a brief containing a calculation of the possible age of Víctor Neira Alegría in order to determine the amount under the "loss of earnings" heading, and those for the "loss of earnings" of Mr. William Zenteno Escobar and Mr. Edgar Zenteno Escobar, both of which were different to those presented in the brief of September 30, 1995. The amounts sought were as follows: US$173,058.35 for the next of kin of William Zenteno Escobar, US$148,136.17 for the next of kin of Mr Edgar Zenteno Escobar, and US$166,541.53 for the next of kin of Mr. Víctor Neira Alegría. The Commission estimated Mr. Neira Alegría's age at 31 for its calculation of his "loss of earnings."

23. On January 26, 1996, the Court held a public hearing attended by,

for the Republic of Peru:

Jorge Hawie Soret, Agent
Julio Vega Eráusquin, Assistant;

for the Inter-American Commission on Human Rights:

Oscar Luján Fappiano, Delegate
Domingo E. Acevedo, Attorney
Juan E. Méndez, Assistant.

24. At the public hearing on reparations the Government produced the following documentary evidence: a document issued by the National Prisons Institute, stating the date on which Mr. Víctor Neira Alegría, Mr. Edgar Zenteno Escobar and Mr. William Zenteno Escobar entered the "El Frontón" correctional institution; legal material on the offenses of "ridicule and insolence"; documents of the Central Reserve Bank of Peru, documentation from the Ministry of Labor and Social Promotion on the calculation of "loss of earnings." The Government also supplied copies of some judgments handed down in Peru in connection with State responsibility stemming from the commission of criminal acts.

25. The delegate of the Inter-American Commission, for his part, submitted an article from a Peruvian daily newspaper on the compensation of the relatives of the victims of the "La Cantuta massacre."

26. In connection with costs and expenses [*daño emergente*], the Government also produced a letter of January 23, 1996 to the Government's agent from Monsignor Juan Luis Martín Bisson, Bishop and President of the Episcopal Social Welfare Commission [*Comisión Episcopal de Acción Social*], stating that the Episcopal Commission's professional services in the Neira Alegría *et al.* case had been provided free of charge.

27. On that subject, the Commission claimed at the public hearing that the Episcopal Social Welfare Commission was one of the Peruvian nongovernmental human rights organizations that had originally participated in the case, but that legal services *"were subsequently provided by organizations such as CEAPAZ and FEDEPAZ."*

28. On March 27, 1996, the Commission submitted to the Court a brief containing information on the case supplied by the victims' representatives. The information concerned the calculation of "loss of earnings" for Víctor Neira Alegría and indicated that the whereabouts of his next of kin were unknown.

29. On April 29, 1996, the Secretariat of the Court wrote formally to the Inter-American Commission requesting the presentation of certain documents containing information on: the list of beneficiaries of Costs and Expenses [*daño emergente*], "loss of earnings" and moral damages, for the purpose of determining the proper compensation amounts at the appropriate stage of the process. On May 31, 1996, in response to a request from the Court, the Commission presented a communication containing additional information. Attached to that communication were the birth certificates of some relatives of the victims but, as far as the other information sought by the Court was concerned, the Commission took the view that "*the Honorable Court should contact the Peruvian Government directly in order to obtain the necessary documents inasmuch as* ... [it is the Government] *that has direct and unrestricted access to the departments that can supply that information.*"

30. In that communication the Commission declared that at the public hearing held on January 26, 1996, the Peruvian State recognized the following facts and information: the life expectancy of the victims and their actual and potential income; the number of dependents and successors; the Costs and Expenses [*daño emergente*], and the fact that the minor child, Erika Claudia Zenteno Yupanqui, daughter of William Zenteno Escobar, is the person most seriously affected by her father's death and is receiving medical and psychological treatment. As regards Víctor Neira Alegría, the Commission maintained that the Government had not challenged the expenditures incurred by the victim's sister in lodging the appeal of *habeas corpus* on behalf of Mr. Neira. Lastly, the Commission's communication contained a list of the victims' representatives during the proceedings before the domestic judicial authorities and information on their fees, based on the Table of Fees prepared by the Bar Association (*Colegio de Abogados*) of Peru.

31. On May 22, 1996, the Government presented a brief containing evidence relating to Mr. Neira Alegría's age.

32. On June 4, 1996, the Government submitted a brief containing certain details about the case and produced legal documents, as well as a minimum living wage table with calculations of the "loss of earnings" by the victims' next of kin. On July 23, 1996, in response to the Secretariat's request of July 1, 1996, the Government submitted a brief in which it maintained that, in order to conduct a search for the Civil Register certificates, *"it is essential to know the places and dates of birth and/or registration."*

33. On July 8, 1996, the *Asociación Pro-Derechos Humanos* [Pro-Human Rights Association] (APRODEH) presented the Secretariat with a brief containing information on the Costs and Expenses [*daño emergente*], "loss of earnings" and moral damages in respect of Milagros Yoisy Zenteno Rodríguez, one of the minor daughters of Mr. William Zenteno Escobar.

IV

34. In order to come to an informed decision on the amounts of the indemnities, in keeping with the necessary technical considerations, the Court deemed it advisable to avail itself of the professional services of an actuarial expert. To that end, Mr. Eduardo Zumbado J., an actuarial consultant in San José, Costa Rica, was engaged. The Secretariat of the Court received his reports on August 5 and 9 and September 18, 1996. Mr. Zumbado had been instructed by the Court to use the figure of US$125 as the victims' probable monthly income, for the reasons stated in paragraph 50 of this judgment.

V

35. In the operative part of the judgment of January 19, 1995, the Court decided 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."* However, the parties disagree on the amount of the compensation and expenditures. The Court will rule on that controversy in the present judgment.

36. The provision applicable to reparations is Article 63(1) of the American Convention, which reads 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.

The provisions of this article contain one of the fundamental principles of international law, as has been recognized in case law (*Factory at Chorzów,* Jurisdiction, Judgment No. 8, 1927, P.C.I.J., Series A, No. 9, page 21, and *Factory at Chorzów,* Merits, Judgment No. 13, 1928, P.C.I.J., Series A, No. 17, page 29; *Reparation for Injuries Suffered in the Service of the United Nations,* Advisory Opinion, I.C.J. Reports 1949, page 184). It has been applied thus by this Court (*Velásquez Rodríguez Case, Compensatory Damages (Art. 63(1) of the American Convention on Human Rights),* Judgment of July 21, 1989. Series C No. 7, para. 25; *Godínez Cruz Case, Compensatory Damages (Art. 63(1) of the American Convention on Human Rights),* Judgment of July 21, 1989, Series C No. 8, para. 23; *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. 43, and *El Amparo Case. Reparations (Art. 63(1) of the American Convention on Human Rights*), Judgment of September 14, 1996, Series C No. 28, para. 14).

37. By virtue of the above, the obligation to make reparation is governed by international law in all of its aspects, such as its scope, characteristics, beneficiaries, etc., and may not be subject to modification or suspension by the respondent State through invocation of provisions of its own domestic law (*Aloeboetoe et al. Case, Reparations, supra* 9, para. 44, and *El Amparo Case, Reparations, supra* 36, para. 15).

38. Inasmuch as the rule of *"restitutio in integrum"* cannot be applied in a case in which the right to life has been violated, alternative forms of reparation, such as pecuniary compensation, must of necessity be sought for the victims' next of kin and dependents. Such compensation primarily covers actual damages suffered and, as this Court has declared on a previous occasion, comprises both material and moral damages (*see Aloeboetoe et al. Case, Reparations, supra* 9, paras. 47 and 49, and *El Amparo Case, Reparations, supra* 36, para. 15).

VI

39. The Commission requested, as reparation for material damages, the reimbursement of any expenditures the victims' relatives may have incurred in their recourse to the domestic courts, including the numerous journeys they were obliged to make to Lima and their many representations to the Peruvian authorities, and requested US$2,100 for each family. The Government, for its part, claimed that the professional services of the attorneys of the Episcopal Social Welfare Commission, an organ of the Peruvian Episcopal Conference, had been provided free of charge.

40. At the public hearing the Commission called for compensation for the costs incurred by the relatives in instituting the proceedings before the Commission and the Court. The Commission considers that *"such costs, which have hitherto never been recognized in the jurisprudence of this Court, should be recognized ... on a fundamental principle of justice."*

41. With regard to costs, this Court has already declared, in paragraph 87 of its judgment on the merits of January 19, 1995, 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 inter-American system is funded by the Member States by means of their annual contributions." (Aloeboetoe et al. Case. Reparations, supra* 9, para. 114, and *El Amparo Case. Reparations, supra* 36, para. 63*).*

42. Although no documentary evidence of the actual expenditures has been submitted, the Court deems it fair to award an indemnity in the amount of US$2,000 to each of the victims' families as compensation for the expenditures incurred in the various representations they made in the country.

VII

43. In order to arrive at a suitable amount for the material damages suffered by the victims, the Commission contends that the fair basis for "loss of earnings" in the instant case is the income that the dependent relatives could have received from the victim during the remainder of his life. On that basis, the Commission submits for the consideration of the Court (*supra* 14 and 22*)* precise figures for compensation to the next of kin of each of the three victims in the case.

44. The Government has not submitted any precise figures, but contests those submitted by the Commission on the ground of inaccuracy of the data on which they are based; for example: the average life expectancy, an assumption concerning the victim's employment during that time; and a minimum wage, all of which, it claims, is unsubstantiated and unreasonable. The Government adds that another possible argument is the likelihood that, had the victims lived, they would have been sentenced to years of imprisonment for the crime of terrorism and would therefore have been unable to work during that time (*supra* 20).

45. The Court rejects this last argument of the Government, on the ground that the victims were not convicted and sentenced, and that the general legal principle of the right to be presumed innocent must apply (Art. 8(2) of the American Convention).

46. In determining the amount of compensation, the Commission has simply calculated the annual income that the victims would have earned, taking into account their ages at the time of their deaths and the years remaining until they reached the age of normal life expectancy in Peru. This would be equivalent to advance payment of future income. In the opinion of the Court, this reasoning is fallacious, because the purpose of the calculation at the time of death must be to determine what amount, invested at normal interest rates, would produce the amount of the monthly income the victim

would have received during his probable lifetime in that country, at the end of which time it would be extinguished. A part of the monthly income would therefore be interest and the remainder drawdown of capital. In other words, the present value of an income from their monthly earnings for the rest of their probable lifetime is, perforce, less than the simple sum of their earnings.

The sum thus obtained corresponds to the compensation at the time of death. However, since that compensation is to be paid many years later, the interest that would have accrued during that time must be added to that sum for purposes of calculating the proper compensation.

47. The Commission also assumes an increase of two percent per annum in the minimum living wage, an assumption which has not been substantiated.

48. In conclusion, the Commission makes no deduction whatsoever for the personal expenses which the victims would have incurred during their probable lifetime for such items as food and clothing. In the opinion of the Court, those expenses, estimated at one quarter of their income, should be deducted from the total compensation.

49. The Court considers that the appropriate compensation for each of the families of the victims should depend both on their ages at the time of death and the years remaining until they would have reached the age of normal life expectancy, and their actual incomes, calculated on the basis of their actual wage (*Velásquez Rodríguez Case, Compensatory Damages, supra* 36, para. 46, and *Godínez Cruz Case, Compensatory Damages, supra* 36, para. 44) or, in default of the appropriate information, on the minimum monthly wage in effect in the country (*Aloeboetoe et al. Case, Reparations, supra* 9, paras. 88 and 89.

50. In the instant case, with regard to the first of the above factors, the Commission claimed that the life expectancy in Peru was sixty-seven years. Although this was refuted by the Government, it produced no evidence in support of its objection. With regard to the calculation of the monthly minimum wage, which would apply in this case, the Court observes that neither the Commission's declarations nor the data supplied by the Government provide sufficient information for determining the minimum wage. Consequently, the Court, for reasons of equity and in view of the actual economic and social situation of Latin America, fixes the amount of US$125 as the victims' probable income, and therefore as the monthly figure to be used for calculating the correct compensation (*El Amparo Case, Reparations, supra* 36, para. 28). Once the calculation has been made, 25 percent shall be deducted for personal expenses (*ibid.*, para. 28). The interest accruing from the date of the events up to the present shall be added to that amount.

51. The Court, calculating the amounts on the basis of the above criteria, finds that the compensation that Peru must pay is US$31,065.88 to the next of kin of William Zenteno Escobar and US$30,102.38 to the next of kin of Edgar Zenteno Escobar.

52. It is difficult to make the calculation for the next of kin of Víctor Neira Alegría, inasmuch as neither party has supplied his age in its statements. The Commission proposed that the average of the ages of the other two victims be used. However, the Government subsequently produced a statement delivered in Cuzco before the investigation officer [*Instructor*] at one of the Criminal Investigation Department offices, to the effect that Neira Alegría was born on February 25, 1944, in Lucanas Province in the Department of Ayacucho.

On the basis of that information, the compensation to be paid to the Víctor Neira Alegría's next of kin is US$26,872.48.

VIII

53. The Commission considers that compensation should be paid for the moral damages caused and that it should be added to compensation for the income which the victims' next of kin ceased to receive. The Commission based its argument on this Court's assessments in the Velásquez Rodríguez and Godínez Cruz cases in judgments of July 21, 1989. The Government considers exorbitant the amount of US$125,000 being sought by the Commission for each of the families.

54. The Court observes that whereas the Commission did calculate the moral damages on this Court's assessments in the Velásquez Rodríguez and Godínez Cruz cases in judgments of July 21, 1989, it is also a fact that the awards were different in the judgments on reparations in the Aloeboetoe *et al.* Case (US$29,070 for each of six families and US$38,155 for the seventh, to which were added other obligations to be discharged by the State) and the El Amparo case (US$20,000 for each of the 16 families).

55. The Court is of the opinion that while case law may establish precedents in this regard, it cannot be invoked as an absolute criterion; instead, each case needs to be considered individually.

56. This having been said, there are numerous cases in which other international tribunals have decided that a condemnatory judgment constitutes *per se* adequate reparation for moral damages, as amply demonstrated by the jurisprudence of, among others, the European Court of Human Rights (*arrêt Kruslin du 24 avril 1990, série A No.176-A p. 24 par 39; arrêt McCallum du 30 août 1990, série A No. 183, p. 27, para. 37; arrêt Wassink du 27 septembre 1990, série A No. 185-A, p. 15 par. 41; arrêt Koendjbiharie du 25 octobre 1990, série A No. 185-B, p.42 par. 35; arrêt Darby du 23 octobre 1990, série A No. 187, p. 14 par. 40; arrêt Lala c. Pays-Bas du 22 septembre 1994, série A No. 297-A p. 15 par. 38; arrêt Pelladoah c. Pays-Bas du 22 septembre 1994, série A No. 297-B p. 36, par. 44; arrêt Kroon et autres c. Pays-Bas du 27 octobre 1994, série A No. 297-C p. 59 par. 45; arrêt Boner c. Royaume-Uni du 28 octobre 1994, série A No. 300-B, p. 76, par. 46; arrêt Ruiz Torija c. Espagne du 9 décembre 1994, série A No. 303-A, p. 13, par. 33; arrêt B. contre Autriche du 28 mars 1990, série A No. 175, p. 20, par. 59).* However, it is the Court's opinion that although a condemnatory judgment may in itself constitute a form of reparation and moral satisfaction, whether or not there has been recognition on the part of the State, it would not suffice in the instant case, owing to the particular seriousness of the violation of the right to life and of the moral suffering inflicted on the victims and their families, which deserve be paid fair compensation.

57. As this Court has established in the past, "[i]*t is clear that the victims suffered moral damages, for it is characteristic of human nature that anybody subjected to the aggression and abuse described above will experience moral suffering. The Court considers that no evidence is required to arrive at this conclusion"* (*Aloeboetoe et al. Case, Reparations, supra* 9, para. 52, and *El Amparo Case. Reparations, supra* 36, para. 36).

58. In the light of the foregoing, the Court, taking all the special circumstances of the case into account, concludes that it is fair and just to grant an indemnity of US$20,000 to each of the families of the deceased and to each of the survivors.

IX

59. The Court has ruled in previous cases which the indemnity that should be paid for the arbitrary deprivation of a person's life is a right to which those directly injured by that fact are entitled.

60. As the Court has also declared on previous occasions, it is a norm common to most legal systems that a person's successors are his or her children. It is also generally accepted that the spouse

has a share in the assets acquired during a marriage; some legal systems also grant the spouse inheritance rights along with the children (*Aloeboetoe et al. Case, Reparations, supra* 9, para. 62 and *El Amparo Case. Reparations, supra* 36, para. 40).

X

61. The Court turns to the examination of the distribution of the amounts fixed for the various types of compensation, and considers it equitable to apply the following criteria, which are in keeping with its rulings in previous cases (*Aloeboetoe et al. Case. Reparations, supra* 9, para. 97, and *El Amparo Case. Reparations, supra* 36, para. 41).

a. Reparations for material damages shall be divided as follows: one-third to the wife, and two-thirds to the children, to be shared equally among them.

b. Reparations for moral damages shall be awarded as follows: one half to the children; one quarter to the wife; and one quarter to the parents.

c. In the matter of material damages, where there is no wife, that part shall be awarded to the parents. With regard to moral damages, where there is no wife, that part shall be added to the share of the children.

d. If there are no parents, their portion shall be paid to the children of the victims and, if there should be only one surviving parent, that parent shall receive that entire share.

e. The expenses shall be reimbursed to each of the families.

62. On the basis of the information contained in the dossier, the Court has prepared the following list of beneficiaries entitled to compensation:

1) Víctor Neira Alegría:

WIFE:
Aquilina M. Tapia de Neira (her whereabouts are unknown to the Commission)

CHILDREN:
Three minor sons (not identified in the dossier and their whereabouts are unknown to the Commission)

2) William Zenteno Escobar

WIFE:
Norma Yupanqui Montero

CHILDREN:
Erika Claudia Zenteno
Edith Valia Zenteno
Milagros Yoisy Zenteno Rodríguez (daughter William Zenteno Escobar and Julia Rodríguez Zenteno)

3) Edgar Zenteno Escobar

PARENTS:
Corcenio Zenteno Flores
Aurea Escobar de Zenteno

The claim for the compensation payable to the family of Víctor Neira Alegría is subject to the presentation of documentary proof to the Government of Peru by the interested parties.

XI

63. This judgment is to be executed in the following manner: within six months of the date of notification the State shall pay the indemnities awarded to the adult relatives and the survivors. Should any of those persons die before the payment is made, that sum shall be paid to his or her heirs.

64. The Court rules that the State may fulfill this obligation through payments in dollars of the United States, or of an equivalent amount in the local currency of Peru. The rate of exchange used to determine the equivalent value shall be the selling rate for the United States dollar and the Peruvian currency quoted on the New York market on the day before the date of the payment.

65. The Government shall pay the compensation for the minor children by creating, within a period of six months, trust funds in a solvent and sound Peruvian banking institution, on the most favorable terms permitted by banking laws and practice, for each of the minor children, who shall receive the interest accrued on a monthly basis. Once the children become of age or marry, they shall receive the total owing to them. In the event of their death, their rights herein shall pass to their heirs.

66. In the event that any of the adult beneficiaries fail to claim the payment of the compensation to which they are entitled, the State shall deposit the sum due in a trust fund, on the terms set forth in the preceding paragraph, and shall make every effort to locate that person. If, after ten years from the establishment of the trust fund the indemnity has not been claimed by the person or his or her heirs, it shall be returned to the State and this judgment shall be deemed to have been fulfilled with regard to that person. The foregoing shall also apply to the trust funds established for the minor children.

67. The compensation payments shall be exempt from any tax currently in force or any that may be decreed in the future.

68. Should the Government be in arrears with its payments, it shall pay interest on the total of the capital owing at the current bank rate in Peru on the date of the payment.

69. As a form of moral reparation, the Government has the obligation to do all in its power to locate and identify the remains of the victims and deliver them to their next of kin.

XII

70. With reference to costs, these were determined in the judgment on the merits (*Neira Alegría et al. Case, supra* 5, para. 87), which is consistent with the Court's previous rulings to the effect that the Commission cannot demand that expenses incurred as a result of its own internal work structure be reimbursed through the assessment of costs (*Aloeboetoe et al. Case, Reparations, supra* 14, paras. 110-115, and *El Amparo Case. Reparations, supra* 36, para. 63).

NOW, THEREFORE,

THE COURT,

By five votes to one,

1) Sets the total reparations at US$154,040.74 to be paid to the next of kin and the surviving victims referred to in the instant case. This payment shall be made by the State of Peru within six months of the date of the notification of the present judgment, and in the form and conditions set forth in the preceding paragraphs,

Judge *ad hoc* Orihuela-Iberico dissenting.

Unanimously,

2) Orders the creation of trust funds on the terms set forth in paragraphs 65 and 66 of this judgment.

Unanimously,

3) Decides that the State of Peru shall not impose any taxes on the compensation paid.

Unanimously

4) Decides that the State of Peru is obliged to do all in its power to locate and identify the remains of the victims and deliver them to their next of kin.

Unanimously,

5) Decides that it shall supervise compliance with this judgment and that the case shall be deemed to be closed only after such compliance.

Unanimously,

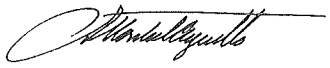
6) Rules that payment of costs shall not be ordered.

Judge *ad hoc* Orihuela-Iberico informed the Court of his dissenting opinion, which shall be attached to this judgment.

Done in Spanish and English, the Spanish text being authentic, in San José, Costa Rica, on this nineteenth day of September, 1996.

Héctor Fix-Zamudio
President

Hernán Salgado-Pesantes



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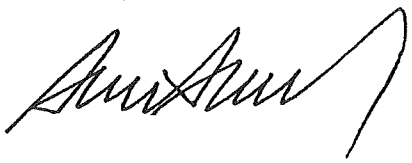

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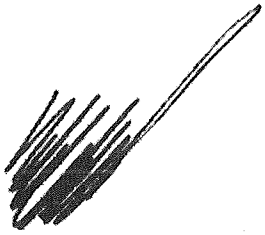
Antônio A. Cançado Trindade

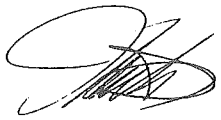


Jorge E. Orihuela-Iberico
Judge *ad hoc*

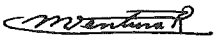
Manuel E. Ventura-Robles
Secretary

Read at a public session at the seat of the Court in San José, Costa Rica, on September 20, 1996.

So ordered,



Héctor Fix-Zamudio
President



Manuel E. Ventura-Robles
Secretary

DISSENTING OPINION OF JUDGE ORIHUELA-IBERICO

I

...

II

1. Regarding my **dissenting opinion** on the judgment of September 19, 1996 on Reparations in the Neira Alegría *et al.* case, which concerns the first point of its operative part, I must say that my opinion merely questions the amount of the indemnity of US$154,040.74 to the next of kin of the victims in the instant case. The purpose of this judgment must be to establish the amount of an indemnity already ordered by the judgment on the merits of January 19, 1995.

2. Paragraph 42 of the judgment on reparations states that "[a]*lthough no proof of the amount of the expenditures has been submitted, the Court deems it fair to award each of the deceased victims' next of kin an indemnity in the amount of US$2,000 as compensation for the expenditures incurred in their various petitions before the national authorities.*"

3. As regards moral damages, although in paragraph 56 of this judgment, the Court declares that *"a condemnatory judgment constitutes per se adequate reparation for moral damages, as amply demonstrated by the jurisprudence of, among others, the European Court of Human Rights ...,"* it adds, "*However, it is the Court's opinion that although a condemnatory judgment may in itself constitute a form of reparation and moral satisfaction, whether or not there has been recognition on the part of the State, it would not suffice in the instant case, owing to the particular seriousness of the violation of the right to life and of the moral suffering inflicted on the victims and their families, which deserve to be paid fair compensation.*" Paragraph 58 of the judgment states that "[i]*n the light of the foregoing, the Court, taking all the special circumstances of the case into account, concludes that it is fair and just to award an indemnity of US$20,000 to each of the families of the deceased and to each of the survivors.*"

4. The reasons for my opinion with regard to paragraphs 2 and 3 above can be expressed together, since both those paragraphs are founded on the Court's decisions for reasons of equity. This is a subjective matter with which I am not in agreement, believing as I do that those amounts could have been determined in the light of the actual economic situation prevailing in the country. This situation is revealed in the evidence presented by the Government of Peru, which attests to the acute inflation during the years in which the El Frontón incidents took place and those that followed.

5. As far as the indemnity for "loss of earnings" is concerned, paragraph 50 of the Court's judgment on reparations states that to arrive at an appropriate amount for the material damages suffered by the victims, *"for reasons of equity and in view of the actual social and economic situation of Latin America,* [the Court] *fixes the amount of US$125 as the victims' probable income, and therefore as the monthly figure to be used for calculating the correct compensation.*" It adds that "[o]*nce the calculation has been made, 25 percent shall be deducted for personal expenses ... The interest accruing from the date of the events up to the present shall be to that amount.*"

This means that the Court does not take into account the statistics on Minimum Living Wages (Salaries) for 1986-1995 from the Ministry of Labor and Social Welfare, submitted by the Government of Peru (F. 1029 to F. 1032). Had it done so, the amount of the compensation would have been considerably lower than that established in paragraphs 51 and 52 of the judgment on reparations. Nor should it have invoked, as stated, *"reasons of equity and the actual economic and social situation of Latin America,"* when examining a specific case in one country and not in a region as a whole.

Judge Orihuela-Iberico
Judge *ad hoc*

Manuel E. Ventura-Robles
Secretary

APPENDIX XXIV

ORDER OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS OF SEPTEMBER 10, 1996

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

COLOTENANGO CASE

HAVING SEEN:

1. The Order of the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court") of February 1, 1996, the operative part of which provides as follows:

> 1. To take note of the measures adopted by the Government of the Republic of Guatemala in compliance with the Order of May 18, 1995.
>
> 2. To extend for a period of six months the provisional measures ordered in June 22, 1994 Order of the Court, expanded by the December 1, 1994 Decision and extended by the Order of May 18, 1995.
>
> 3. To call upon the Government of the Republic of Guatemala, further to the measures already in place, to institute mechanisms of control and vigilance over the civil patrols operating in Colotenango.
>
> 4. To call upon the Government of the Republic of Guatemala and the Inter-American Commission on Human Rights to continue to provide periodic reports to the Inter-American Court of Human Rights concerning the measures taken in accordance with the Order of May 18, 1995.
>
> 5. To request the Inter-American Commission on Human Rights to consider the appropriateness of submitting this case to the Inter-American Court of Human Rights for its consideration.

2. The reports submitted to the Court by the Government of the Republic of Guatemala (hereinafter "Guatemala" or "the Government") on March 15, May 10 and July 11, 1996, in which it informed the Court of the measures taken pursuant to paragraphs 3 and 4 of the aforementioned Order.

3. The briefs, received at the Inter-American Court of February 22, April 24, May 30 and August 7, 1996, containing the comments of the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") on the Government's reports.

4. The Government's brief of August 21, 1996, in which it requested the Court to extend by six months the provisional measures ordered in the instant case, so as to "*provide a framework of security and tranquillity*" for the process for a friendly settlement in which the two parties are engaged.

5. The Commission's brief of August 30, 1996, in which "*it concurs in the request of the Illustrious Government of Guatemala for an extension of the provisional measures ordered.*"

CONSIDERING:

1. That the period covered by the extension of the provisional measures, established in paragraph 2 of the Order of February 1, expired on August 1, 1996.

2. That pursuant to the Order of the Inter-American Court of May 18, 1995, Guatemala has punctually and regularly submitted eight reports on the status of the provisional measures in the instant case.

3. That the Commission, for its part, has regularly submitted its comments on the Government's brief and has also reported on the status of the provisional measures ordered.

4. That, by Order of December 1, 1994, the Court decided to call upon 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.*"

5. That, according to the latest brief from the Inter-American Commission, on April 25 last the First Trial Court of Huehuetenango acquitted the nine patrolmen detained in connection with the Colotenango case, an event which the Commission claims "*increases the risk to the inhabitants and their fear of further reprisals.*"

6. That in the brief presented on August 21, 1996 the Government requests that the Court extend for a period of six months the provisional measures ordered in this case "*for the purpose of providing a framework of security and tranquillity for the... process for a friendly settlement*" initiated through the good offices of the Inter-American Commission.

7. That the Commission acceded to the Government's request for the extension of the provisional measures ordered by the Court.

NOW, THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

pursuant to Article 63(2) of the American Convention on Human Rights,

DECIDES:

1. To take note of the measures adopted by the Government of the Republic of Guatemala, pursuant to the Order of February 1, 1996.

2. To maintain for six months as of this day the provisional measures in force in the instant case.

Done in Spanish and English, the Spanish text being authentic, at the seat of the Court in San José, Costa Rica on this tenth day of September, 1996.

Héctor Fix-Zamudio
President

Hernán Salgado-Pesantes

Alejandro Montiel-Argüello

Alirio Abreu-Burelli

Antônio A. Cançado Trindade

Manuel E. Ventura-Robles
Secretary

So ordered,

Héctor Fix-Zamudio
President

Manuel E. Ventura-Robles
Secretary

APPENDIX XXV

ORDER OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS OF SEPTEMBER 10, 1996

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

CARPIO NICOLLE CASE

HAVING SEEN:

1. The Order of the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court") of February 1, 1996 in which it decided "[t]o *extend until September 20, 1996, the provisional measures ordered in the September 19, 1995, Order of the Court.*"

2. The reports of the Government of the Republic of Guatemala (hereinafter "Guatemala" or "the Government") received by the Court on February 23, March 5, April 12, May 10, June 13, July 9, and August 22, 1996.

3. The briefs, received by the Court on March 14, May 2, May 24, June 28, August 1, and September 7, 1996, containing the comments of the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") on the Government's reports.

CONSIDERING:

1. That in its Order of February 1, 1996 the Court decided to extend until September 20, 1996 the provisional measures ordered in the instant case.

2. That the Government has not to date taken measures to comply with the request of the Inter-American Court, as shown in the reports duly presented.

3. That the Commission, for its part, has regularly submitted its comments on the Government's briefs and has also reported on the status of the provisional measures ordered.

4. That, in the light of the Inter-American Commission's claims that some of the persons on whose behalf those provisional measures were ordered have been subjected to intimidation and threats, the Court feels continued concern for the prevention of the irreparable damage caused by the alleged violation of human rights recognized in the American Convention.

5. That the Government is to report every two months on the provisional measures ordered in this case, and that the Inter-American Commission is to submit its comments on that information to the Court not later than one month from the date of its receipt.

NOW, THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

pursuant to Article 63(2) of the American Convention on Human Rights,

DECIDES:

1. To take note of the measures adopted by the Government of the Republic of Guatemala to comply with the Order of February 1, 1996.

2. To maintain the provisional measures set forth in the Order of September 19, 1995 and extended by the Order of February 1, 1996.

3. To call upon the Government of Guatemala to report to the Court every two months from the date of notification of this Order on the measures it has taken in this case, and upon the Inter-American Commission on Human Rights to submit its comments on that information to the Court not later than one month from the date of its receipt.

Héctor Fix-Zamudio
President

Hernán Salgado-Pesantes

Alejandro Montiel-Argüello

Oliver Jackman

Alirio Abreu-Burelli

Antônio A. Cançado Trindade

Manuel E. Ventura-Robles
Secretary

So ordered,

Héctor Fix-Zamudio
President

Manuel E. Ventura-Robles
Secretary

APPENDIX XXVI

ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
SEPTEMBER 13, 1996

PROVISIONAL MEASURES IN THE MATTER OF PERU

LOAYZA TAMAYO CASE

HAVING SEEN:

1. The Order delivered by the President of the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court") on June 12, 1996, in which he decided:

> 1. To request that the Government of the Republic of Peru adopt forthwith such measures as are necessary to effectively ensure the physical, psychological and moral integrity of Ms. María Elena Loayza-Tamayo, so that any provisional measures that the Inter-American Court may take can have the requisite effect.
>
> 2. To request that the Government of the Republic of Peru submit to the President of the Court, not later than June 25, 1996, a report on the measures taken so that they may be brought to the attention of the Court at its next session scheduled for June 26 to July 3, 1996.
>
> 3. To submit this Order for the Court's consideration and pertinent effects during its next session.

2. The Order of the Court of July 2, 1996, in which it decided:

> 1. To ratify the Order of the President of the Inter-American Court of June 12, 1996.
>
> 2. To call once more upon the Government of the Republic of Peru to take, on behalf of Ms. María Elena Loayza-Tamayo, all provisional measures necessary for the effective safeguard of her physical, psychological and moral integrity.
>
> 3. To call upon the Government of Peru to continue to report every two months on the provisional measures taken.
>
> 4. To call upon the Inter-American Commission on Human Rights to submit to the Court its comments on that information not later than one month from the date of its receipt.

3. The brief presented by the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") on September 12, 1996 and its attachments, in which it informed the Court that Ms. María Elena Loayza-Tamayo's health had deteriorated because:

> she is subjected to a regime of inhuman and degrading treatment caused by incommunicado detention and by being enclosed for 23 1/2 hours a day in a damp, cold cell measuring approximately 2 meters by 3

> meters, without direct ventilation, containing cement bunks, a latrine and a hand-basin... The cell has no direct lighting and is only dimly and indirectly lit from the fluorescent tubes in the corridors. She is allowed neither a radio, newspapers nor magazines. She is allowed into the sunlight for only 20 to 30 minutes a day.

In that brief the Commission requested that the Inter-American Court order the Government of Peru (hereinafter "Peru") to bring to an end the solitary confinement and incommunicado detention imposed on María Elena Loayza-Tamayo.

4. Official communication 194-USP-EPMSMCH-96 of July 25, 1996, attached by the Commission to the aforementioned brief of September 12, in which Dr. Julia Ruiz Camacho, Chief Medical Officer of Chorillos Women's Maximum Security Prison, after her examination of Ms. María Elena Loayza-Tamayo, certified that the prisoner was suffering from physical and psychological disorders, including depressive anxiety syndrome.

CONSIDERING:

1. That Perú has been a State Party to the American Convention since July 28, 1978 and that it accepted the compulsory jurisdiction of the Court on January 21, 1981.

2. That Article 63(2) of the Convention provides that the Court shall take the provisional measures it deems pertinent in matters it has under consideration in cases "*of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons.*"

3. That Peru has not complied with the third operative paragraph of the Court's Order of July 2, 1996, in which it is called upon to report regularly to this Tribunal on any measures it has taken to ensure the effective safeguard of María Elena Loayza-Tamayo's physical, psychological and moral integrity.

4. That the Commission's brief of September 12, 1996 was accompanied by copies of communications and documents attesting both to the deterioration in Ms. María Elena Loayza-Tamayo's state of health and to the living conditions of male and female inmates in Lima's maximum security prisons.

5. That, in default of the report which the Government should have provided in accordance with the requirements of this Court, it is presumed that the conditions of imprisonment imposed on Ms. María Elena Loayza-Tamayo seriously endanger her physical, psychological and moral health, as the Commission claims.

6. That Article 5 of the American Convention on Human Rights provides that:

> 1. Every person has the right to have his physical, mental, and moral integrity respected.
>
> 2. No one 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.

NOW, THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

pursuant to Article 63(2) of the American Convention on Human Rights,

DECIDES:

1. To call upon the Government of Peru to modify the conditions in which Ms. María Elena Loayza-Tamayo is being held, particularly in regard to her solitary confinement, so as to bring the situation into line with Article 5 of the American Convention on Human Rights and the Order of the Court of July 2, 1996.

2. To call upon the Government of Peru to provide Mrs. María Elena Loayza-Tamayo with medical treatment -both physical and psychiatric- without delay.

3. To call upon the Government of Peru to inform the Court of the measures it has taken to comply with this Order within fifteen days. Starting with that initial report, the Government shall report to the Court every two months on the status of the measures taken in the instant case.

4. To call upon the Inter-American Commission on Human Rights to submit its comments on the above information to the Court not later that one month from the date of its receipt.

Héctor Fix-Zamudio
President

Hernán Salgado-Pesantes

Alejandro Montiel-Argüello

Oliver Jackman

Alirio Abreu-Burelli

Antônio A. Cançado Trindade

Manuel E. Ventura-Robles
Secretary

So ordered,

Héctor Fix-Zamudio
President

Manuel E. Ventura-Robles
Secretary

APPENDIX XXVII

ORDER OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS OF SEPTEMBER 10, 1996

VELASQUEZ RODRIGUEZ CASE

HAVING SEEN:

1. The judgment on compensatory damages delivered by the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") on July 21, 1989 in the Velásquez Rodríguez Case, in which it established at seven hundred and fifty thousand lempiras the compensatory damages that the State of Honduras (hereinafter "Honduras") must pay to the next of kin of Mr. Angel Manfredo Velásquez-Rodríguez and decided that the Court would supervise "*execution of payment of* [this] *compensation ... and that only after it was settled* [would] *the case be closed.*"

2. The Court's interpretation of its aforementioned judgment on compensatory damages, which it provided on August 17, 1990, at the request of the Inter-American Commission on Human Rights (hereinafter "the Inter-Americana Commission" or "the Commission").

3. The Inter-American Commission's brief of March 21, 1996 and its attachments, in which is informed the Court that it has received:

> communications from the Government of Honduras and the representatives of the victims' next of kin in the "Velásquez Rodríguez" and "Godínez Cruz" Cases, indicating that it had made the compensation payments established by decision of [the] Court in its judgments of July 21, 1989 and December 27, 1990 [*rectius*: August 17, 1990].

4. The brief presented by Honduras on April 12, 1996, in which it informed the Court "*that the Constitutional President of the Republic, Dr. Carlos Roberto Reina-Idiáquez,* [had] *delivered* [on February 7, 1996] *the checks in payment of the compensatory damages due to the next of kin of the disappeared persons,*" and submitted copies of a number of documents relating to the delivery.

5. The brief of the Inter-American Commission of April 29, 1996, whereby it informed the Court that it had "*no comments to make for the time being*" on the aforementioned documents.

6. The brief presented by the Commission on May 2, 1996, in which it requested "*the entry of an incidental plea to allow discussion and clarification of the scope of the payments made by the Government of Honduras.*"

7. The document prepared by the attorneys representing the victims' next of kin, submitted by the Commission together with its brief of May 2, 1996, claiming that the payments actually received did not fully accord with the Court's judgment on the compensatory damages and its interpretation of that judgment, inasmuch as the payment to Mr. Velásquez-Rodríguez's spouse and offspring reflected the amount due in January 1994 and not on the dates on which the payments were actually made, namely August 30, 1995 and February 15, 1996, respectively.

8. The brief presented by Honduras on May 31, 1996, in which it claimed that with the delivery of the checks "*it ha*[d] *now completely discharged its pecuniary liability*" in respect of the judgments in the Velásquez Rodríguez Case.

9. The brief presented by Honduras on June 21, 1996, in which it declared that:

> [the] delivery of the outstanding amount of the compensation by the President of the Republic was the culmination of an Agreement between the parties establishing the final amounts and the form of payment of compensatory damages by the State of Honduras. Payment in full was expressly acknowledged by the beneficiaries in the "RECORD OF DELIVERY AND RECEIPT", and endorsed by the highest human rights protection authorities in Honduras,

and requested the Court "*to consider the obligations imposed on it to have been fulfilled*" in the instant case.

10. The Commission's note of July 3, 1996, in which it withdrew the incidental plea in the case, "*inasmuch as the petitioners and the Illustrious Government of Honduras have both informed the Commission that they do not which to proceed* [with it]," and requested that the instant case "*be struck from the list.*"

CONSIDERING:

1. That the Inter-American Commission and Honduras have requested the Court to close the Velásquez Rodríguez Case.

2. That the Commission has notified the Court that the petitioners in the instant case had informed it that they had no wish to proceed with the incidental plea, the purpose of which had been to establish Honduras' compliance with the judgments on compensatory damages and the Inter-American Court's interpretation thereof.

3. That the declarations by the parties and the documentation received show that Honduras has fulfilled the provisions contained in Article 68(1) of the American Convention on Human Rights, whereby States are obligated to comply with the judgments of the Court.

NOW, THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

pursuant the Article 45(1) of its Rules of Procedure,

DECIDES:

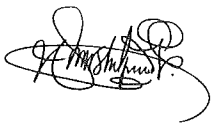
Unanimously

1. To close the instant case.

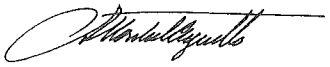
2. To communicate this Order, through its Annual Report, to the General Assembly of the Organization of American Sates at its next regular session.

Done in Spanish and English, the Spanish text being authentic, at the seat of the Court on this tenth day of September, 1996.

Héctor Fix-Zamudio
President



Hernán Salgado-Pesantes



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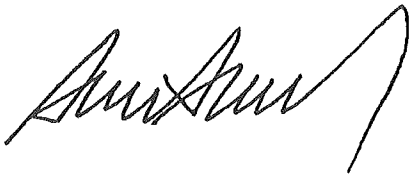

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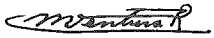
Antônio A. Cançado Trindade



Manuel E. Ventura Robles
Secretary

APPENDIX XXVIII

ORDER OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS OF SEPTEMBER 10, 1996

GODINEZ CRUZ CASE

HAVING SEEN:

1. The judgment on compensatory damages delivered by the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") on July 21, 1989 in the Godínez Cruz Case, in which it set at six hundred and fifty thousand lempiras the compensatory damages that the State of Honduras (herein after "Honduras") must pay to the next of kin of Mr. Saúl Godínez-Cruz and decided that the Court would supervise "*execution of payment of* [this] *compensation ... and that only after it was settled* [would] *the case be closed.*"

2. The Court's interpretation of its aforementioned judgment on compensatory damages, which it provided on August 17, 1990, at the request of the Inter-American Commission on Human Rights (hereinafter "the Inter-Americana Commission" or "the Commission").

3. The Inter-American Commission's brief of March 21, 1996 and its attachments, in which it informed the Court that it had received:

> communications from the Government of Honduras and the representatives of the victims' next of kin in the "Velásquez Rodríguez" and "Godínez Cruz" Cases, indicating that it had made the compensation payments established by decision of [the] Court in its judgments of July 21, 1989 and December 27, 1990" [*rectius*: August 17, 1990].

4. The brief presented by Honduras on April 12, 1996, in which it informed the Court "*that the Constitutional President of the Republic, Dr. Carlos Roberto Reina-Idiáquez,* [had] *delivered* [on February 7, 1996] *the checks in payment of the compensatory damages due to the next of kin of the disappeared persons*", and submitted copies of a number of documents relating to the delivery.

5. The brief of the Inter-American Commission of April 29, 1996, whereby it informed the Court that it had "no *comments to make for the time being*" on the aforementioned documents.

6. The brief presented by the Commission of May 2, 1996, in which it requested "*the entry of an incidental plea to allow discussion and clarification of the scope of the payments made by the Government of Honduras.*"

7. The document prepared by the attorneys representing the victims' next of kin, submitted by the Commission together with its brief of May 2, 1996, claiming that the payments actually received did not fully accord with the Court's judgment on the compensatory awards and its interpretation of that judgment, inasmuch as the payment to Mr. Godínez-Cruz's spouse and daughter reflected the amount due in January 1994 and not on the dates on which the payments were actually made, namely August 30, 1995 and February 15, 1996, respectively.

8. The brief presented by Honduras on May 31, 1996, in which it claimed that with the delivery of the checks "*it ha*[d] *now completely discharged its pecuniary liability*" in respect of the judgments in the Godínez Cruz Case.

9. The brief presented by Honduras on June 21, 1996, stating that:

> [the] delivery of the outstanding amount of the compensation by the President of the Republic was the culmination of an Agreement between the parties which determined the final amounts and the form of payment of compensatory damages by the State of Honduras. Payment in full was expressly acknowledged by the beneficiaries in the "RECORD OF DELIVERY AND RECEIPT", and endorsed by the highest human rights protection authorities in Honduras,

and requested the Court "to consider the obligations imposed on it to have been fulfilled" in the instant case.

10. The Commission's note of July 3, 1996, in which it withdrew the incidental plea in the case, "*inasmuch as the petitioners and the Illustrious Government of Honduras have both informed the Commission that they do not wish to proceed* [with it]," and requested that the instant case "*be struck from the list,*"

CONSIDERING:

1. The Inter-American Commission and Honduras have requested the Court that to strike the Godínez Cruz Case from its list.

2. That the Commission has notified the Court that the petitioners in the instant case had informed it that they had no wish to proceed with the incidental plea, the purpose of which had been to establish Honduras' compliance with the judgments on compensatory damages and with the Inter-American Court's interpretation thereof.

3. That the declarations by the parties and the documentation received show that Honduras has fulfilled the provisions contained in Article 68(1) of the American Convention on Human Rights, whereby States are obligated to comply with the judgments of the Court.

NOW, THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

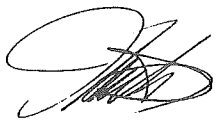
pursuant Article 45(1) of its Rules of Procedure,

DECIDES:

1. To close the instant case.

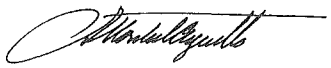
2. To communicate this Order, through its Annual Report, to the General Assembly of the Organization of American States at its next regular session.

Done in Spanish and English, the Spanish text being authentic, at the seat of the Court on this tenth day of September, 1996.

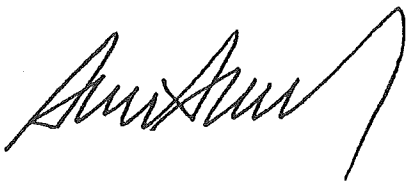


Héctor Fix-Zamudio
President

Hernán Salgado-Pesantes



Alejandro Montiel-Argüello



Alirio Abreu-Burelli

Antônio A. Cançado Trindade

Manuel E. Ventura Robles
Secretary

APPENDIX XXIX

DECISION OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS

OF SEPTEMBER 10, 1996

CASTILLO PAEZ CASE

HAVING SEEN:

1. The judgment on preliminary objections of January 30, 1996 in the Castillo Páez case.

2. The communication from the Government of Peru of March 21, 1996, in which it filed a motion for *"nullification"* of that judgment which declared the preliminary objections raised by the Government to be without merit.

3. The communication from the Inter-American Commission on Human Rights of April 30, 1996, in which it presented the observations on the petition of nullification lodged by the Government of Peru and requests *"that the petition of nullification be rejected."*

4. The communication of May 23, 1996, submitted by the Government, in which it referred to the observations made by the Inter-American Commission on the petition for nullification.

CONSIDERING:

1. That the communication from Peru's Agent, in which he lodged the petition of "nullification", is based primarily on the argument that the decision on preliminary objections of January 30, 1996 does not *"conform to the law, inasmuch as it lacks legal justification, a sine qua non for delivery of any decision."* It adds a number of considerations on the exhaustion of domestic remedies as a condition for admissibility of claims before the Inter-American Commission, on the ground that, as evinced in the documentation submitted by the Government's representatives to the Commission, a case was at that time in progress in the national courts, so that the Commission was not competent to act or to hear an international case until the case before the national courts was resolved. The brief also cited the Separate Opinion emitted by then Judge of this Court, Dr. Rodolfo Piza-Escalante, in the context of the Court's interpretative rulings on the reparations judgments of August 17, 1990, on compensatory damages in the Velásquez Rodríguez and Godínez Cruz Cases. The burden of that opinion was that a ruling of the Court which does not go to the merits of a case, and does not constitute a final disposal of the dispute, may not properly be called "a judgment", inasmuch as it is in the nature of an interlocutory decision; as a consequence, since is it not a final pronouncement, such a decision is subject to interpretation, alteration, reversal or nullification.

2. That the main contention of the Delegate of the Inter-American Commission in his observations on the aforementioned communication is that, in accordance with Article 25(2) of the Statute of the Court, only rulings or decisions issued by the President or the Committees of the Court that are not purely procedural may be appealed before the full Court. Consequently, rulings or decisions of the full Court are not subject to appeal. Thus, the decision on preliminary objections delivered by the Court on January 30, 1996, may not be legally contested. The proceeding before the Court is covered by the rule of non-appealability; for this reason there is no provision in the Court's Rules of Procedure for what, in some domestic legal codes and in procedural law doctrine, are known as "general characteristics" [caracteres generales] which lay down the time limits within which motions for the review of judicial decisions may be validly filed. It would be wrong to claim that the decisions of the Inter-American Court or any other tribunal are open to challenge at all times. This would undermine the security of the juridical process and thwart the attainment of the ultimate goal of a lawsuit, which is to put an end to the dispute between the parties.

3. That the Commission also states that in the domestic legislation of the vast majority of States governed by the system of codified law, the proper procedural method of contesting decisions in which -as in the instant case- one of the parties claims that the laws have been erroneously applied or that the facts have been misinterpreted, is by way of appeal rather than nullification. The latter may be filed under domestic legislation in order to contest rulings that contain errors of form, or derive from a proceeding in which the predetermined formalities have not been observed; this is known as *error in procedendo*.

II

4. That this Court observes, first and foremost, that the Inter-American Commission on Human Rights correctly claims that, in any event, what the Peruvian Government is in fact filing is an appeal against the merits of the judicial decision, and not what the Government describes as a "nullification", since according to the general rules of impugnment under domestic law, "nullification" is used to contest a breach of procedure, which has not been alleged in this case.

5. That, whether or not the decision in question may technically be described as a "judgment", an "interlocutory decision," or an "interlocutory judgment," -as it is in the legislation of some countries- the main point at issue is whether the decisions rendered by this Tribunal may be contested.

6. That with regard to this Court's decisions that resolve a dispute as to merits, Article 67 of the Convention categorically states that the judgment of the Court shall be final and not subject to appeal. It is also quite clear that other decisions which are not purely procedural, that is, those traditionally called "interlocutory decisions or judgments," may not be challenged in any way.

7. That, according to Article 25(2) of the Statute of the Court and Article 45 of its Rules of Procedure, judgments and interlocutory decisions for discontinuance of a case shall be rendered by the Court, but the Rules of Procedure may delegate to the President or to the Committees of the Court authority to carry out certain parts of the legal proceedings, with the exception of issuing final rulings or advisory opinions. Rulings or decisions issued by the President or the Committees that are not purely procedural in nature may always be appealed before the full Court. These precepts dictate that only the decisions of the President or of the Committees of the Court may be challenged before the full Court; however, other decisions, including decisions on preliminary objections, may not be contested. The reason is that a contentious proceeding before this Court must be concentrated inasmuch as protection of the human rights enshrined in the American Convention requires that such a proceeding be as brief as possible; it cannot, therefore, be subject to the excessive formalities of an ordinary domestic trial which is governed by a complex system of impugnment instruments, and directions and deadlines for filing them.

8. That, for the reasons set out above, the conclusion of this Court is that the application presented by the Government is out of order, and must accordingly be rejected.

9. That the filing of applications which are flagrantly out of order slows down the speed with which justice should be imparted in the field of human rights. Therefore, it is the opinion of this Court that parties to human rights cases have a duty to refrain from making applications of this nature.

NOW THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS

By virtue of the powers conferred on it by Article 62(3) of the American Convention on Human Rights and Article 45 of its Rules of Procedure,

DECIDES:

1. To reject, as being out of order, the motion introduced by the Government of Peru for review of the January 31, 1996 decision on preliminary objections.

2. To continue to hear the case.

Hector Fix-Zamudio
President

Hernán Salgado-Pesantes

Alejandro Montiel-Argüello

Oliver Jackman

Antonio A. Cançado Trindade

Manuel E. Ventura-Robles
Secretary

APPENDIX XXX

ORDER OF THE

INTER-AMERICAN COURT OF HUMAN RIGHTS

OF SEPTEMBER 16, 1996

CONSIDERING:

That the delivery of judgments and advisory opinions by the Inter-American Court of Human Rights has called for ongoing evaluation of the procedures laid down in its Rules of Procedure.

That it is the duty of the Court to ensure that the rules governing the procedures provide a genuine and effective guarantee of human rights.

NOW THEREFORE,

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

pursuant to Article 60 of the American Convention on Human Rights and Article 25(1) of its Statute,

ORDERS THE FOLLOWING RULES OF PROCEDURE:

RULES OF PROCEDURE OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS

Approved by the Court at its XXXIV Regular Session held September 9 - 20, 1996

PRELIMINARY PROVISIONS

Article 1
Purpose

1. These Rules regulate the organization and establish the procedure of the Inter-American Court of Human Rights.

2. The Court may adopt such other Rules as may be necessary to carry out its functions.

3. In the absence of a provision in these Rules or in case of doubt as to their interpretation, the Court shall decide.

Article 2
Definitions

For the purposes of these Rules:

a. the term "**agent**" refers to the person designated by a State to represent it before the Court;

b. the expression "**General Assembly**" refers to the General Assembly of the Organization of American States;

c. the term "**Commission**" refers to the Inter-American Commission on Human Rights;

d. the expression "**Permanent Commission**" refers to the Permanent Commission of the Court;

e. The expression "**Permanent Council**" refers to the Permanent Council of the Organization of American States;

f. the term "**Convention**" refers to the American Convention on Human Rights (Pact of San José, Costa Rica);

g. the term "**Court**" refers to the Inter-American Court of Human Rights;

h. the expression "**Delegates of the Commission**" refers to the persons designated by the Commission to represent it before the Court;

i. the expression "**original claimant**" refers to the person, group of persons, or nongovernmental entity that instituted the original petition with the Commission, pursuant to Article 44 of the Convention;

j. the term "**day**" shall be understood to be a natural day;

k the expression "**States Parties**" refers to the States that have ratified or adhered to the Convention;

l. the expression "**Member States**" refers to the States that are members of the Organization of American States;

m. the term "**Statute**" refers to the Statute of the Court, as adopted by the General Assembly of the Organization of American States on October 31, 1979 (AG/RES. 448 [IX-0/79]), as amended;

n. the expression "**report of the Commission**" refers to the report provided for in Article 50 of the Convention;

o. the expression "**judge ad hoc**" refers to any judge appointed in pursuance of Article 55 of the Convention;

p. the expression "**interim judge**" refers to any judge appointed in pursuance of Articles 6(3) and 19(4) of the Statute;

q. the expression "**titular judge**" refers to any judge elected in pursuance of Articles 53 and 54 of the Convention;

r. the term "**month**" shall be understood to be a calendar month;

s. the acronym "**OAS**" refers to the Organization of American States;

t. the expression "**parties to the case**" refers to the parties in a case before the Court;

u. the term "**Secretariat**" refers to the Secretariat of the Court;

v. the term "**Secretary**" refers to the Secretary of the Court;

w. the expression "**Deputy Secretary**" refers to the Deputy Secretary of the Court;

x. the expression "**Secretary General**" refers to the Secretary General of the Organization of American States;

y. the term "**victim**" refers to the person whose rights under the Convention are alleged to have been violated.

TITLE I

ORGANIZATION AND FUNCTIONING OF THE COURT

Chapter I
The Presidency and Vice-Presicency

Article 3
Election of the President and Vice-President

1. The President and Vice-President shall be elected by the Court for a period of two years and may be reelected. Their terms shall begin on July 1 of the corresponding year. The election shall be held during the regular session nearest to that date.

2. The elections referred to in this Article shall be by secret ballot of the titular judges present. The judge who wins four or more votes shall be deemed to have been elected. If no candidate receives the required number of votes, a ballot shall take place between the two judges who have received the

most votes. In the event of a tie, the judge having precedence in accordance with Article 13 of the Statute shall be deemed to have been elected.

Article 4
Functions of the President

1. The functions of the President are to:

   a. represent the Court;

   b. preside over the meetings of the Court and to submit for its consideration the topics appearing on the agenda;

   c. direct and promote the work of the Court;

   d. rule on points of order that may arise during the meetings of the Court. If any judge so requests, the point of order shall be decided by a majority vote;

   e. present a biannual report to the Court on the activities he has carried out as President during that period;

   f. exercise such other functions as are conferred upon him by the Statute or these Rules, or entrusted to him by the Court.

2. In specific cases, the President may delegate the representation referred to in paragraph 1(a) of this Article to the Vice-President, to any of the judges or, if necessary, to the Secretary or Deputy Secretary.

3. If the President is a national of one of the parties to a case before the Court, or in special situations in which he considers it appropriate, he shall relinquish the Presidency for that particular case. The same rule shall apply to the Vice-President or to any judge called upon to exercise the functions of President.

Article 5
Functions of the Vice-President

1. The Vice-President shall replace the President in the latter's temporary absence, and shall assume the Presidency when the absence is permanent. In the latter case, the Court shall elect a Vice-President to serve out that term. The same procedure shall be followed if the absence of the Vice-President is permanent.

2. In the absence of the President and the Vice-President, their functions shall be assumed by the other judges in the order of precedence established in Article 13 of the Statute.

Article 6
Commissions

1. The Permanent Commission shall be composed of the President, the Vice-President and any other judges the President deems it appropriate to appoint, according to the needs of the Court. The Permanent Commission shall assist the President in the exercise of his functions.

2. The Court may appoint other commissions for specific matters. In urgent cases, they may be appointed by the President if the Court is not in session.

3. In the performance of their functions, the commissions shall be governed by the provisions of these Rules, as applicable.

Chapter II
The Secretariat

Article 7
Election of the Secretary

1. The Court shall elect its Secretary, who must possess the legal qualifications required for the position, a good command of the working languages of the Court, and the experience necessary for discharging his functions.

2. The Secretary shall be elected for a term of five years and may be re-elected. He may be freely removed at any time if the Court so decides by the vote of not less than four judges. The vote shall be by secret ballot.

3. The Secretary shall be elected in accordance with the provisions of Article 3(2) of these Rules.

Article 8
Deputy Secretary

1. The Deputy Secretary shall be appointed on the proposal of the Secretary of the Court, in the manner prescribed in the Statute. He shall assist the Secretary in the performance of his functions and replace him during his temporary absences.

2. If the Secretary and Deputy Secretary are both unable to perform their functions, the President may appoint an Interim Secretary.

Article 9
Oath

1. The Secretary and Deputy Secretary shall take an oath in the presence of the President.

2. The staff of the Secretariat, including any persons called upon to perform interim or temporary duties, shall, upon assuming their functions, take an oath before the President undertaking to respect the confidential nature of any facts that may come to their attention during their performance of such duties. If the President is not present at the seat of the Court, the Secretary shall administer the oath.

3. All oaths shall be recorded in a document which shall be signed by the person being sworn and by the person administering the oath.

Article 10
Functions of the Secretary

The functions of the Secretary shall be to:

a. communicate the judgments, advisory opinions, orders and other rulings of the Court;

b. keep the minutes of the meetings of the Court;

c. attend all meetings of the Court held at its seat or elsewhere;

d. deal with the correspondence of the Court;

e. direct the administration of the Court, pursuant to the instructions of the President;

f. prepare the draft programs, rules and regulations, and budgets of the Court;

g. plan, direct and coordinate the work of the staff of the Court;

h. carry out the tasks assigned to him by the Court or the President;

i. perform any other duties provided for in the Statute and in these Rules.

Chapter III
Functioning of the Court

Article 11
Regular Sessions

The Court shall meet in two regular sessions each year, one during each semester, on the dates decided upon by the Court at the previous session. In exceptional circumstances, the President may change the dates of these sessions after prior consultation with the Court.

Article 12
Special Sessions

Special sessions may be convoked by the President on his own initiative or at the request of a majority of the judges.

Article 13
Quorum

The quorum for the deliberations of the Court shall consist of five judges.

Article 14
Hearings, Deliberations and Decisions

1. Hearings shall be public and shall be held at the seat of the Court. When exceptional circumstances so warrant, the Court may decide to hold a hearing in private or at a different location. The Court shall decide who may attend such hearings. Even in these exceptional circumstances, however, minutes shall be kept in the manner prescribed in Article 42 of these Rules.

2. The Court shall deliberate in private, and its deliberations shall remain secret. Only the judges shall take part in the deliberations, although the Secretary and Deputy Secretary or their substitutes may attend, as well as such other Secretariat staff as may be required. No other persons may be admitted, except by special decision of the Court and after taking an oath.

3. Any question that calls for a vote shall be formulated in precise terms in one of the working languages. At the request of any of the judges, the Secretatiat shall translate the text thereof into the other working languages and distribute it prior to the vote.

4. The minutes of the deliberations of the Court shall be limited to a statement of the subject of the discussion and the decisions taken. Dissenting and concurring opinions and declarations made for the record shall also be noted.

Article 15
Decisions and Voting

1. The President shall present, point by point, the matters to be voted upon. Each judge shall vote either in the affirmative or the negative; there shall be no abstentions.

2. The votes shall be cast in inverse order to the order of precedence established in Article 13 of the Statute.

3. The decisions of the Court shall be adopted by a majority of the judges present.

4. In the event of a tie, the President shall have a casting vote.

Article 16
Continuation in Office by the Judges

1. Judges whose terms have expired shall continue to exercise their functions in cases that they have begun to hear and that are still pending. However, in the event of death, resignation or disqualification, the judge in question shall be replaced by the judge who was elected to take his place, if applicable, or by the judge who has precedence among the new judges elected upon expiration of the term of the judge to be replaced.

2. All matters relating to reparations and indemnities, as well as supervision of the implementation of the judgments of this Court, shall be heard by the judges comprising it at that stage of the proceedings, unless a public hearing has already been held. In that event, they shall be heard by the judges who had attended that hearing.

Article 17
Interim Judges

Interim judges shall have the same rights and functions as titular judges, except for such limitations as shall have been expressly established.

Article 18
Judges Ad Hoc

1. In a case arising under Article 55(2) and 55(3) of the Convention and Article 10(2) and 10 (3) of the Statute, the President, acting through the Secretariat, shall inform the States referred to in those provisions of their right to appoint an judge ad hoc within thirty days of notification of the petition.

2. When it appears that two or more States have a common interest, the President shall inform them that they may jointly appoint one judge ad hoc, pursuant to Article 10 of the Statute. If those States have not communicated any agreement to the Court within thirty days of the last notification of the petition, each State shall have fifteen days in which to propose a candidate. Thereafter, and if more than one candidate has been nominated, the President shall choose one judge ad hoc by lot, and shall communicate the result to the interested parties.

3. Should the interested States fail to exercise their right within the time limits established in the preceding paragraphs, they shall be deemed to have waived that right.

4. The Secretary shall communicate the appointment of judges ad hoc to the other parties to the case.

5. A judge ad hoc shall take an oath at the first meeting devoted to the consideration of the case for which he has been appointed.

6. Judges ad hoc shall receive honoraria on the same terms as titular judges.

Article 19
Disqualification

1. Disqualification of a judge shall be governed by the provisions of Article 19 of the Statute.

2. Motions for disqualification must be filed prior to the first hearing of the case. However, if the grounds therefor were not known at the time, such motions may be submitted to the Court at the first possible opportunity, so that it can rule on the matter immediately.

3. When, for any reason whatsoever, a judge is not present at one of the hearings or at other stages of the proceedings, the Court may decide to disqualify him from continuing to hear the case, taking all the circumstances it deems relevant into account.

TITLE II
PROCEDURE

Chapter I
General Rules

Article 20
Official Languages

1. The official languages of the Court shall be those of the OAS.

2. The working languages shall be those agreed upon by the Court each year. However, in a specific case, the language of one of the parties may be adopted as a working language, provided it is one of the official languages.

3. The working languages for each case shall be determined at the start of the proceedings, unless they are the same as those already being employed by the Court.

4. The Court may authorize any person appearing before it to use his own language if he does not have sufficient knowledge of the working languages. In such circumstances, however, the Court shall make the necessary arrangements to ensure that an interpreter is present to translate that testimony into the working languages.

5. The Court shall, in all cases, determine which text is authentic.

Article 21
Representation of the States

1. The States parties to a case shall be represented by an Agent, who may, in turn, be assisted by any persons of his choice.

2. If a State replaces its Agent, it shall so notify the Court, and the replacement shall only take effect once the notification has been received at the seat of the Court.

3. A Deputy Agent may be designated. His actions shall have the same validity as those of the Agent.

4. When appointing its Agent, the State in question shall indicate the address at which all relevant communications shall be deemed to have been officially received.

Article 22
Representation of the Commission

1. The Commission shall be represented by the Delegates it has designated for the purpose. The Delegates may be assisted by any persons of their choice.

2. If the original claimant or the representatives of the victims or of their next of kin are among the persons selected by the Delegates of the Commission to assist them, in accordance with the preceding paragraph, that fact shall be brought to the attention of the Court, which shall, on the proposal of the Commission, authorize their participation in the discussions.

Article 23
Representation of the Victims or their Next of Kin

At the reparations stage, the representatives of the victims or of their next of kin may independently submit their own arguments and evidence.

Article 24
Cooperation of the States

1. The States parties to a case have the obligation to cooperate so as to ensure that all notices, communications or summonses addressed to persons subject to their jurisdiction are duly executed. They shall also expedite compliance with summonses by persons who either reside or are present within their territory.

2. The same rule shall apply to any proceedings that the Court decides to conduct or order on the territory of a State party to a case.

3. When the performance of any of the measures referred to in the preceding paragraphs requires the cooperation of any other State, the President shall request the government in question to provide the requisite assistance.

Article 25
Provisional Measures

1. At any stage of the proceedings involving cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court may, at the request of a party or on its own motion, order such provisional measures as it deems pertinent, pursuant to Article 63(2) of the Convention.

2. With respect to matters not yet submitted to it, the Court may act at the request of the Commission.

3. The request may be made to the President, to any judge of the Court, or to the Secretariat, by any means of communication. The recipient of the request shall immediately bring it to the President's attention.

4. If the Court is not sitting, the President, in consultation with the Permanent Commission and, if possible, with the other judges, shall call upon the government concerned to adopt such urgent measures as may be necessary to ensure the effectiveness of any provisional measures subsequently ordered by the Court at its next session.

5. In its Annual Report to the General Assembly, the Court shall include a statement concerning the provisional measures ordered during the period covered by the report. If those measures have not been duly implemented, the Court shall make such recommendations as it deems appropriate.

Article 26
Filing of Briefs

1. The application and the reply thereto, and the communication setting out the preliminary objections and the reply thereto, as well as any other briefs addressed to the Court, may be presented in person, by courier, facsimile, telex, mail or any other method in general use. If they are dispatched by electronic mail, the original documents must be submitted within fifteen days.

2. The President may, in consultation with the Permanent Commission, reject any communication from the parties which he considers patently unreceivable, and shall order that it be returned to the interested party, without further action.

Article 27
Default Procedure

1. When a party fails to appear in or continue with a case, the Court shall, on its own motion, take such measures as may be necessary to complete the consideration of the case.

2. When a party enters a case at a later stage of the proceedings, it shall take up the proceedings at that stage.

Article 28
Joinder of Cases and Proceedings

1. The Court may, at any stage of the proceedings, order the joinder of interrelated cases.

2. The Court may also order the joinder of the written or oral proceedings of several cases, including the introduction of witnesses.

3. After consulting the Agents and the Delegates, the President may direct that the proceedings in two or more cases be conducted simultaneously.

Article 29
Decisions

1. The judgments and interlocutory decisions for discontinuance of a case shall be rendered exclusively by the Court.

2. All other orders shall be rendered by the Court if it is sitting, and by the President if it is not, unless otherwise provided. Decisions of the President that are not purely procedural may be appealed before the Court.

3. Judgments and decisions of the Court may not be contested in any way.

Article 30
Publication of Judgments and Other Decisions

1. The Court shall order the publication of:

   a. the judgments and other decisions of the Court; the former shall include only those explanations of votes which fulfill the requirements set forth in Article 55(2) of these Rules;

   b. documents from the dossier, except those considered irrelevant or unsuitable for publication;

   c. the records of the hearings;

d. any other document that the Court considers suitable for publication.

2. The judgments shall be published in the working languages used in each case. All other documents shall be published in their original language.

3. Documents relating to cases already adjudicated, and deposited with the Secretariat of the Court, shall be made accessible to the public, unless the Court decides otherwise.

Article 31
Application of Article 63(1) of the Convention

Application of this provision may be invoked at any stage of the proceedings.

Chapter II
Written Proceedings

Article 32
Institution of the Proceedings

For a case to be referred to the Court under Article 61(1) of the Convention, the application shall be filed with the Secretariat of the Court in each of the working languages. Whereas the filing of an application in only one working language shall not suspend the proceeding, the translations into the other language or languages must be submitted within thirty days.

Article 33
Filing of the Application

The brief containing the application shall indicate:

1. the parties to the case; the purpose of the application; a statement of the facts; the supporting evidence, specifying the facts on which they will bear; the particulars of the witnesses and expert witnesses; the legal arguments, and the conclusions reached.

2. The names of the Agents and Delegates.

If the application is filed by the Commission, it shall be accompanied by the report referred to in Article 50 of the Convention.

Article 34
Preliminary Review of the Application

When, during a preliminary review of the application, the President finds that the basic requirements have not been met, he shall request the Applicant to correct any deficiencies within twenty days.

Article 35
Notification of the Application

1. The Secretary of the Court shall give notice of the application to:

a. The President and the judges of the Court;

b. the respondent State;

c. the Commission, when it is not also the Applicant;

d. the original claimant, if known;

e. the victim or his next of kin, if applicable.

2. The Secretary of the Court shall inform the other States Parties and the Secretary General of the filing of the application.

3. When giving notice, the Secretary shall request that the respondent States designate their Agent, and that the Commission appoint its Delegates, within one month. Until the Delegates are duly appointed, the Commission shall be deemed to be properly represented by its Chairman for all purposes of the case.

Article 36
Preliminary Objections

1. Preliminary objections shall be filed within two months of notification of the application.

2. The document setting out the preliminary objections shall be filed with the Secretariat and shall set out the facts on which the objection is based, the legal arguments, and the conclusions and supporting documents, as well as any evidence which the party filing the objection may wish to produce.

3. The Secretary shall immediately give notice of the preliminary objections to the persons indicated in Article 35(1) above.

4. The presentation of preliminary objections shall not cause the suspension of the proceedings on the merits, nor of the respective time periods or terms.

5. Any parties to the case wishing to submit written briefs on the preliminary objections may do so within thirty days of receipt of the communication.

6. The Court may, if it deems it appropriate, convene a special hearing on the preliminary objections, after which it shall rule on the objections.

Article 37
Answer to the application

The respondent shall answer the application in writing within four months of the notification. The requirements indicated in Article 33 of these Rules shall apply. The Secretary shall communicate the answer to the persons referred to in Article 35(1) above.

Article 38
Other Steps in the Written Proceedings

Once the application has been answered, and before the start of the oral proceedings, the parties may seek the permission of the President to enter additional written pleadings. In such a case, the President, if he sees fit, shall establish the time limits for presentation of the relevant documents.

Chapter III
Oral Proceedings

Article 39
Opening

The President shall announce the date for the opening of the oral proceedings and shall call such hearings as may be necessary.

Article 40
Conduct of the Hearings

The President shall direct the hearings. He shall prescribe the order in which the persons eligible to take part shall be heard, and determine the measures required for the smooth conduct of the hearings.

Article 41
Questions Put During the Hearings

1. The judges may ask all persons appearing before the Court any questions they deem proper.

2. The witnesses, expert witnesses and any other persons the Court decides to hear may, subject to the control of the President, be examined by the persons referred to in Articles 21, 22 and 23 of these Rules.

3. The President is empowered to rule on the relevance of the questions posed and to excuse the person to whom the questions are addressed from replying, unless the Court decides otherwise.

Article 42
Minutes of the Hearings

1. Minutes shall be taken at each hearing and shall contain the following:

   a. the names of the judges present;

   b. the names of those persons referred to in Articles 21, 22 and 23 of these Rules, who are present at the hearing;

   c. the names and other relevant information concerning the witnesses, expert witnesses and other persons appearing at the hearing;

   d. statements made expressly for the record by the States parties to the case or by the Commission;

   e. the statements of the witnesses, expert witnesses and other persons appearing at the hearing, as well as the questions put to them and the replies thereto;

   f. the text of the questions put by the judges and the replies thereto;

   g. the text of any decisions rendered by the Court during the hearing.

2. The Agents and Delegates, as well as the witnesses, expert witnesses and other persons appearing at the hearing, shall receive a copy of the relevant parts of the transcript of the hearing to enable them, subject to the control of the Secretary, to correct any substantive errors. The Secretary shall set the time limits for this purpose, in accordance with the instructions of the President.

3. The minutes shall be signed by the President and the Secretary, and the latter shall attest to their accuracy.

4. Copies of the minutes shall be transmitted to the Agents and Delegates.

Chapter IV
Evidence

Article 43
Admission of Evidence

Items of evidence tendered by the parties shall be admissible only if previous notification thereof is contained in the application and in the reply thereto and, where appropriate, in the communication setting out the preliminary objections and in the answer thereto. Should any of the parties allege *force majeure*, serious impediment or the emergence of supervening events as grounds for producing an item of evidence, the Court may, in that particular instance, admit such evidence at a time other than those indicated above, provided that the opposing party is guaranteed the right of defense.

Article 44
Procedure for Taking Evidence

The Court may, at any stage of the proceedings:

1. Obtain, on is own motion, any evidence it considers helpful. In particular, it may hear as a witness, expert witness, or in any other capacity, any person whose evidence, statement or opinion it deems be to relevant.

2. Invite the parties to provide any evidence at their disposal or any explanation or statement that, in its opinion, may be useful.

3. Request any entity, office, organ or authority of its choice to obtain information, express an opinion, or deliver a report or pronouncement on any given point. The documents may not be published without the authorization of the Court.

4. Commission one or more of its members to conduct an inquiry, undertake an *in situ* investigation or obtain evidence in some other manner.

Article 45
Cost of Evidence

The party requesting the production of evidence shall defray the cost thereof.

Article 46
Convocation of Witnesses and Expert Witnesses

1. The Court shall determine when the parties are to call their witnesses and expert witnesses whom the Court considers it necessary to hear. They shall be summoned in the manner deemed most suitable by the Court.

2. The summons shall indicate:

   a. the name of the witness or expert witness;

   b. the facts on which the examination will bear or the object of the expert opinion.

Article 47
Oath or Solemn Declaration by Witnesses and Expert Witnesses

1. After his identity has been established and before giving evidence, every witness shall take an oath or make a solemn declaration as follows:

"I swear" -- or "I solemnly declare" -- "upon my honor and conscience that I will speak the truth, the whole truth and nothing but the truth."

2. After his identity has been established and before performing his task, every expert witness shall take an oath or make a solemn declaration as follows:

"I swear" -- or "I solemnly declare" -- "that I will discharge my duty as an expert witness honorably and conscientiously."

3. The oath shall be taken, or the declaration made, before the Court or President or any of the judges so delegated by the Court.

Article 48
Objections to Witnesses

1. The interested party may object to a witness before he testifies.

2. If the Court considers it necessary, it may nevertheless hear, for purposes of information, a person who is not qualified to be heard as a witness.

3. The Court shall assess the value of the testimony and of the objections by the parties.

Article 49
Objections to an Expert Witness

1. The grounds for disqualification applicable to judges under Article 19(1) of the Statute shall also apply to expert witnesses.

2. Objections shall be presented within fifteen days of notification of the appointment of the expert witness.

3. If the expert witness who has been challenged contests the ground invoked against him, the Court shall rule on the matter. However, when the Court is not in session, the President may, after consultation with the Permanent Commission, order the evidence to be presented. The Court shall be informed thereof and shall rule on the value of the evidence.

4. Should it become necessary to appoint a new expert witness, the Court shall rule on the matter. Nevertheless, if the evidence needs to be heard as a matter of urgency, the President, after consultation with the Permanent Commission, shall make the appointment and inform the Court accordingly. The Court shall rule on the value of the evidence.

Article 50
Protection of Witnesses and Expert Witnesses

States may neither nor institute proceedings against witnesses or expert witnesses nor bring illicit pressure to bear on them or on their families on account of declarations or opinions they have delivered before the Court.

Article 51
Failure to Appear or False Evidence

The Court may request that the States apply the sanctions provided in their domestic legislation against persons who, without good reason, fail to appear or refuse to give evidence or who, in the opinion of the Court, have violated their oath.

Chapter V
Early Termination of the Proceedings

Article 52
Discontinuance

1. When the party that has brought the case notifies the Court of its intention not to proceed with it, the Court shall, after hearing the opinions of the other parties thereto and the representatives of the victims or their next of kin, decide whether to discontinue the hearing and, consequently, to strike the case from its list.

2. If the respondent informs the Court of its acquiescence in the claims of the party that has brought the case, the Court shall decide, after hearing the opinions of the latter and the representatives of the victims or their next of kin, whether such acquiescence and its juridical effects are acceptable. In that event, the Court shall determine the appropriate reparations and indemnities.

Article 53
Friendly Settlement

When the parties to a case before the Court inform it of the existence of a friendly settlement, compromise, or any other occurrence likely to lead to a settlement of the dispute, the Court may, in that case and after hearing the representatives of the victims or their next of kin, decide to discontinue the hearing and strike the case from its list.

Article 54
Continuation of a Case

The existence of the conditions indicated in the preceding paragraphs notwithstanding, the Court may, bearing in mind its responsibility to protect human rights, decide to continue the consideration of a case.

Chapter VI
Judgments

Article 55
Contents of the Judgment

1. The judgment shall contain:

   a. the names of the President, the judges who rendered it, and the Secretary and Deputy Secretary.

   b. the identity of the parties and their representatives and, where appropriate, of the representatives of the victims or their next of kin;

   c. a description of the proceedings;

   d. the facts of the case;

   e. the conclusions of the parties;

   f. the legal arguments;

   g. the ruling on the case;

h. the decision, if any, in regard to costs;

i. the result of the voting;

j. a statement indicating which text is authentic.

2. Any judge who has taken part in the consideration of a case is entitled to append a dissenting or concurring opinion to the judgment. These opinions shall be submitted within a time limit to be fixed by the President, so that the other judges may take cognizance thereof prior to notification of the judgment.

Article 56
Judgment on Reparations

1. When no specific ruling on reparations has been made in the judgment on the merits, the Court shall set the time and determine the procedure for the deferred decision thereon.

2. If the Court is informed that the injured party and the party adjudged to be responsible have reached an agreement in regard to the execution of the judgment on the merits, it shall verify the fairness of the agreement and rule accordingly.

Article 57
Delivery and Communication of the Judgment

1. When a case is ready for a judgment, the Court shall meet in private. A preliminary vote shall be taken, the wording of the judgment approved, and a date fixed for the public hearing at which the parties shall be so notified.

2. The texts, legal arguments and votes shall all remain secret until the parties have been notified of the judgment,.

3. Judgments shall be signed by all the judges who participated in the voting and by the Secretary. However, a judgment signed by only a majority of the judges shall be valid.

4. Dissenting or concurring opinions shall be signed by the judges submitting them and by the Secretary.

5. The judgments shall conclude with an order, signed by the President and the Secretary and sealed by the latter, providing for the communication and execution of the judgment.

6. The originals of the judgments shall be deposited in the archives of the Court. The Secretary shall dispatch certified copies to the States parties to the case, the Commission, the President of the Permanent Council, the Secretary General, the representatives of the victims or their next of kin, and any interested persons who request them.

7. The Secretary shall transmit the judgment to all the States Parties.

Article 58
Request for Interpretation

1. The request for interpretation, referred to in Article 67 of the Convention, may be made in connection with judgments on the merits or on reparations and shall be filed with the Secretariat. It shall state with precision the issues relating to the meaning or scope of the judgment of which the interpretation is requested.

2. The Secretary shall transmit the request for interpretation to the States that are parties to the case and to the Commission, as appropriate, and shall invite them to submit any written comments they deem relevant, within a time limit established by the President.

3. When considering a request for interpretation, the Court shall be composed, whenever possible, of the same judges who delivered the judgment of which the interpretation is being sought. However, in the event of death, resignation or disqualification, the judge in question shall be replaced pursuant to Article 16 of these Rules.

4. A request for interpretation shall not suspend the effect of the judgment.

5. The Court shall determine the procedure to be followed and shall render its decision in the form of a judgment.

TITLE III
ADVISORY OPINIONS

Article 59
Interpretation of the Convention

1. Requests for an advisory opinion under Article 64(1) of the Convention shall state with precision the specific questions on which the opinion of the Court is being sought.

2. Requests for an advisory opinion submitted by a Member State or by the Commission shall, in addition, identify the provisions to be interpreted, the considerations giving rise to the request, and the names and addresses of the Agent or the Delegates.

3. If the advisory opinion is sought by an OAS organ other than the Commission, the request shall also specify, further to the information listed in the preceding paragraph, how it relates to the sphere of competence of the organ in question.

Article 60
Interpretation of Other Treaties

1. If the interpretation requested refers to other treaties for the protection of human rights in the American states, as provided for in Article 64(1) of the Convention, the request shall indicate the name of, and parties to, the treaty, the specific questions on which the opinion of the Court is being sought, and the considerations giving rise to the request.

2. If the request is submitted by one of the organs of the OAS, it shall also indicate how the subject of the request falls within the sphere of competence of the organ in question.

Article 61
Interpretation of Domestic Laws

1. A request for an advisory opinion presented pursuant to Article 64(2) of the Convention shall indicate the following:

   a. the provisions of domestic law and of the Convention or of other treaties concerning the protection of human rights to which the request relates;

   b. the specific questions on which the opinion of the Court is being sought;

   c. the name and address of the applicant's Agent.

2. Copies of the domestic laws referred to in the request shall accompany the application.

Article 62
Procedure

1. On receipt of a request for an advisory opinion, the Secretary shall transmit copies thereof to all the Member States, the Commission, the Secretary General, and the OAS organs within whose spheres of competence the subject of the request falls, as appropriate.

2. The President shall establish the time limits for the filing of written comments by the interested parties.

3. The President may invite or authorize any interested party to submit a written opinion on the issues covered by the request. If the request is governed by Article 64(2) of the Convention, he may do so after prior consultation with the Agent.

4. At the conclusion of the written proceedings, the Court shall decide whether there should be oral proceedings and shall fix the date for such a hearing, unless it delegates the latter task to the President. Prior consultation with the Agent is required in cases governed by Article 64(2) of the Convention.

Article 63
Application by Analogy

The Court shall apply the provisions of Title II of these Rules to advisory proceedings, to the extent that it deems them to be compatible.

Article 64
Delivery and Content of Advisory Opinions

1. The delivery of advisory opinions shall be governed by Article 57 of these Rules.

2. Advisory opinions shall contain:

   a. the name of the President, the judges who rendered the opinion, and the Secretary and Deputy Secretary;

   b. the issues presented to the Court;

   c. a description of the various steps in the proceedings;

   d. the legal arguments;

   e. the opinion of the Court;

   f. a statement indicating which text is authentic.

3. Any judge who has taken part in the delivery of an advisory opinion is entitled to append a dissenting or concurring opinion to the opinion of the Court. These opinions shall be submitted within a time limit to be fixed by the President, so that the other judges can take cognizance thereof before the advisory opinion is rendered. They shall be published in accordance with Article 30(1)(a) of these Rules.

4. Advisory opinions may be delivered in public.

TITLE IV
FINAL AND TRANSITORY PROVISIONS

Article 65
Amendments to the Rules of Procedure

These Rules of Procedure may be amended by the decision of an absolute majority of the titular judges of the Court. Upon their entry into force, they shall abrogate the previous Rules of Procedure.

Article 66
Entry into Force

These Rules of Procedure, the Spanish and English versions of which are equally authentic, shall enter into force on January 1, 1997.

TABLE OF CONTENTS

TITLE II
PROCEDURE

Chapter I
General Rules

Chapter II
Written Proceedings

Chapter III
Oral Proceedings

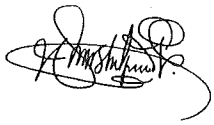
TITLE IV
FINAL AND TRANSITORY PROVISIONS

Article 65. Amendments to the Rules of Procedure

Article 66. Entry into Force

Done at the seat of the Inter-American Court of Human Rights in San José, Costa Rica on this sixteenth day of September, 1996.

Héctor Fix-Zamudio
President



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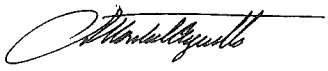

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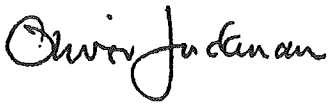

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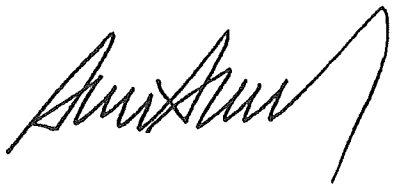

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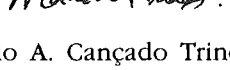


Antônio A. Cançado Trindade

Manuel E. Ventura-Robles
Secretary

So ordered,

Héctor Fix-Zamudio
President

Manuel E. Ventura-Robles
Secretary

APPENDIX XXXI

20 March 1996

Mr. Secretary:

I have the honor to transmit to you a copy of the application submitted by the Inter-American Commission on Human Rights to the Inter-American Court of Human Rights against the Republic of Ecuador in Case No. 10.476 concerning Consuelo Benavides. I would like to also inform you that we shall be dispatching by courier ten copies of the application, with its corresponding annexes.

The Commission has decided to designate Dr. Oscar Luján Fappiano and Professor Robert Goldman as its Delegates. They will be assisted by Dr. David J. Padilla, Assistant Executive Secretary, and Dr. Elizabeth H. Abi-Mershed, an Attorney attached to the Secretariat.

Pursuant to Article 22(2) of the Rules of Procedure of the Inter-American Court, the Commission will also be assisted by the following attorneys, who represent the victim: Alejandro Ponce Villacís, William Clark Harrell, Richard Wilson and Karen Musalo.

Pursuant to Article 26(1) of the Rules of Procedure of the Inter-American Court of Human Rights, as amended on July 16, 1993, this application is being submitted in English, one of the working languages of the Court. The Commission will provide the Spanish translation within 45 days.

Accept, Sir, the assurances of my highest consideration.

Domingo E. Acevedo
Assistant Executive Secretary

Mr. Manuel Ventura-Robles
Secretary
Inter-American Court of Human Rights
San Jose, Costa Rica

APPENDIX XXXII

August 8, 1996

Mr. Secretary:

I have the honor to transmit to you ten copies of the application, with its corresponding annexes, submitted by the Inter-American Commission on Human Rights to the Inter-American Court of Human Rights against the Peruvian State in case No. 11.337 concerning **Luis Alberto Cantoral-Benavides**.

The Commission has designated Dr. Carlos Ayala-Corao as its Delegate, Dr. Jean Joseph Exumé as its Deputy Delegate, and Dr. Domingo E. Acevedo as its Advisor.

The Commission has also designated the following professionals, who also represent Mr. Luis Alberto Cantoral, to serve as Assistants: Dr. Ivan Bazán-Chacón (FEDEPAZ), Dr. José Miguel Vivanco (Human Rights Watch/Americas), Dr. Viviana Krsticevic, Dr. Ariel Dulitzky and Dr. Marcela Matamoros (CEJIL), and Dr. Rosa Quedena (FEDEPAZ).

A copy of the note of November 14, 1995 in which the petitioners in this case (FEDEPAZ) requested the Commission to include CEJIL and Human Rights Watch/Americas as co-petitioners in this case appears as Annex XIV to the application.

Accept, Sir, the assurances of my highest consideration.

Jorge E. Taiana
Executive Secretary

Dr. Manuel E. Ventura-Robles
Secretary,
Inter-American Court of Human Rights
San José, Costa Rica

APPENDIX XXXIII

August 8, 1996

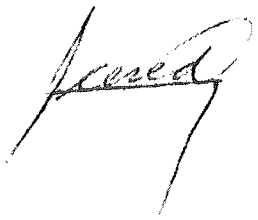
Mr. Secretary:

I have the honor to transmit to you ten copies of the application, with its corresponding annexes, submitted by the Inter-American Commission on Human Rights to the Inter-American Court of Human Rights against the Peruvian State in case No. 10.009 concerning Nolberto Durand-Ugarte and Gabriel Pablo Ugarte-Rivera.

The Commission has designated Ambassador John S. Donaldson as its Delegate, Ambassador Alvaro Tirado-Mejía as its Deputy Delegate, and Dr. Domingo E. Acevedo as its Advisor.

The Commission has also designated the following professionals, who also represent the victims, to act as Assistants: Dr. Ronald Gamarra (Legal Defense Institute), José Miguel Vivanco (Human Rights Watch/Americas), Dr. Viviana Krsticevic, Dr. Ariel Dulitzky and Dr. Marcela Matamoros (CEJIL), and Dr. Katya Salazar (an Attorney from the Legal Defense Institute.)

Accept, Sir, the assurances of my highest consideration.



Domingo E. Acevedo
Assistant Executive Secretary

Dr. Manuel E. Ventura-Robles
Secretary,
Inter-American Court of Human Rights
San José, Costa Rica

APPENDIX XXXIV

August 30, 1996

Ref.: Case No. 11.129

Mr. Secretary:

I have the honor to transmit to you a copy of the application from the Inter-American Commission on Human Rights to the Inter-American Court of Human Rights in the case of Efraín Bámaca Velásquez. I would like to also inform you that ten copies of the application, with its corresponding annexes, will be delivered to you by a Secretariat official who will be visiting the Court on Tuesday, September 2, 1996.

The Commission has designated the following Delegates to represent it: Dean Claudio Grossman, President of the Commission, and Dr. Carlos Ayala-Corao, Second Vice President, who will be assisted by Dr. David J. Padilla, Assistant Executive Secretary, and Dr. Denise Gilman, an Attorney of the Secretariat.

Pursuant to Article 22(2) of the Rules of Procedure of the Illustrious Court, they will also be assisted by Dr. José Pertierra.

Pursuant to Article 26(1) of the Rules of Procedure of the Inter-American Court, as amended on July 16, 1993, this application is being submitted in English, one of the working languages of the Court. The Commission will shortly submit its translation.

Accept, Sir, the renewed assurances of my highest consideration.

Jorge E. Taiana
Executive Secretary

Mr. Manuel E. Ventura-Robles
Secretary,
Inter-American Court of Human Rights
Sam José, Costa Rica

APPENDIX XXXV

February 2, 1996

Mr. President:

On behalf of the Inter-American Commission on Human Rights, I have the honor to request that you adopt provisional measures on behalf of Dr. Arnoldo Alemán-Lacayo, Case No. 11.281 before the Commission, pursuant to Article 63(2) of the American Convention on Human Rights, and Article 24 of the Rules of Procedure of the Court.

The decision to seek these provisional measures was taken on January 30, 1996 by the President of the Inter-American Commission on Human Rights, Dr. Alvaro Tirado-Mejía, pursuant to Article 76 of the Regulations of the Commission and on the basis of the information and grounds set forth in the decision attached hereto.

For purposes of the processing of this request, the Inter-American Commission on Human Rights will be represented before the Illustrious Court by its President, Dr. Alvaro Tirado-Mejía, assisted by Dr. Milton Castillo, an Attorney attached to the Secretariat.

Accept, Sir, the assurances of my highest consideration.

Edith Márquez-Rodríguez
Executive Secretary

His Excellency.
Mr. Héctor Fix-Zamudio
President
Inter-American Court of Human Rights
Apartado 6906
San José, Costa Rica

APPENDIX XXXVI

March 15, 1996

Mr. President:

On the instructions of the Inter-American Commission on Human Rights, I have the honor of transmitting to you a request for provisional measures in the case of Rafael Iván Suárez-Rosero (No. 11.273) currently before the Illustrious Court, pursuant to Article 63(2) *in fine* of the American Convention on Human Rights, and Article 24 of the Rules of Procedure of the Court.

The decision to seek these provisional measures from the Illustrious Court was taken by the Commission on March 13, 1996, on the basis of information and grounds set forth in the decision attached hereto.

Accept, Sir, the assurances of my highest consideration.

David J. Padilla
Assistant Executive Secretary

Dr. Héctor Fix-Zamudio
President,
Inter-American Court of Human Rights
San José, Costa Rica

APPENDIX XXXVII

March 28, 1996

Ref.: Provisional Measures
Father Daniel Vogt *et al.*

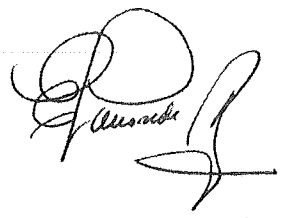
Mr. Secretary:

On behalf of the Inter-American Commission on Human Rights, and on the instructions of its President, Dean Claudio Grossman, I herewith transmit to you, and through you to the Honorable Court, the provisional measures in the case of Father Daniel Vogt (Case No. 11.497), pursuant to Article 63(2) *in fine* of the American Convention on Human Rights, and Article 24 of the Rules of Procedure of the Inter-American Court of Human Rights.

The decision to request these measures from the Honorable Court was taken on March 26, 1996, pursuant to Article 76 of the Regulations of the Commission, on the basis of the information and grounds set forth in the decision attached hereto.

For purposes of the processing of this request, the Commission will be represented before the Illustrious Court by its President, Dean Claudio Grossman as its Delegate, and by its Assistant Executive Secretary, Dr. David Padilla, and Dr. Denise Gilman as its Advisors. They will be assisted by Dr. José Miguel Vivanco, Dr. Anne Manuel, Dr. Viviana Krsticevic, Dr. Ariel Dulitzky, Dr. Marcela Matamoros, Dr. Francisco Cox, and Dr. Bertha Argüello.

Accept, Sir, the assurances of my highest consideration.



Domingo Acevedo
Assistant Executive Secretary

Mr. Manuel Ventura-Robles
Secretary
Inter-American Court of Human Rights
San José, Costa Rica

APPENDIX XXXVIII

April 12, 1996

Ref.: Provisional Measures
11.570, Pascual Serech, Manuel Saquic *et al.*

Mr. Secretary:

On behalf of the Inter-American Commission on Human Rights, and on the instructions of its President, Dean Claudio Grossman, I am transmitting to you and, through you, to the Honorable Court, the provisional measures enclosed herein, in the case of Pascual Serech *et al.* (Case No. 11.570), pursuant to Article 63(2) *in fine* of the American Convention on Human Rights, and Article 24 of the Rules of Procedure of the Inter-American Court of Human Rights.

The decision to request these measures from the Honorable Court was taken on April 12, 1996, pursuant to Article 76 of the Regulations of the Commission, on the basis of the information and grounds set forth in the attached decision.

For purposes of the processing of this request, the Commission will be represented before the Illustrious Court by its President, Dean Claudio Grossman as its Delegate, and by its Assistant Executive Secretary, Dr. David Padilla, and Dr. Denise Gilman as its Advisors. They will be assisted by Dr. William Harrell and Dr. Frank Larue.

Accept, Sir, the assurances of my highest consideration.

Domingo Acevedo
Assistant Executive Secretary

Mr. Manuel Ventura-Robles
Secretary
Inter-American Court of Human Rights
San José, Costa Rica

APPENDIX XXXIX

May 30, 1996

Mr. Secretary:

I have the honor to tramit to you the brief by which the Delegate of the Commission in the **María Elena Loayza Tamayo** Case, request that the Honorable Inter-American Court of Human Rights, in conformity with that in Articles 63(2) of the American Convention and 24 of the Rules of Procedure of the Court request the Peruvian State reverse the cellular isolation order imposed on the claimant.

Accept, Sir, the assurances of my highest consideration.

Jorge E. Taiana
Executive Secretary

Lic. Manuel E. Ventura-Robles
Secretary Inter-American Court
of Human Rights
San José, Costa Rica

APPENDIX XI

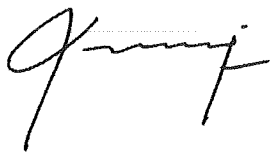
October 18, 1996

Mr. President:

I have the honor to inform you that, pursuant to Article 63(2) of the American Convention on Human Rights, the Inter-American Commission on Human Rights, meeting at its 93rd. Regular Session, decided to request the Illustrious Court to take provisional measures on behalf of the wife and children of Mr. José Giraldo Cardona, a lawyer and President of the Human Rights Committee of the Department of El Meta, and on behalf of the committee members and other persons under serious threat of death as a result of the murder of Mr. José Giraldo-Cardona on October 13, 1996. We are making this request inasmuch as the precautionary measures sought by the Commission from the Government of Colombia on behalf of Mr. Giraldo-Cardona and the members of the El Meta Committee, pursuant to Article 29 of its Regulations, have had no effect.

In accordance with the decision of the Commission, I am pleased to submit a copy of the aforementioned resolution issued today and request that you take appropriate action.

Accept, Sir, the renewed assurances of my highest consideration.



Jorge E. Taiana
Executive Secretary

Dr. Héctor Fix-Zamudio
President
Inter-American Court of Human Rights
San José, Costa Rica

APPENDIX XLI

SANTIAGO, 5 NOV 1996

Dr. Héctor Fix-Zamudio
President of the Inter-American
Court of Human Rights
SAN JOSE, COSTA RICA

Mr. President,

In conformity with Article 64(1) of the American Convention on Human Rights and Article 51 of the Rules of Procedure of the Inter-American Court of Human Rights, the Government of Chile, a State Member of the Organization of American States and a Party to the said Convention, has the honor to address to you a request for an Advisory Opinion.

The purpose of the request is to obtain an interpretation of Articles 50 and 51 of the Convention, in the context of the specific circumstances set out below.

The Government of Chile is desirous of obtaining the considered opinion of the Court as to whether Articles 50 and 51 of the Convention give the Inter-American Commission on Human Rights authority to revise a Report which it has unanimously approved and has ordered to be published, having notified the Parties to that effect.

Specifically, the Government of Chile is requesting from the Inter-American Court of Human Rights answers to the following two questions:

(a) Can the Inter-American Commission on Human Rights, once it has, in relation to a given State, adopted the two Reports mentioned in Articles 50 and 51, and has notified the State that the second of these is definitive, subsequently make substantial changes to those reports and issue a third report?

(b) In the event that the Commission is not authorized by the Convention to make changes to its definitive Report, which of the Reports should the State consider to be valid?

In formulating this request, the Government of Chile has in mind the circumstances surrounding an actual case which was submitted to the Inter-American Commission on Human Rights.

For greater clarity and ease of comprehension, the chronological order of the events that have given rise to this request is set out below:

(1) On September 14, 1995, the Commission approved, in accordance with Article 50 of the Convention, Report 20/95 on this case, and transmitted it to the Government of Chile on October 6, 1995. The Chilean Government responded to this on February 8, 1996.

(2) On March 19, 1996, the Commission notified Report 11/96 to the Chilean Government. In its communication the Commission advised the Government of Chile that it had given final approval to the Report and ordered its publication.

(3) On April 2, 1996, the Commission wrote to the Government of Chile stating that it had agreed to postpone publication of Report 11/96, in the light of new information which the petitioners had brought to its attention on March 27 and 29, 1996.

(4) On April 22, 1996, the Permanent Representative of Chile to the Organization of American States informed the Commission of the views of his Government concerning its decision to postpone publication of Report 11/96.

(5) On May 2, 1996, at the request of the Petitioners, a hearing was held at which they, as well as representatives of the Government of Chile, participated.

(6) It is also worthy of note that, on May 3, 1996, the Commission adopted a new Report on the case, the next of which was substantially different from the text of the second Report. This last report was transmitted to the Government on May 21, 1996. The new report was described as being "a copy of the Report with the modifications approved by the Commission in its Session held on May 3 of the current year."

It should be pointed out that this new Report of the IACHR was not unanimously approved by the Commission, as it includes the dissenting opinion of Dr Alvaro Tirado-Mejía, an opinion which the Government of Chile wholly supports.

In addition, it is the view of the Government of Chile that no power to revise and amend a final report is neither contemplated in, or can be inferred from, the text of Articles 50 and 51 of the Convention. On the contrary, such a proceeding undermines the juridical security which is essential to the functioning of the system.

Given the difference of opinion within the Commission itself over this decision, which touches on an extremely important practical and procedural aspect of the Convention, and in view of the necessity that those who take part in proceedings before the IACHR should know what they can rely upon, it is imperative that the Government of Chile be apprised to the opinion of the Inter-American Court of Human Rights on this matter.

The Government of Chile recalls and registers its full support for the *dictum* in the *Cayara Case* of the Court over which Your Excellency presides, to the effect that: "The Court must preserve fair balance between the protection of human rights, which is the ultimate purpose of the system, and the legal certainty and procedural equity that will ensure the stability and reliability of the international protection mechanism. In the instant case, to continue with a proceeding aimed at ensuring the protection of the interests of the alleged victims in the face of manifest violations of procedural norms established by the Convention itself would result in a loss of the authority and credibility that are indispensable to organs charged with administering the system for the protection of human rights."

The Government of Chile believes that the Advisory Opinion which it is requesting is of great importance for the due application of the American Convention on Human Rights and for the proper functioning of the American regional system for the protection of human rights.

The names and addresses of the agents for this request are:

- Ambassador Edmundo Vargas Carreño, Permanent Representative of Chile to the OAS., 200 L Street, N.W., Suite 720 Washington, D.C., United States of America, telephone: No. (202) 887-5475 and fax: No. (202) 775-0713;

- Attorney Carmen Hertz Cádiz, Human Rights Advisor of the Minister of Foreign Affairs, Catedral 1183, Santiago, Chile, telephone: No. (56-2) 672-7581 and fax: No. (56-2) 699-0783.

I avail myself of this opportunity to express to your Excellency the assurances of my highest and most distinguished consideration.

JOSE MIGUEL INSULZA

APPENDIX XLII

December 12, 1996

Dear Mr. Ventura:

I am pleased to transmit through you to the Inter-American Court of Human Rights the application in which the victims' representatives and the Commission's Assistants in the El Amparo case request an interpretation of the judgment on reparations rendered by the Honorable Court on September 14, 1996.

I wish to inform the Honorable Court that for this purpose Dr. Oscar Luján-Fappiano, Rapporteur for Venezuela, will serve as the Delegate of the Commission.

Sincerely,

Jorge E. Taiana
Executive Secretary

Mr. Manuel E. Ventura-Robles
Secretary
Inter-American Court of Human Rights
San José, Costa Rica

APPENDIX XLIII

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
Brasil		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		11/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		24/III/81	
Nicaragua	22/XI/69	25/IX/79	12/II/91
Panamá	22/XI/69	22/VI/78	09/V/90
Paraguay	22/XI/69	24/VIII/89	26/III/93
Peru	27/VII/77	28/VII/78	21/I/81
Suriname		12/XI/87	12/XI/87
Trinidad and Tobago		28/V/91	28/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	
Brazil		21/VIII/96
Costa Rica	17/XI/88	
Dominican Rep.	17/XI/88	
Ecuador	17/XI/88	25/III/93
El Salvador	17/XI/88	06/VI/95
Guatemala	17/XI/88	
Haiti	17/XI/88	
Mexico	17/XI/88	16/IV/96
Nicaragua	17/XI/88	
Panama	17/XI/88	18/II/93
Paraguay	26/VIII/96	
Peru	17/XI/88	04/VI/95
Suriname		10/VII/90
Uruguay	17/XI/88	02/IV/96
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	13/VIII/96
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